SEARCH AND SEIZURE

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FOREWORD

It is the desire of a supposed good which is the incentive to every crime: No crime, therefore, could exist if it were infallibly certain that not good, but evil, must follow, as an unavoidable consequence to the person who committed it. This absolute certainty, it is true, can never be attained, where facts are to be ascertained by human testimony, and questions are to be decided by human judgments. But the impossibility of arriving at complete certainty, ought not to deter us from endeavoring to approach it as nearly as human imperfection will admit; and the only means of accomplishing this, are a vigorous and enlightened Police, rational rules of Evidence, clear and unambiguous Laws, and **punishments proportioned to the Offender's guilt.**[1]

In the administration of justice, every fault or defect that enables the culprit to elude the net set to ensnare his kind cannot but be of some gain to the felon. On the other hand, any miscarriage of justice[2] which punishes the innocent is nothing that any system can boast of. In any case, distinct problems arise from the foregoing situations as to face those responsible for the administration of justice, one of which touches upon the subject of search and seizure. This area raises questions, to mention only two, regarding "fishing expeditions" for evidence and admissibility of evidence secured via illegal process. It is not difficult to perceive the importance of the law on search and seizure in the light of the situations referred to.[3]

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[1] "The Speeches of Sir Samuel Romilly in the House of Commons" (1820) Vol. I pp. 127-128.

[2] Associate Justice Edgarton, dissenting, *Chaplain v. U.S.*, 157 F. (2d) 697 at 701 stated: "It is true that innocent men are sometimes accused of crime. Since it is impossible to prevent occasional miscarriage of justice, every criminal statute jeopardizes innocent people in some degree."

[3] See Weeks v. U.S., 232 U.S. 383 at 392: "The tendency of those who execute the criminal laws of the country to obtain conviction by means of unlawful seizures and enforced confessions, the latter often obtained after subjecting accused persons to unwarranted practices destructive of rights secured by the Federal Constitution, should find no sanction in the judgments of the courts which are charged at all times with the support of the Constitution, and to which people of all conditions have a right to appeal for the maintenance of such fundamental rights."

This paper is an exposition on the role of search and seizure as it bears on the questions cited, and as justice was administered in the Philippines through four regimes of alternating war (or revolution) and peace, to wit:

1. Under the Spanish monarchy: 1837-1896[4]
2. Under the republican form of American government: 1901-1935
3. Under the Japanese Imperial Forces: 1942-1945
4. Under Philippine governments between the various regimes to the present.

Notable changes in the administration of justice will be made apparent in the unfolding panorama as the system established by the Spanish monarchy yields to that characteristic of the American democratic way and as the latter succumbs to the transitory domination of the Japanese warrior class. Comparisons will be inescapable as the development of the law is related. The end product of all this history constitutes the present-day law and jurisprudence of Philippine search and seizure.

INTRODUCTION

The "knock at the door" in its broadest sense is no more than a sound that most Americans hear in cinema war pictures; in a narrow sense[1] and as used in relation to police and judicial process, the words have raised enough tumult that they have become associated by reason of United States Supreme Court decisions[2] with unreasonable search and seizure. It may be said that litigations on this subject in courts, federal and state alike, are faint reverberations of the glorious American revolution invariably mentioned in contests involving the Constitution of the United States.

In other places like the Philippines, the struggle for freedom was long

[4] The Philippines were finally conquered by Spain in 1572 (Fernandez, *A Brief History of the Philippines* [*revised edition*] p. 55). This paper, however, commences with the period that the Cortes (the Spanish legislature) by Law of April 18, 1837 proclaimed the Constitution of the Peninsula inapplicable to the ultramarine provinces of Asia of which the Philippines were one.

Translations from the 1880 Revised Code of Criminal Procedure of Spain are the writer's.

[1] The term is used by Justice Frankfurter in Wolf v. Colorado, 338 U.S. 25 at 28: "The knock at the door, whether by day or night, as a prelude to a search, without authority of the law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of English-Speaking peoples."

In U.S. v. Rabinovitz, 339 U.S. 56, at 82, dissenting: "The knock at the door under the guise of a warrant of arrest for a venial or spurious offense was not unknown to them."

[2] A partial list of cases on search and seizure are tabulated in the appendix to the dissenting opinion of Justice Frankfurter in U.S. v. Rabinovitz, *supra*.

and frustrating.[3] The development of the law of search and seizure in that country reflects some failures in the management of justice, at least in those times that the Philippines did not have a bill of rights. This was particularly true under their domination by Spain.

