THE PHILIPPINE LAW ON SEARCH AND SEIZURE: A RESTATEMENT*

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Our law on search and seizure has essentially been developed and refined from the injunction in our Constitution that "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated."[1] The injunction, however is qualified in terms: what is proscribed are only unreasonable searches and seizures. The Constitutional prohibition therefore readily translates itself into a "reasonableness" test.

Still, the same provision of the Constitution goes on to provide a limitation on the issuance of search warrants when it says:

> "x x x and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized."

The above-quoted Constitutional provision is equally as meaningful in what it does not say as in what it does say. As the provision sets forth the procedural requirements for the issuance of a search warrant, it does not say that only searches and seizures with a warrant shall be deemed lawful and reasonable. The net implication of this is that a search and seizure may be lawful and reasonable regardless of whether or not it was made with a warrant, but a warrant must be issued according to the prescribed procedure else the search and seizure thereunder cannot derive legitimacy from the warrant.

This article is an attempt to restate the law on the following matters:

1. When a search and seizure may be made without a warrant;
2. The issuance, form and execution of a search warrant; and
3. The consequences of an unlawful search and seizure.

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[1] PHIL. CONST., art. IV, sec. 3.

I. Warrantless Search and Seizure

The situations in which a search and seizure may be made without a warrant are few and limited. These situations are explored in the discussion which now follows:

1. *"Consent" search and seizure*

Where the person voluntarily submits himself to a search, a warrant therefor is unnecessary. Where the person at the time of the search fails to object thereto, he is deemed to have consented to the search. This is precisely what the Supreme Court ruled in *People v. Kagui*:[2]

> "The appellant permitted them to search his person and to take from him the articles in question to be used as evidence against him in due time; at least, he neither made any objection nor even muttered a bit of protest. Consequently his contention that he was subjected to the rigor of an unreasonable search to dispossess him of his effects without judicial warrant, and that the court should have ordered their return to him when he so formally requested before the trial, is unfounded. When one voluntarily submits to a search or consents to have it made of his person or premises, he is precluded from later complaining thereof. (Cooley, Constitutional Limitations, 8th ed., vol. I, page 631.) The right to be secure from unreasonable search may, like every right, be waived and such waiver may be made either expressly or impliedly."

A person's refusal to give his consent to a search should not be taken as evidence against him or be made the basis of an inference of guilt.[3]

There is statutory recognition of the legality of a warrantless search made with the previous consent of the owner. The Revised Penal Code extends this implied recognition when it makes it a criminal offense for "any public officer or employee who, not being authorized by judicial order, shall enter any dwelling against the will of the owner thereof, search papers or other effects found therein without the previous consent of such owner, or having surreptitiously entered said dwelling, and being required to leave the premises, shall refuse to do so."[4] Similarly, the Revised Penal Code punishes any private person who enters the dwelling or closed premises or fenced estate of another against his will.[5]

The consent to the search and seizure must however be given knowingly and intelligently.

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[2] 63 Phil. 221, 226 (1936). Here, however, the search and seizure was also justified as having been made incident to an arrest.

[3] U. S. v. De los Reyes, 20 Phil. 467 (1911).

[4] Rev. Penal Code, art. 128.

[5] *Id.*, Arts. 280-81.

Where a law enforcement officer is enabled to enter a house and make a search therein with the consent of its occupants upon the officer's false representation that he has a search warrant, the search has been said to be unlawful. "When a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no right to resist the search. The situation is instinct with coercion — albeit colorably lawful coercion. Where there is coercion there cannot be consent."[6]

But it is not clear whether the police should follow the *Miranda* safeguards in obtaining a person's consent to a warrantless search. There is no Philippine decision on the matter and there is a split of authority in the American cases with no pronouncement yet by the United States Supreme Court.[7]

Where the warrantless search is conducted with the consent of a third party — *e.g.*, a friend, relative, landlord, or employee, it is likewise unsettled in our jurisdiction whether such a search would be lawful.[8]

2. *Search and seizure incident to an arrest*

A search and seizure incident to a lawful arrest has been a long-recognized exception[9] to the requirement of a search warrant. What may be searched and seized in this connection are: (1) the person of him who is arrested, in order to find and seize things connected with the crime as its fruits or as the means by which it was committed,[10] (2) whatever is found in the possession or control of the person arrested,[11] (3) any money or property found upon the person arrested which might furnish him with the means of committing violence or of escaping,[12] and (4) any money or property found in the person arrested which may be used as evidence in the trial of the case.[13]

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[6] Bumper v. North Carolina, 391 U.S. 543, 88 S.Ct. 1788, 20 L.Ed. 2d 797, 803 (1968).

[7] Compare State v. McCarthy, 199 Kan. 166, 427 P. 2d 616 (1967) with U.S. v. Blalock, 255 F. Supp. 268 (E. D. Pa. 1966). Recent decisions favoring application of *Miranda* safeguards: U.S. v. Fisher, 329 F. Supp. 630 (D. Minn. 1971); Tidewell v. Superior Court, 17 Cal. App. 3rd 780, 95 Cal. Rptr. 213 (1971).