The Spanish Regime From 1837 to 1896

The nineteenth century was a period of extensive revision by Spain of its colonial law policy[4] from the civil[5] to the penal[6] and ultimately the procedural laws.[7] Beginning with the general declaration[8] that the Spanish Constitution did not apply to the colonial possessions and that these were to be governed by special laws analogous to the respective situations,[9] a movement[10] was started for selective extension of the pertinent legislation of Spain to the Philippines. By Royal Order of December 17, 1886 a penal code accompanied by the corresponding law of transition[11] was made effective therein. While professing[12] that the penal code neither followed that given by Great Britain to India which recognized no differences regarding the inferiority of races, nor that existing in the French colonies which did so, the Code Commission nevertheless sanctioned Article 11[13] thereof providing for discrimination between the Spaniards and other foreign residents on the one hand and the natives, half-breeds and the Chinese

[3] See *"Our Fighters for Freedom from Mactan to Bataan"* by A. Ruff and Jose Batungbakal, Education Golden Jubilee Edition (1951). Manuel Luis Quezon, *The Good Fight*, 1946.

[4] See Zaide, *Philippine Political and Cultural History*, Vol. 2, pp. 121-124 (1949 edition). See also Exposition of the Code Commission of the Ultramarine Provinces, *Codigo Penal y Ley Provisional*, 1886, p. 17.

[5] Codigo Civil, 1889, *Exposicion de Motivos*, pp. 10-24, *Codigo Civil Anotado*, Kincaid y Aldeguer.

[6] *Op. cit.* note 4, *Exposicion*, etc. p. 8.

[7] Prologo, *Compilacion de Disposiciones Sobre el Enjuicimiento en Filipinas*, 1857, pp. I-XV.

[8] Law of April 18, 1837.

[9] As in fact had been the case theretofore under the *Leyes de Indias*, *Las Siete Partidas*, *Las Leyes de Toro* and the *La Novisima Recopilacion*. The occasion for a reiteration of that policy in no uncertain terms was precipitated by a secret session of the Spanish Cortes on January 16, 1837 when no Philippine delegate had attended, although there was Philippine representation there in 1810-13, 1820-23 and 1934-37.

During the secret session, a delegate from Valencia, Spain sponsored a measure to end representation of the Spanish colonies in legislature in view of their great distance from Spain. With its approval, on April 16, 1837, the same was ultimately embodied in the Spanish Constitution promulgated June 18, 1847. (Zaide, Philippine Political and Cultural History Vol. 2, pp. 50, 60 (1949 edition).

[10] Relevant are the citations in notes 4 and 7.

[11] *Codigo Penal y Ley Provisional*, 1886, p. 8.

[12] Exposition of the Code Commission of the Ultramarine Provinces, *op. cit.* note 11, p. 17.

[13] It provides: The circumstances of the offender being a native, mestizo or Chinaman shall be taken into consideration by the judges and courts in their discrimination for the purpose of mitigating or aggravating the penalties according to the degree of intent, the nature of the act, and the circumstances of the offended person.

on the other hand. Taken together with certain provisions of the law of criminal procedure of 1880 (known as the Reformed Compilation) hereafter to be examined, the effect was to draw a line, real and unmistakable, between the races. Indeed, as between the then more recent law of Criminal Procedure of 1882 and the earlier laws on Criminal Procedure of 1872, the choice[14] made by Spain for the Philippines was the latter law, though a comparatively primitive one since it was suited for the inquisitorial system in operation in the islands whereas the more advanced procedural law of 1882 was adopted to the accusatorial system established in Spain, admittedly progressive in nature but exclusive to the mother country. Supplementary to the 1872 procedural law was the Reformed Compilation of 1880.[15] It was this compilation that contained the offensive corroboration for Article 11 of the Penal Code, *supra* in a pertinent provision, Article 681[16] which prohibited any person "to enter the dwelling of a Spaniard or of a resident foreigner without his consent, except in those cases and in the manner expressly provided for by law."[17] By implication, the natives and the half-breeds enjoyed no protection against unwarranted search, not to mention seizure.

Such was the arrangement on the legislative level. On the judicial level, an English writer observed: "The foulest blot upon the Spanish Administration in all her former colonies was undoubtedly the thorough venality of her infamous Courts of Justice."[18]

From what has been stated, it is evident that there were two sets of laws operating in the Philippines as a colony of Spain: one for the Spaniards and other foreign residents and another for the natives and half-breeds with whom the Chinese were identified for purposes only, however, of taking the fact of their nationality, either as a mitigating or an aggravating circumstance in the commission of crimes. Spain was committed to the described treatment of her subjects by reason of her colonial policy of "necessary limitations for conserving with strength at such great distance the principle of authority, and the national interests."[19] The situation might have been more acceptable to the governed if the governing officials and the judiciary had been more circumspect and did not aggravate matters.