[8] However, it may be possible to infer from the opinion in *Lopez v. Commissioner of Customs*, 68 SCRA 320 (1975) that a wife may give consent to the warrantless search of her husband's papers and effects, but the decisive point in this case seems actually to have been the fact that the consenting party was the occupant of the hotel room where the search was made — even as it turned out later that she was not really the wife of her co-occupant, the owner of the things searched. For a discussion of the American cases, see Tigar, *Waiver of Constitutional Rights: Disquiet in the Citadel*, 84 HARV. L. REV. 1 (1970). But see n. 82 and accompanying text.

[9] Alvero v. Dizon, 76 Phil. 637, 645, (1946) calls it "[t]he most important exception to the necessity for a search warrant."

[10] *Id.*

[11] *Id.*; People v. Kagui, *supra*, note 2.

[12] People v. Veloso, 48 Phil. 169, 180-81 (1925); Moreno v. Ago Chi, 12 Phil. 439 (1909).

[13] *Id.*

Line-drawing problems arise where the warrantless search incident to an arrest is made to extend beyond the physical person of the one arrested. In *Alvero v. Dizon*[14] what was seized were documents from the accused's house but it was not clear whether the accused was also arrested while in his house or while elsewhere. At any rate, our Supreme Court there generalized:

> "When one is legally arrested for an offense whatever is found in his possession or in his control may be seized and used in evidence against him; and an officer has the right to make an arrest without a warrant of a person believed by the officer upon reasonable grounds to have committed a felony. (Carroll vs. United States, 267 U.S., 132.)"[15]

The citation to the *Carroll* case bears updating. In the much more recent case of *Chimel v. California,*[16] the United States Supreme Court clarified that *Carroll* did not imply that the "place" where one is arrested may be searched so long as the arrest is valid.

Chimel announced what has been called the "immediate control" test as follows:

> "* * * When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control' — construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.
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> "There is no comparable justification, however, for routinely searching rooms other than that in which an arrest occurs — or, for that matter, for searching through all the desk drawers or other closed or concealed areas in that room itself. Such searches, in the absence of well-recognized exceptions, may be made only under the authority of a search warrant."
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> "It is argued in the present case that it is 'reasonable' to search a man's house when he is arrested in it. But that argument is founded on

[14] 76 Phil. 637 (1946).
[15] *Id.* at 645.
[16] 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed. 2d 685 (1969).

> little more than a subjective view regarding the acceptability of certain sorts of police conduct, and not on considerations relevant to Fourth Amendment interests. Under such an unconfined analysis, Fourth Amendment protection in this area would approach the evaporation point. It is not easy to explain why, for instance, it is less subjectively 'reasonable' to search a man's house when he is arrested on his front lawn — or just down the street — than it is when he happens to be in the house at the time of arrest. * * *"

The case law on warrantless search incident to an arrest may be said to have been essentially codified in the following provision of the Rules of Court: "A person charged with an offense may be searched for dangerous weapons or anything which may be used as proof of the commission of the offense."[17]

3. *Search and seizure by customs authorities*

The Tariff and Customs Code contains the following provisions on the authority of persons in charge of enforcing customs and tariff laws to conduct searches and seizures:

> "SEC. 2208. *Right of Police Officer to Enter Inclosure.* — For the more effective discharge of his official duties, any person exercising the powers herein conferred, may at anytime enter, pass through, or search any land or inclosure or any warehouse, store or other building, not being a dwelling house.
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> A warehouse, store or other building or inclosure used for the keeping or storage of articles does not become a dwelling house within the meaning hereof merely by reason of the fact that a person employed as watchman lives in the place, nor will the fact that his family stays there with him alter the case."
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> "SEC. 2209. *Search of Dwelling House.* — A dwelling house may be entered and searched only upon warrant issued by a judge or justice of the peace, upon sworn application showing probable cause and particularly describing the place to be searched and person or thing to be seized."
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> "SEC. 2210 — *Right to Search Vessel or Aircrafts and Persons or Articles Conveyed Therein.* — It shall be lawful for any official or person exercising police authority under the provisions of this Code to go aboard any vessel or aircraft within the limits of any collection district, and to inspect, search and examine said vessel or aircraft and any trunk, package, box or envelope on board, and to search any person on board the said vessel or aircraft and to this end to hail and stop such vessel

[17] Rule 126, sec. 12.

or aircraft if under way, to use all necessary force to compel compliance; and if it shall appear that any breach or violation of the customs and tariff laws of the Philippines has been committed, whereby or in consequence of which such vessels or aircrafts, or the article, or any part thereof, on board of or imported by such vessel or aircraft, is liable to forfeiture, to make seizure of the same or any part thereof.

The power of search hereinabove given shall extend to the removal of any false bottom, partition, bulkhead or other obstruction, so far as may be necessary to enable the officer to discover whether any dutiable or forfeitable articles may be concealed therein.

No proceeding herein shall give rise to any claim for damage thereby caused to article or vessel or aircraft."

"SEC. 2211. *Right to Search Vehicles, Beasts and Persons.* — It shall also be lawful for a person exercising authority as aforesaid to open and examine any box, trunk, envelope or other container, wherever found when he has reasonable cause to suspect the presence therein of dutiable or prohibited article or articles introduced into the Philippines contrary to law, and likewise to stop, search and examine any vehicle, beast or person reasonably suspected of holding or conveying such article as aforesaid."

"SEC. 2212. *Search of Persons Arriving From Foreign Countries.* — All persons coming into the Philippines from foreign countries shall be liable to detention and search by the customs authorities under such regulations as may be prescribed relative thereto.

Female inspectors may be employed for the examination and search of persons of their own sex."

Justification for the power of customs authorites to effect warrantless search and seizure has been put in terms of "tradition":

"Search and seizure without search warrant of vessels and aircrafts for violations of the customs laws have been the traditional exception to the constitutional requirement of a search warrant, because the vessel can be quickly moved out of the locality or jurisdiction in which the search warrant must be sought before such warrant could be secured; hence it is not practicable to require a search warrant before such search or seizure can be constitutionally effected (Papa vs. Mago, L-27360, Feb. 28, 1968, 22 SCRA 857, 871-74; Magoncia vs. Palacio, 80 Phil. 770, 774; Carroll vs. U.S. 267, pp. 132, 149, 158; Justice Fernando, The Bill of Rights, 1972 ed., p. 225; Gonzales, Philippine Constitutional Law, 1966 ed., p. 300).

"The same exception should apply to seizures of fishing vessels breaching our fishery laws. They are usually equipped with power-

> ful motors that enable them to elude pursuing ships of the Philippine Navy or Coast Guard."[18]

The Supreme Court, however, struck down as unlawful a warrantless seizure of a motor launch which had no engine and which therefore could not easily be moved.[19]

The power of customs authorities to search a passenger coming from abroad ceases after he has debarked and been permitted to leave the port, otherwise he would be in "the highly anomalous situation of being liable to detention and search for an indefinite time, which is a violation of the right to be secured against unreasonable searches."[20]

4. *Regulatory searches*

Administrative and executive officials do at times conduct inspections of premises and establishments in the exercise of their regulatory or licensing powers. The matter of whether these inspections may be made without a search warrant has neither been raised in nor decided by our courts. In the United States, however, the rule is that these inspections must be made with a warrant except where the inspection has to be made promptly in an emergency situation.[21] However, warrantless inspection of the premises of a business which is heavily regulated may be upheld on the theory that the licensee consented to such inspection as a condition to his license.[22] Adoption in the Philippines of the American view requiring warrants for regulatory inspection would, it has been suggested, forebode intriguing potentialities for stamping out petty graft in all levels of government.[23]

II. SEARCH WARRANTS

1. *Who may issue search warrant*

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[18] Roldan, Jr. v. Arca, G.R. No. L-25434, July 25, 1975, 65 SCRA 336, 348 (1975). In this case, however the seizure was upheld as "equally valid as an incident to a lawful arrest." "Searches and seizures made by customs authorities are an entirely separate category from searches generally. They are excepted from the constitutional requirement of probable cause and of a warrant validly issued, but not from the requirement of reasonableness." CORTES, THE CONSTITUTIONAL FOUNDATIONS OF PRIVACY 54 (1970). There is even a suggestion in Papa v. Mago, G.R. No. L-27360, February 28, 1968, 22 SCRA 857, 873-74 (1968) that warrantless search of an automobile may also be justified on the reasoning that this is not a home and is moreover very mobile.

[19] Lim v. Ponce de Leon, G.R. No. L-22554, August 29, 1975, 66 SCRA 299 (1975).

[20] People v. Chan Fook, 42 Phil. 230 (1921).

[21] See v. City of Seattle, 387 U.S. 541, 87 S.Ct. 1737, 18 L.Ed. 2d 943 (1967); Camara v. Municipal Court, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed. 2d 930 (1967).

[22] See U. S. v. Biswell, 406 U.S. 311, 92 S.Ct. 1593, 32 L.Ed. 2d 87 (1972).

[23] See CORTES, *op. cit., supra*, note 18 at 60.

As our law stands today, only a judge is authorized to issue a search warrant.[24] A fiscal has no authority to issue a search warrant.[25] Under the 1973 Constitution, however, any "other responsible officer" may be authorized by law to issue a search warrant.[26]

2. *Grounds for issuance of search warrant*

Like a warrant of arrest, a search warrant can be issued on only one ground, and that is, "upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized."[27]

It is a criminal offense for any public officer or employee to "procure a search warrant without just cause."?[28]