Still, the defects of the procedural law in the Philippines did not detract from its merits insofar as it was designed to furnish maximum security to Spain's citizens beyond the seas. Worthy of note is the fact that the

[14] *Op. cit.*, note 7, pp. XI-XIII.

[15] By authority of the Royal Decree of May 6, 1880 p. 129, *op. cit.*, note 7.

[16] Found in Chapter IX entitled "Of Entry and Search in Closed Places and of Holding and Opening of Written Correspondence and Telegraphs", Part II of the *Compilacion de Disposiciones Sobre el Enjuiciamiento en Filipinas*, 1897.

[17] A re-statement of the corresponding provision in the Constitution of the Monarchy, Article 6, paragraph 1.

[18] Frederick H. Sawyer, *The Inhabitants of the Philippines*. London, 1900, p. 24.

[19] Royal Order of December 17, 1886, p. 8, *op. cit.* note 5.

chapter on search refers to "closed places",[20] not necessarily limited to "houses", a word used in the United States Constitution[21] and the Philippine Constitution of today.[22] The maxim "Every man's house is his castle" was in effect extended by the Spaniard to "buildings and public places"[23] thereby giving a scope and coverage to the law of search that is not generally found in American jurisprudence as Justice Frankfurter views it in the following language: "With only rare diversions,.... this Court has construed the Fourth Amendment 'liberally, to safeguard the *right of privacy*'."[24]

Buildings and public places are defined[25] to include those destined for meetings or recreation, legitimate or not; those which do not constitute dwellings for anyone (particular); and state ships. Procedure for search is set forth for the following places: legislative bodies,[26] the Royal Palace,[27] buildings and dwellings of representatives of foreign nations,[28] foreign vessels, war and merchant.[29] By extending the protection against unreasonable search to places other than those meant to protect privacy, the law of criminal procedure more than adequately protected the Spanish citizens and foreign residents of the Philippines. In this sense, the procedural law of Spain for her citizens in her colonies may be said to be more democratic than the comparable constitutional provisions of other governments, a result brought about by the fact that the Spanish law of search contained elements of evidentiary law usually treated by many systems under the subject on *subpoena duces tecum*. This conclusion finds basis in Article 682[30] of the said law on search. The objects of search, according to

[20] The words used are *"lugar cerrado."*

[21] The Fourth Amendment reads: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

[22] The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge 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." Article III, Sec. 1, cl. 31, Philippine Constitution.

[23] Article 682, *op. cit.* note 16 provides: "The judge or tribunal with cognizance of the cause can order the entry and search in the daytime or at night of all buildings and public places wherever they may be located in the territory if there are indications of finding the accused "effects or instruments of the delict, or books, papers and other objects which may serve for discovery of proof."

[24] Dissenting in U.S. v. Rabinovitz, 339 U.S. 56 at 74, citing U.S. v. Lefkowitz, 285 U.S. 452, 464, 52 S. Ct. 430, 423. *Italics supplied.*

[25] Article 683, *op. cit.*, note 16.

[26] Article 684, *op. cit.*, note 16.

[27] Articles 689 and 690, *op. cit.*, note 16. The Royal Palace was in Madrid. In the Philippines the obvious meaning was the governor's palace.

[28] Article 695 and 698, *op. cit.*, note 16.

[29] Article 697, *op. cit.*, note 16.

[30] Text is found in note 23.

that provision "may serve for discovery and proof."[31] Article 682 if read in the light of the American adversary system[32] side by side with Article 714 may even lead to the danger of their use as a means to a fishing expedition for evidence. Article 714 reads: "Judges are authorized to detain private correspondence by mail or telegraph which the accused remits or receives, and to have them opened and examined should there be indications that through these means will be discovered or proved some act or circumstance important to the case."

That the branch in law of *subpoena duces tecum* was fused with search in the procedural law of 1880 is further substantiated by Article 712 thereof providing that: "If to determine the necessity of holding the objects which were found during the search it becomes necessary to have an expert assessment, the judge shall do so in the form established in Chapter 7 of this title." Since experts serve the purpose of establishing a fact, their assistance is unnecessary for a determination of questions purely judicial in nature like the legality of a search. The need for experts' aid is more to the service of the law on *subpoena duces tecum* rather than to that of the law of search proper.