"Probable cause" has been judicially defined to import "such facts and circumstances antecedent to the issuance of the warrant, that are in themselves sufficient to induce a cautious man to rely upon them and act in pursuance thereof."[29] The affidavit upon which the warrant is to be issued must, in order to be considered sufficient, be drawn in such a manner that perjury could be charged thereon in case its allegations prove false.[30] The facts sworn to must therefore be based on the affiant's personal knowledge and not on hearsay.[31] This is because the oath is required to convince the judge, not the indivdiual making the affidavit and seeking the issuance of the warrant, of the existence of probable cause.[32] If the applicant's affidavit is based on his personal knowledge and is sufficient in itself to establish probable cause, then the affidavits of other witnesses would be superfluous.[33]

But the "probable cause" must be determined by the judge or "such other responsible officer as may be authorized by law." By this requirement is meant that the judge or other duly authorized officer must himself personally conduct the "examination under oath or affirmation of the complainant and the witnesses he may produce." To date, no officer other than a judge has

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[24] See Rule 126, secs. 1 & 5. The authority of the Secretary of National Defense to issue search warrants is justified as an exercise of the President's emergency powers under martial law.

[25] Lim v. Ponce de Leon, *supra*, note 19.

[26] CONST. art. IV, sec. 3.

[27] *Id.*, Rule 126, secs. 3-5.

[28] REV. PENAL CODE, art. 129.

[29] People v. Sy Juco, 64 Phil. 667, 674 (1937).

[30] *Id.*

[31] Rodriguez v. Villamiel, 65 Phil. 230 (1937); People v. Sy Juco, *supra*, note 29.

[32] Alvarez v. Court of First Instance of Tayabas, 64 Phil. 33, 43 (1937).

[33] *Id.* at 45-46.

been authorized by law to conduct this examination for probable cause. The judge should not delegate the determination of probable cause because this "calls for the exercise of judgment after a judicial appraisal of facts."[34]

The Constitutional requirements of probable cause and of a prior personal examination to determine this probable cause is complemented by the insertion in the Rules of Court of a requirement that every search warrant be "in connection with one specific offense" and that it be issued for one specific offense only.[35] In *Stonehill v. Diokno*[36] the search warrants which were declared to have been improperly issued were for a "violation of Central Bank Laws, Tariff and Customs Laws, Internal Revenue (Code) and Revised Penal Code." Describing and condemning these search warrants, our Supreme Court there said:[37]

> "The averments thereof with respect to the offense committed were *abstract*. As a consequence, it was *impossible* for the judges who issued the warrants to have found the existence of probable cause, for the same presupposes the introduction of competent proof that the party against whom it is sought has performed *particular* acts, or committed *specific* omissions, violating a given provision of our criminal laws."

Where a search warrant is issued without probable cause, "[t]the only possible explanation (not justification) for its issuance," says *Stonehill v. Diokno*,[38] "is the necessity of *fishing* evidence of the commission of a crime." Obtention of a search warrant for the purpose of fishing for evidence to be used in a criminal case against the person whose things or papers are searched and seized "is unconstitutional because it makes the warrant unreasonable, and it is equivalent to a violation of the constitutional provision prohibiting the compulsion of an accused to testify against himself."[39] That fishing for evidence is the purpose for procuring the warrant may be inferred from the fact that the seizing officers turned over the seized articles not to the court but to the fiscal.[40]

3. *Form of search warrant*

A search warrant must be in writing, issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer commanding him to search for personal property and bring it before the court.[41]

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[34] Bache & Co. (Phil.), Inc. v. Ruiz, G.R. No. L-32409, February 27, 1971, 37 SCRA 823, 830 (1971). See Rule 126, secs. 4 & 5.
[35] Rule 126, sec. 3.
[36] G.R. No. L-19550, June 19, 1967, 20 SCRA 383 (1967).
[37] *Id.* at 391-92.
[38] *Id.* at 396.
[39] Rodriguez v. Villamiel, *supra*, note 31 at 238-39.
[40] Garcia v. Locsin, 65 Phil. 689 (1938).
[41] Rule 126, sec. 1.

However, only the following classes of personal property may be the object of search and seizure under a search warrant:

1. Property subject of the offense;
2. Property stolen or embezzled and other proceeds or fruits of the offense; and
3. Property used or intended to be used as the means of committing an offense.[42]

Since the law expressly allows a search warrant to be issued for "property used or intended to be used as the means of committing an offense," it should be plain that it may be issued even if there is no pending criminal prosecution. Thus, a search warrant was held to have been properly issued for gambling devices although there was no pending criminal prosecution.[43]

a) *Specification of one offense only*

There is of course the requirement, as aforestated, that a search warrant be issued for one specific offense only. The warrant must specify the offense allegedly committed or about to be committed.[44] The following search warrants have been struck down for non-compliance with the "one specific offense" requirement: a search warrant for 4 separate and distinct offenses of estafa, falsification, tax evasion and insurance fraud,[45] a search warrant for "violation of Sec. 46(a) of the National Internal Revenue Code in relation to all other pertinent provisions thereof particularly Secs. 53, 72, 73, 208 and 209";[46] and a search warrant for "violation of Central Bank Laws, Tariff and Customs Laws, Internal Revenue (Code) and Revised Penal Code."[47]

b) *Particularity of description of place to be searched and things to be seized*

The Constitution further requires that the search warrant particularly describe the place to be searched and the things to be seized. In *Uy Kheytin v. Villareal*,[48] the Supreme Court explained the purpose of this requirement thus:

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[42] *Id.*, sec. 2.

[43] Philipps v. Municipal Mayor, 105 Phil. 1344 (1959; unrep.). On the other hand, the absence of a pending criminal prosecution may be taken as indicating that the warrant was obtained for "fishing" purposes. Garcia v. Locsin, *supra*, note 40 at 694: "Considering that at the time the warrant was issued there was no case pending against the petitioner, the averment that the warrant was issued primarily for exploration purposes is not without basis."

[44] People v. Sy Juco, *supra*, note 29 at 675-76.

[45] Asian Surety & Insurance Co. v. Herera, G.R. No. L-25232, December 20, 1973 54 SCRA 312 (1973)

[46] Bache & Co. (Phil.), Inc. v. Ruiz, *supra*, note 34.

[47] Stonehill v. Diokno, *supra*, note 36.

[48] 42 Phil. 886, 896-97 (1920).

> "The evident purpose and intent of this requirement is to limit the things to be seized to those, and only those, particularly described in the search warrant — to leave the officers of the law with no discretion regarding what articles they shall seize, to the end that 'unreasonable searches and seizures' may not be made. — that abuses may not be committed."

In that case, the Court held that under a search warrant for opium, the warrant officer was not authorized to seize books, personal letters, and other personal property having remote or no connection with opium.

Several decisions have addressed themselves to the matter of the degree of particularity that the description of the place to be searched and things to be seized must have. Description of the place to be searched as "the building No. 124 Calle Arzobispo, City of Manila" has been held to be particularized enough, the Court stating the rule to be that "a description of a place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended."[49]

People v. *Rubio*[50] perhaps represents the most liberal attitude to the requisite specificity of the description of the things to be seized. In this case, the search warrant which was held to be specific enough described the things to be searched and seized simply as "fraudulent books, invoice and records." Justifying this general and all-encompassing description, the Supreme Court explained:[51]

> "While it is true that the property to be seized under a warrant must be particularly described therein and no other property can be taken thereunder, yet the description is required to be specific only in so far as the circumstances will ordinarily allow. It has been held that, where, by the nature of the goods to be seized, their description must be rather general, it is not required that a technical description be given, as this would mean that no warrant could issue."

The ruling provoked a very strong dissent from Justice Abad Santos who argued:[52]

> "Such phrases [as 'fraudulent books, invoices and records'] do not even express a conclusion of fact by which a warrant officer may be guided in making the search and seizure, but they do express a conclusion of law as to the full import of which even lawyers may differ. In the last analysis, therefore the warrant in this case authorized nothing less than a general exploratory search, which is precisely what the law condemns as 'obnoxious to fundamental principles of liberty'."

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[49] People v. Veloso, *supra*, note 12 at 180.
[50] 57 Phil. 384 (1932).
[51] *Id.* at 389.
[52] *Id.* at 402.

Upon the authority of *People v. Rubio,* the following kinds of descriptions in search warrants had been upheld: (1) "books, documents, receipts, lists, chits and other papers used by him in connection with his activities as money-lender";[53] and (2) "the documents, notebooks, lists, receipts and promissory notes being used by said Sam Sing & Co. in connection with their activities of lending money at usurious rates of interest in violation of law."[54] Similarly, the Supreme Court, in *Central Bank v. Morfe,*[55] upheld a search warrant which enumerated in detail the books of account and accounting records to be searched and seized together with "other documents and articles which are being used or intended to be used in unauthorized banking activities and operations contrary to law."

In *Stonehill v. Diokno,*[56] the search warrants described the effects to be searched for and seized as follows:

> "Books of accounts, financial records, vouchers, journals, correspondence, receipts, ledgers, portfolios, credit journals, typewritters, and other documents and/or papers showing all business transactions including disbursement receipts, balance sheets and related profit and loss statements."

The above-quoted description was ruled to be too general:[57]

> "Thus, the warrants authorized the search for and seizure of records pertaining to *all business transactions* of petitioners herein, regardless of whether the transactions were *legal* or *illegal.* The warrants sanctioned the seizure of *all* records of the petitioners and the aforementioned corporations, whatever their nature, thus openly contravening the explicite command of our Bill of Rights — the thing to be seized be *particularly* described — as well as tending to defeat its major objective: the elimination of *general* warrants."

Refinement of the requirement of particularity was made in the recent case of *Bache & Co. (Phil.), v. Ruiz.*[58] The search warrant involved in this case contained the following description:

> "Unregistered and private books of account (ledgers, journals, columnars, receipts and disbursements books, customers ledgers); receipts for payment received; certificates of stocks and securities; contracts, promissory notes and deeds of sale; telex and coded messages; business records, checks and check stubs; records of bank deposits and withdrawals; and records of foreign remittances, covering the years 1966 to 1970."