There are also indications that aspects of *habeas corpus* or at least crime prevention were incorporated into the law of search. Thus, it was authorized in the night-time in some cases, among others, of helping any person from within buildings or parts thereof.[33]

The usual elements of a valid search such as probable cause[34] before issuance of the order, notification of the person concerned or his representative,[35] necessity of the conduct thereof in the presence of two witnesses[36] and use of force in extreme cases[37] formed the remaining portions of the search law enforced in the Philippines then.

Apparently the Spaniard had little complaint against the administration of the law of search to judge by the cases that reached the *Royal Audiencia*,[38] aggregating five in all. Of the most important, two may be mentioned: the decision of November 11, 1860[39] held that a search issued without cause subjected the judge to damage not lower than 500 pesetas; the

[31] Where the line between *subpoena duces tecum* and search is drawn in the United States jurisdiction is likewise hard to find by standards in the opinions in Boyd v. United States, 116 U.S. 616, 29 L. Ed. 746.

[32] In the important Continental systems the adversary proceedings are subordinated to the conduct of the litigation by the court itself in the role of a dispenser of justice.

[33] Article 687, *op. cit.*, note 16.

[34] Article 693, *op. cit.*, note 16: "The order of entry and search must always be founded."

[35] Article 702, *op. cit.*, note 16.

[36] Articles 702 and 705, *op. cit.*, note 16.

[37] Articles 704 and 705, *op. cit.*, note 16.

[38] The Supreme Court at the time. Zaide, *Philippine Political and Cultural History*, Vol. 2 p. 121 (1949).

[39] p. 728, *op. cit.* page 16.

decision of December 22, 1874[40] ruled that municipal presidents had no power to authorize searches much less to delegate the power they lacked.

As for the native subject or the Filipino, he had no occasion to resort to the courts concerning his complaints against unreasonable search. In fact, he had no personality for the purpose under the procedural law.[41]

The Philippine Revolution 1896-1898 and the First Philippine Republic 1899-1901.

The bloody period[42] from August 30, 1896 initiating the first battle for Philippine independence against Spanish abuses to the cession of the Philippines in favor of the United States by the Treaty of Paris of December 10, 1898 marked a regime of Philippine-made decrees by Filipinos in revolt. These were wrought in course of battle after a pact between the rebels and the Spaniards recognizing equal treatment in the application of justice ended in a fiasco.[43] The decrees abrogated the procedural law while retaining the substantive law on traditional crimes.[44] A summary proceeding replaced the cumbersome Spanish process and "the ancient practices and formulas avoided, for they serve nothing else but to fill up papers and render interminable the course of justice."[45] In the zeal for reform and by way of reaction to Spanish domination the role of the search law was lost in the exigencies of the moment.

Administratively, however, provision was made in the Declaration of Independence[46] dated June 23, 1898 for the election of a Delegate for Justice, demonstrating the aspirations that the revolutionaries possessed in regard to the concept of justice.

Subsequently, a revolutionary Congress framed the celebrated Malolos Constitution of the Philippines which was approved on November 28, 1898.[47] Its Fourth Title[48] entitled the "Filipinos and Their National and Individual Rights" is much like the bill of rights of many modern constitutions. The

[40] *Idem.*

[41] Article 681 of the Reformed Compilation of 1880 confined the protection against unwarranted search to Spaniards or resident foreigners. See notes 16 and 17.

[42] See, *op. cit.* note 38.

[43] Rules 18-21 of the "Instructions For the Rule of the Provinces and Towns" dated June 20, 1898 in *Memorials from Señor Felipe Agoncillo and Constitution of the Provisional Philippine Government*, unpaged.

For a historical record of the pact, see Fernandez, *A Brief History of the Philippines*, pp. 254, 255.

[44] Rules 18-21 *op. cit.* note 43.

[45] *Op. cit.* note 43.

[46] Article 3. See *op. cit.* note 43.

[47] *Op. cit.* note 38, pp. 206-207.

[48] Political Constitution at Malolos (Treasure Room Copy, Widener Library).

[49] Of the merits of the Malolos Constitution, George A. Malcolm in *The Government of the Philippine Islands* (1916) p. 152 states: "The constitution did conform to many of the tests of a good written constitution. And it did faithfully portray the aspirations and political ideals of the people."

provision on search[50] is consolidated with inviolability of domicile in the manner that the Fourth Amendment of the United States Constitution does. In addition, reflecting the reaction of the framers against racial discrimination under the previous regime, the Malolos Constitution categorically provides for equality between the races. Procedural aspects of search such as the presence of two resident witnesses during its conduct and pursuit in flight must have been incorporated with that organic act from overabundance of caution where they would have been more proper in a simple decree.

The American Regime 1901-1935

Details of the Philippine-American alliance against the Spanish enemy,[51] the outbreak of hostilities between the two allies,[52] the ensuing American occupation[53] are relevant here only as they pertain to the transition from the First Philippine Republic and back, for the islands, to a colonial status, this time under the United States of America. History records a Military Government from 1898 to 1901 followed by a civil government inaugurated on July 3, 1901.[54] The distinct achievement of the Military Government from the legal viewpoint was the promulgation on April 23, 1900 of General Orders No. 58, otherwise known as the Code of Criminal Procedure. Sections 95 to 106 thereof treat of search and seizure. These provisions continue to a great extent to be the foundation of the law on search under the Rules of Court prescribed for the practice of law in the Philippine forum today. More of the text of General Orders No. 58 in a subsequent connection.

The new conquerors followed an altruistic policy[55] in their colony after considerable argument about the extension of a bill of rights to the Filipinos. One of the foremost exponents against a policy of inequality of rights was Edwin Burritt Smith of the Chicago Bar, whose ringing words

[50] Art. 10: No one can enter the domicile of a Filipino or foreign resident in the Philippines without his consent, except in urgent cases of fire, flood, earthquake or other similar danger, or of unlawful aggression proceeding from within or in order to assist a person within calling for help.

Outside of these cases, the entrance in the domicile of a Filipino or foreign resident of the Philippines and the searching of his papers or effects can only be decreed by a competent judge and executed during the day.

The searching of the papers and effects shall take place always in the presence of the party interested or of an individual of his family, and in their absence, of two resident witnesses of the same place.

Notwithstanding, when a delinquent may be found, in "flagranti" and pursued by the authority with its agents, may take refuge in his domicile, he may be followed into the same only for the purpose of apprehension. If he should take refuge in the domicile of another, notification to the owner of the latter shall precede. Compare with the Fourth Amendment text in note 21.

[51] *Op. cit.* note 38, pp. 186-188.

[52] *Idem.* p. 217.

[53] *Idem.* pp. 231-251.

[54] *Idem.* pp. 238-240

[55] *Idem.* p. 231.

were: "The proposal, despite such a Constitution so achieved and thus in terpreted, to reintroduce into our system the principle of inequality o rights, the assertion of a purpose to make God's liberty a matter of locality instead of personal right, is indeed shocking.... Nothing short of equality of rights for all men as men in all places within the jurisdiction of the United States can be the purpose of American law."[56]

The outcome of the decision by the United States to extend a bill of rights was an organic act known as the Philippine Bill of 1902 passed by the Congress on July 1, 1902.[57] All constitutional rights except that of trial by jury were granted to the Philippines.[58] If as a subject people under Spain it was impossible for the Filipinos to possess constitutional rights these they gained at last though still subjects under American sovereignty. In a second organic act known as the Jones Law of 1916, the search provision was reproduced.[59]

Without the Philippine Bill of 1902, the right against unreasonable search and seizure had been secured to Filipinos through the instrumentality of General Orders No. 58, while they were still formally governed by the United States Military Governor. For the first time in their legal history, the Filipinos were clear that a search warrant had failed to specify any writing.[60] Even the home-made Malolos Constitution[61] had to be in writing. It was content to state that search had to "be decreed by a competent judge and executed during the daytime"[62] which did not preclude an oral order. Of course under Spain, writing or no writing, the native subjects were liable to be searched and even picked up any time considering that the procedural laws against unreasonable search could be invoked by the favored Spaniards and foreigners alone.

Not only was there need for a writing before search warrants could issue under General Orders No. 58 but proviso was also made for an oath under

[56] From a reprint by the Chicago American Anti-Imperialist League of "The Constitution and Inequality of Rights" printed in the Yale Law Journal February 1901.

[57] Acts of Congress and Treaties Pertaining to the Philippine Islands in Force and Effect July 1, 1919, pp. 1-32.

[58] Sec. 5, Philippine Bill of 1902, *op. cit.* note 57 at 4. It provides: "That the right to be secure against unreasonable searches and seizures shall not be violated." .... "That no warrant shall issue but upon probable cause supported by oath, or affirmation, and particularly describing the place to be searched and the person or things to be seized."

[59] Section 3: "That the right to be secure against unreasonable searches and seizures shall not be violated."