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[53] Alvarez v. CFI of Tayabas, *supra,* note 32 at 46-47.
[54] Yee Sue Koy v. Almeda, 70 Phil. 141, 146 (1940).
[55] G.R. No. L-20119, June 30, 1967, 20 SCRA 507 (1967).
[56] *Supra,* note 36.
[57] *Id.* at 383.
[58] *Supra,* note 34.

Recalling the purpose of the particularity requirement to be to leave the warrant officer no discretion regarding what articles to seize, the Court remarked that this purpose "could, surely and effectively, be defeated under the search warrant issued in this case." Elaborating on the test of particularity, the Court clarified: [59]

> "A search warrant may be said to particularly describe the things to be seized when the description therein is as specific as the circumstances will ordinarily allow (People vs. Rubio, 57 Phil. 384); or when the description expresses a conclusion of fact -- not of law -- by which the warrant officer may be guided in making the search and seizure (*idem.*, dissent of Abad Santos, J.,); or when the things described are limited to those which bear direct relation to the offense for which the warrant is being issued (Sec. 2, Rule 126, Revised Rules of Court). The herein search warrant does not conform to any of the foregoing tests. If the articles desired to be seized have any direct relation to an offense committed, the applicant must necessarily have some evidence, other than those articles, to prove the said offense; and the articles subject of search and seizure should come in handy merely to strengthen such evidence. In this event, the description contained in the herein disputed warrant should have mentioned, at least, the dates, amounts, persons, and other pertinent data regarding the receipts of payments, certificates of stocks and securities, contracts, promissory notes, deeds of sale, messages and communications, checks, bank deposits and withdrawals, records of foreign remittances, among others, enumerated in the warrant."

Especially noteworthy from the foregoing excerpt from the *Bache* opinion are these two points: (1) the adoption from the Abad Santos dissent in *People v. Rubio* of the qualification that the description must express a conclusion of fact — and not of law, and (2) the statement that it is a basic requirement that specific dates, amounts, persons and other pertinent data be enumerated in the warrant. With these indications from *Bache*, the current acceptability of a *Rubio*-type description of "fraudulent books, invoices and records" may fairly be said to have been put in doubt.

4. *Manner of executing search warrant*

Like a warrant of arrest, a search warrant is enforceable by forcible methods where resistance is offered. The Rules of Court expressly authorizes the warrant officer, if refused admittance to the place of directed search after giving notice of his purpose and authority, to break open any outer or inner door or window of a house or any part of a house or anything therein to execute the warrant or liberate himself or any person lawfully aiding him when unlawfully detained therein.[60]

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[59] *Id.* at 835-36.
[60] Rule 126, sec. 6.

However, only such property as has been particularly described in the search warrant may be seized thereunder.[61] Hence, again, the importance of particularity in the description in the warrant of the things to be seized. Further assurance that this mandate is obeyed is provided by the requirement that the seizing officer issue a receipt for the articles seized and then promptly deliver these articles together with an inventory to the issuing court.

The Rules of Court requires of every officer seizing property under a warrant that he "give a detailed receipt for the same to the person on whom or in whose possession it was found, or in the absence of any person, must, in the presence of at least one witness, leave a receipt in the place in which he found the seized property."[62] The receipt must be detailed and specific. Thus, where two carloads of documents were seized, the receipts for these documents are not detailed enough where they only specify "one bordereau of reinsurance, 8 fire registers, 1 marine register, four annual statements, folders described only as Bundle gm. 1 red folders; bundle 17-22 big carton folders; folders of various sizes, etc., without stating therein the nature and kind of documents contained in the folders of which there were about a thousand of them that were seized."[63]

The warrant officer is further required to "forthwith deliver" the property seized to the court issuing the warrant "together with a true inventory thereof duly verified by oath."[64] However, the issuing court may authorize the seizing officer to retain custody of the seized articles, in which case the custody of the seizing officer is deemed to be the custody of the issuing court.[65] Where, moreover, the seized articles constitute the *corpus delicti* of the crime their return to their owners will not be ordered by the court.[66]

Time is important in executing a search warrant. The lifetime of a search warrant is 10 days only from its date, and thereafter the warrant becomes void.[67] But a search warrant cannot be used everyday for 10 days, and for a different purpose each day; after the articles for which the warrant was issued have been seized the same warrant cannot be used as authority to make another search.[68] But a search made on one day can be continued the next day, all under the same warrant, because the search on the next day is a mere continuation of the search begun on the day previous — provided that both days come within the 10-day lifetime of the writ.[69]

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[61] People v. Rubio, 57 Phil. 384, 389-90 (1932).
[62] Rule 126, sec. 10.
[63] Asian Surety & Ins. Co., Inc. v. Herrera, *supra*, note 45 at 319-20.
[64] Rule 126, sec. 11.
[65] Yee Sue Koy v. Almeda, *supra*, note 54 at 146-47.
[66] *Id.* at 148.
[67] Rule 126, sec. 9.
[68] Uy Kheytin v. Villareal, *supra*, note 43 at 895.
[69] See *id.* at 895-96.