[60] Section 95, General Orders No. 58 provides: "A search warrant is an order in writing, issued in the name of the people of the Philippine Islands, signed by a judge or a justice of the peace, and directed to a peace officer, commanding him to search for personal property and bring it before the court."

[61] Text in note 50.

[62] *Idem.*

probable cause[63] as a further safeguard against abuses. The use of force was authorized after refusal of admittance by the person concerned and notice had been given to him.[64] Search in a vacant house had to be made in the presence of at least two competent witnesses.[65] Besides, the place to be searched had to be particularly described as well as the person or thing to be seized.[66] Search during the daytime was the general rule with nighttime searches as the exception if there were an affidavit making positive assertions about the object or objects of search.[67] Ten days from the issuance of the search warrant, it became void.[68]

After the search a detailed receipt was required to be given to the person or to the witnesses concerned[69] and the property delivered in court with a true inventory under oath.[70]

Cases construing the search provisions of General Orders No. 58 have held that the purpose of the requirement that the place to be searched be described was to leave the officers no discretion as regards the articles they were to seize, thereby preventing abuses;[71] that the mere fact that a visitor at the house of another is suspected of unlawful possession of opium is no excuse for entry therein by any person conducting a search, against the will of the occupant and without a proper search warrant.[72] Apparently the situation would have been different had the official concerned armed himself with a legal search warrant.

The need of an oath supporting the petition for search was interpreted by the Supreme Court of the Philippines as a step against the admission

[63] Section 97, *op. cit.* note 59: "A search warrant shall not issue except for probable cause and upon application supported by oath particularly describing the place to be searced and the person or thing to be seized." Section 98: "The judge or justice must, before issuing the warrant, examine on oath the complainant and any witnesses he may produce and take their depositions in writing."

[64] Section 100: "The officer, if refused admission to the place of directed search after giving notice of his purpose and authority, may break open any outer or inner door or window of a house or anything therein to execute the warrant or to liberate himself or any person lawfully aiding him when unlawfully detained therein. No search of a vacant house shall be made except in the presence of at least two competent witnesses, residents of the neighborhood."

[65] *Idem.*

[66] Section 97. Text in note 63.

[67] Section 101: "The warrant must direct that it be served in the day time unless the affidavit positively asserts that the property is on the person or in the place ordered to be searched, in which case a direction may be inserted that it be served at any time of the day or night."

[68] Section 102: "A search warrant shall be valid for ten days from its date. Thereafter it shall be void."

[69] Section 103: "The officer seizing property under the warrant must 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 two witnesses, leave a receipt in the place in which he found the seized property."

[70] Section 104: "The officer must forthwith deliver the property to the court, together with a true inventory thereof duly verified by oath."

[71] Uy Khetin v. Villareal, 42 Phil. 886.

[72] U.S. v. Reyes and Esquera, 20 Phil. 467.

of mere hearsay.[73] The true test, it held, of the sufficiency of the affidavi is whether it is drawn in such a manner that it could be made the basi of a charge for perjury.[74] Moreover, it is emphasized, the determinatio of a probable cause rests upon the judgment of the judge,[75] not on tha of the applicant.[76] A search warrant refused by a judge may be grante by another on the ground that the matter does not constitute *res adjudicata*.[77]

In the nature of the proviso connected with the issuance of a searc warrant, no presumption of regularity can be invoked by the officer wh tries to justify it.[78] To allow excuses of this nature is to diminish th rights of a citizen who goes into business equipped with the necessar books and to permit a weapon which might be used properly in some cas but which might be improperly used in other cases.[79]

So it has been held that the compulsory production of a man's p vate papers to be used in evidence against him is equivalent to compellin him to be a witness against himself.[80] Yet in this very case, the conced irregularity that authorized the seizure of the papers was held not to a fect the objects found in the place as long as the possession thereof is fo bidden by law, as is the case with opium.[81] Nor can the objects seized be

[73] Alvarez v. Court of First Instance, 64 Phil. 33; People v. Sy Juc 64 Phil. 667; Rodriguez v. Villamiel, 65 Phil. 230; Garcia v. Locsin, O.G. 3275.

[74] People v. Sy Juco, 64 Phil. 667; People v. Villamiel, 37 O.G. 2416.

[75] U.S. v. Ocampo, 18 Phil. 1, affirmed in 234 U.S. 91, 58 L. ed. 123; U v. Grant, 18 Phil. 3275.

[76] Garcia v. Locsin, 36 O.G. 3275.

[77] Cruz v. Dinglasan, et al, 46 O.G. 4900.

[78] People v. Veloso, 48 Phil. 169.

[79] Uy Kheytim v. Villareal, 42 Phil. 887 at 898: "we believe it would the height of absurdity to hold, upon technical grounds, that a search warra is illegal which is issued to search for and seize property the very possessi of which is forbidden by law and constitutes a crime. Opium is su property. 'Search-warrants have heretofore been allowed to search stolen goods, for goods supposed to have been smuggled into the coun in violation of the revenue laws, for implements of gaming or coun feiting, for lottery tickets or prohibited liquors kept for sale contrary law, for obscene books and papers kept for sale or circulation, and powder or other explosive and dangerous material so kept as to endan the public safety.' (Cooley on Constitutional Limitations, 7th ed., p. 43

[80] Uy Kheytim v. Villareal, 42 Phil. 87.

[81] Idem. at p. 892: "It may be said that — Books of account, priva documents, and private papers are property which men may lawfully posse It is not believed that the statute (subsection 2 of section 96, G.O. was intended to cover property of this class. Granting that property which men may lawfully possess themselves has been used in the co mission of a crime and not possessed nor created purely for the purpose committing a crime, and not likely to be used again, then certainly the seiz can only be for the purpose of using the same as evidence to prove commission of the crime already committed. This purpose is not cont plated by the provision of the law. The finding of evidence cannot be immediate reason for issuing the search warrant. To use a search war for the purpose of obtaining possession of property for this purpose w be an "unreasonable' use of the remedy by search warrant, which is hibited by law. (Regidor v. Araullo, 5 Off. Gaz. 955, 961, 962; U.S. De los Reyes and Esguerra, 20 Phil.

turned if they constitute the *corpus delicti* though illegally seized.[82] And when an official arrests a person, the property seized must be returned if it was in no way connected with the crime, but not otherwise.[83]

Seizure is objectionable when it is used as a fishing expedition for evidence,[84] and more so if there is no pending case against the person searched.[85] It is not unreasonable from the mere fact though, that the party meant is unnamed provided there is a sufficient *descriptio personae* to enable the executing officer to identify the person concerned.[86]

[82] People v. Filemon Cordon et al. CA-GR. 4392-R, November 13, 1950; People v. Judge of the Court of First Instance of Batangas, G.R. No. 46361, Resolution of the Supreme Court of February 14, 1939; People v. Malasuigui, 34 O.G. 2163: "The effects found in the possession of a person detained or arrested are perfectly admissible in evidence against him if they constitute the body of the crime or are pertinent and relevant. Certainly it is repugnant to sustain a contrary view because that would be authorizing the return to the accused of the proof of conviction which he possesses, notwithstanding the fact that they are evidence of the crime so that he may conceal them, destroy them, or dispose of them in any other manner in order to assure his impunity."

[83] Moreno v. Ago-Chi, 12 Phil. 439. In this connection, Section 6, Rule 109 of the Rules of Court is relevant: "A peace officer, or a private person may, without a warrant, arrest a person:

(a) When the person to be arrested has commited, is actually committing, or is about to commit an offense in his presence;

(b) When an offense has in fact been committed, and he has reasonable ground to believe that the person to be arrested has commited it;

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another." See also Section 12, Rule 122: "Search without warrant of person arrested. — 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." This rule is a reproduction of Section 5 of General Orders No. 58. Even a private individual can effect the arrest without a search warrant if the person illegally possesses firearms. Magonica v. Palacio, 45 O.G. Supp. 9 p. 392. Compare with Agnellao v. U.S., 260 U.S. 20, the rule in American courts.

[84] People v. Sy Juco, 64 Phil. 667 at 675: "In other words, the warrant in question has gone beyond what had been applied for by Narciso Mendiola, and the agents who executed it performed acts not authorized by the warrant, and it is for this and the above-stated reasons why it is unreasonable, it being evident that the purpose thereof was solely to fish for evidence or seach for it by exploration, in case some could be found. It is common knowledge that search warrants have not been designed for such purpose (Gould v. U.S. 255 U.S. 298, S.C.R.; 65 Law ed. 647; Uy Kheytim v. Villareal, 42 Phil. 886), much less in a case as the one under consideration where it has not even been alleged in the affidavit of Narciso Mendiola what crime had been committed by Santiago Sy Juco or what crime he was about to commit. On this point, said affidavit merely contained the following allegation: 'It has been reported to us by a person whom I considered reliable that in said premises are fraudulent books, correspondence and records.' Therefore, the first question raised should be decided in the negative."