Generally, a search warrant can be served in the daytime only. Where, however, the affidavit supporting the warrant's issuance "asserts that the property is on the person or in the place ordered to be searched x x x a direction may be inserted that it be served at any time of the day or night."[70] Absent such an explicit directive in the warrant itself, a search cannot be made at night time. Thus, in *Asian Surety & Ins. Co., Inc. v. Herrera*,[71] where the search warrant left blank the "time" for making search, an actual search conducted at 7:30 p.m. until the wee hours of the following morning was declared illegal.

Where what is searched is "the domicile, papers or other belongings" of a person, the law requires, upon penal sanctions, that the search be made in the presence of the owner or any member of his family or in their default, in the presence of two witnesses residing in the same locality.[72] This requirement does not of course apply to a search made of vehicles.

It is a crime in itself for a warrant officer to "exceed his authority or use unnecessary severity in executing" a search warrant.[73]

III. Consequences of Unlawful Search and Seizure

The 1973 Constitution expressly ordains that any evidence obtained from an unreasonable search and seizure "shall be inadmissible for any purpose in any proceedings."[74] The exclusionary rule announced in *Stonehill v. Diokno*,[75] which adopted the rule from *Mapp v. Ohio*[76] even as it overturned the earlier rule in this jurisdiction as laid down in *Moncado v. People's Court*,[77] has now therefore been constitutionally established in this jurisdiction.

While *Stonehill v. Diokno* and *Mapp v. Ohio* emphasize as the principal basis for their espousal of the exclusionary rule, the demonstrated inadequacy if not the futility of remedies other than the exclusionary rule in securing

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[70] Rule 126, sec. 8.

[71] *Supra*, note 63 at 320.

[72] Rev. Penal Code, art. 130. But see Rule 126, Sec. 7. "No search of a house, room, or any other premise shall be made except in the presence of at least one competent witness, resident of the neighborhood." It is submitted that the Revised Penal Code provision being an enactment of Congress, prevails over this inconsistent Rules of Court provision.

[73] Rev. Penal Code, art. 129.

[74] Phil. Const., art. IV, sec. 4(2). The extent to which evidence derived from or otherwise traceable to that which had been illegally seized may also be excluded, has not received consideration by any decision of our Supreme Court. In the United States, there is the so-called "fruit of the poisonous true" doctrine by which this derivative evidence is excluded unless proved to have been otherwise obtained from an independent source. See Gelbard v. U. S., 408 U.S. 41, 92 S.Ct. 2357, 33 L.Ed. 2d 179 (1972); Pitler, *The Fruit of the Poisonous Tree Revisited and Shepardized*, 56 Calif. L. Rev. 579 (1968).

[75] *Supra*, note 36.

[76] 367 U.S. 643, 84 A.L.R. 2d 933, 81 S.Ct. 1984, 6 L.Ed. 2d 1081 (1961).

[77] 80 Phil. 1 (1948).

respect for the guaranty against unreasonable searches and seizures, the adoption of the exclusionary rule has not effected the abolition of these other remedies. These other remedies are: (1) self-help, (2) criminal prosecution of the officer, (3) civil damages againts the officer, and (4) disciplinary action against the officer by his administrative superiors.[78]

There is the remedy of self-help in the form of resistance, without liability, to an unlawful search and seizure.

As earlier stated, an officer who makes an unjustified warrantless search and seizure may be criminally liable for "violation of domicile,"[79] while procurement of a search warrant without just cause as well as improper execution of the warrant are also independently punishable as criminal acts.[80]

The Civil Code[81] expressly gives a cause of action for damages, including moral and exemplary, against any public officer or employee or any private individual "who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs" any person's right against unreasonable searches and seizures and to privacy of his communication and correspondence.

Disciplinary proceedings may also be instituted against the erring officer or employer.

1. *Standing to question lawfulness of search and seizure*

"[I]t is well settled," said the Supreme Court in *Stonehill v. Diokno*,[82] "that the legality of a seizure can be contested *only* by the party whose rights have been impaired thereby, and that the objection to an unlawful search and seizure is *purely personal* and cannot be availed of by third parties." So, in that case, the Court ruled that the right to object to the admission in evidence of documents, papers and things seized from the offices and premises of certain corporations, belongs exclusively to the corporations and cannot be invoked by the corporate officers in proceedings against them in their individual capacity. The dissent, citing decisons of U.S. federal courts, summarized the rules of "standing" as follows: (1) ownership of documents, papers and effects gives "standing;" (2) ownership and/or control or possession — actual or constructive — of premises searched gives "standing"; and (3) the "aggrieved person" doctrine where the search warrant and the sworn application for search warrant are "primarily" directed solely and exclusively against the "aggrieved person," gives "standing."

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78 See Stonehill v. Diokno, *supra*, note 36 at 393-94.
79 REV. PENAL CODE, art. 128.
80 *Id.*, arts, 129-130.
81 Art. 32, 1st par., (9) and (11).
82 *Supra*, note 77, at 390.

Stonehill v. Diokno's rule on "standing" was reiterated in *Nasiad v. Court of Tax Appeals*[83] where the owners of allegedly smuggled goods were precluded from questioning the legality of the search and seizure of documents from a vessel not owned by them and from a hotel room occupied by another third party.

2. *Waiver of objections to lawfulness of search and seizure*

Like other personal rights, the Constitutional immunity against unreasonable searches and seizures may be waived, expressly or impliedly.[84] Precisely because this immunity is a personal one, it cannot be waived by anyone except the person whose rights are invaded or one who is expressly authorized to do so in his or her behalf.[85]

While waiver may result from a failure to object within a reasonable time to a search and seizure illegally made, such a waiver is not to be readily inferred. The mere failure to resist or object to the execution of a search warrant does not constitute an implied waiver:

> "It is, as Judge Cooley observes, but a submission to the authority of the law. (Const. Lim., 8th ed., Vol. I, p.630). As the constitutional guaranty is not dependent upon any affirmative act of the citizen, the courts do not place the citizen in the position of either contesting an officer's authority by force, or waiving his constitutional rights; but instead they hold that a peaceful submission to a search or seizure is not a consent or an invitation thereto, but is merely a demonstration of regard for the supremacy of the law. (56 C.J., pp. 1180, 1181.)"[86]

However, where the search is made without a warrant, the failure to object may tantamount to a consent to the search under the doctrine of "consent" search and seizure.[87]

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[83] G.R. No. L-29318, November 29, 1974, 61 SCRA 238 (1974). As sharp perhaps a criticism of this "standing" doctrine as any that may be found is the following from Justice Traynor in People v. Martin, 45 Cal. 2d. 755, 290 P. 2d 855 (1955): "[I]f law enforcement officers are allowed to evade the exclusionary rule by obtaining evidence in violation of the rights of third parties, its deterrent effect is to that extent nullified. Moreover, such a limitation virtually invites law enforcement officers to violate the rights of third parties and to trade the escape of a criminal whose rights are violated for the conviction of others by the use of the evidence illegally obtained against them. x x x [A defendant's] right to object to the use of the evidence must rest, not on a violation of his own constitutional rights, but on the ground that the government must not be allowed to profit by its own wrong and thus encouraged in the lawless enforcement of the law."

[84] Garcia v. Locsin, *supra*, note 40 at 694.

[85] *Id.* at 695.

[86] *Id.*

[87] See discussion accompanying footnotes 2 to 8.

In attacking the validity of a search warrant, the jurisdictional limitations of the courts must of course be observed. So, the validity of a search warrant can only be questioned in the court that issued it, not in another court of concurrent jurisdiction.[88]

CONCLUDING OBSERVATIONS

The Philippine law on search and seizure remains largely statutory. Regulatory norms are scattered among the Constitution, the Revised Penal Code, the Rules of Court, the Civil Code and other statutes. The decisions of the Supreme Court on the subject are few and sparsely written and reasoned out. Most often, these decisions rely only on a mechanical interpretation of a statutory provision. No Philippine Supreme Court decision on search and seizure has ever really attempted a broad-ranged analysis of the clashing interests of law enforcement and individual liberty. Consequently, many interstices and grey areas remain.

The law on search warrants may however be regarded as having been fairly developed, both by statutory provision as well as by case doctrine. But many unresolved problems remain in the area of warrantless searches and seizures. For one, finer limitations as had been made by the United States Supreme Court in *Chimel* appear to be called for in respect to the physical scope of a search made incident to an arrest. For another, despite *Stonehill v. Diokno's* ruling on "standing" to object to an unreasonable search and seizure, the matter of whether a third party is qualified to give consent to a search so as to legitimize it is still open and undecided.

Extremely helpful, of course, is the express adoption in the 1973 Constitution of the exclusionary rule. Still, the ramifications and outer limits of this exclusionary rule remain to be more fully thought out and considered in actual cases. No "fruit of the poisonous tree" doctrine having yet been evolved here, the extension of the exclusionary rule to evidence traceable to that illegally seized cries for resolution and definition. The "standing" rule formulated in *Stonehill v. Diokno* bears close reexamination not only because of the strong dissent made therein but also in light of its apparently illogical implications, among which is that a person's right against unreasonable seaches and seizures may cavalierly be violated so long as the evidence obtained thereby is not used against this person.

Given the few cases on the subject that are elevated to our Supreme Court, we cannot expect our law on this subject of search and seizure to develop rapidly. It must be accepted, along with Justice Jackson's observa-

[88] Templo v. Dela Cruz, G.R. No. L-37393-94, October 23, 1974, 60 SCRA 295 (1974).

tion, "that a court which can make only infrequent sallies into the field cannot recast the body of case law on this subject in many, many years, even if it were clear what the rules should be."[88] But then, sharper attention to the competing policy considerations and more expansive analysis whenever the Court is given its rare opportunity to rule on the subject should go a long way towards helping recast and refine the body of our case law on search and seizure.

[88] Michelson v. United States, 335 U.S. 469, 69 S.Ct. 213, 93 L.Ed. 168 (1948).