See also Yee Sue Koy and Yee Tip v. Almeda, 40 O.G. No. 11 p. 264; People v. Rubin, 57 Phil. 384.

[85] Garcia v. Locsin, 35 O.G. 3275.

The rigidity of the law connected with the conduct of a proper search may be considered relaxed by waiver of the right to claim the objection.[87] The constitutional immunity being personal, it can be claimed by the offended person only or one expressly authorized to do so for him.[88] In a case,[89] the police were unarmed with a warrant but did not enter the house against the will of the owner. Their search was not considered improper as to subject them to the penal sanction[90] imposed against unreasonable searches. The court insinuated that the proper charge should have been trespass. Mere entrance without consent is not refusal from the person concerned and relieved the officers of criminal liability.[92] In short, to incur penal responsibility,[93] the following requirements for violation of Article 128 of the Revised Penal Code punishing unlawful searches must be satisfied, to wit:

1. By *entering* any dwelling *against* the will of the owner thereof; or
2. By searching papers or the effects found therein without the previous consent of such owner; or
3. By refusing to leave the premises, after having surreptitiously entered said dwelling and after having been required to leave same.[93a]

[86] People v. Veloso, 48 Phil. 169 at 181, considered as sufficient *description personae*: "As the search warrant stated that John Doe had gambling apparatus in his possession in the building occupied by him at No. 12 Calle Arsobispo, City of Manila, and as this John Doe was Jose Ma. Veloso, the manager of the club, the police could identify John Doe as Jose Ma. Veloso."

[87] *Idem.* note 85.

[88] *Idem.* American decisions to the same effect: U.S. v. Gass, 14 F. (2d) 229; Lewis v. U.S. 5 F. (2d) 222; Pielov v. U.S. 8 F. (2d) 492.

[89] People v. Ella et al., (C.A.) 49 O.G. 1891.

[90] Article 128, Revised Penal Code: *'Violation of domicile.* The penalty of *prision correccional* in its minimum period shall be imposed upon 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."

[91] Under Article 280, Revised Penal Code: *"Qualified trespass to dwelling.* — Any private person who shall enter the dwelling of another against the latter's will, shall be punished by *arresto mayor* and a fine not exceeding 1,000 pesos.

If the offense be committed by means of violence or intimidation, the penalty shall be *prision correccional* in its medium and maximum periods and a fine not exceeding 1,000 pesos.

The provisions of this article shall not be applicable to any person who shall enter another's dwelling for the purpose of preventing some serious harm to himself, the occupants of the dwelling or a third person, nor shall it be applicable to any person who shall enter a dwelling for the purpose of rendering some service to humanity or justice, nor to anyone who shall enter cafes, taverns, inns and other public houses, while the same are open."

[92] People v. Luis Sane, (C.A.) 40 O.G. 5th Supp. 113.

[93] Article 128, The Revised Penal Code.

[93a] See Reyes, The Revised Penal Code, (1956)

Offenses involving search warrants maliciously obtained are punished by Artlice 129 of the Revised Penal Code,[94] searching a domicile without witnesses is punishable under Article 130 of the same code.[95] The presence of the two witnesses actually protects searcher and searched in the long run: the former is not wont to plant evidence nor remove objects surreptitiously; the latter cannot assert that the evidence was planted and so get even with the officer, or accuse him of removing objects as a thief.[96]

Aside from the penal sanctions, extraordinary procedural remedies may be resorted to by the person who suffers unreasonable search in order to obtain relief, as by mandamus to compel return of the seized objects.[97]

By legislation,[98] the authority to search and seize is not confined to regular police officers. Customs,[99] internal revenue,[100] postal,[101] and forestry officials[102] in the discharge of their respective functions possess the power equally with police officers. But despite the authority of customs officials to detain and search all persons coming into the Philippines from abroad, they abuse their power by searching those foreigners who have started to reside in the country after having been permitted to land.[103] It would seem that the usual procedure for search by the regular police officer is appropriate rather than the procedure by legislative grant to customs officials.

As the foregoing demonstrates, the golden age of court decisions interpreting the search law came to the Philippines after the introduction of General Orders No. 58. When these were replaced by the Rules of Court in 1940 little change was wrought. These were the following: The provision on the nature of personal property which might be seized was en-

[94] *"Search warrant maliciously obtained and abuse in the service of those legally obtained.* — In addition to the liability attaching to the offender for the commission of any other offense, the penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, and a fine not exceeding 1,000 pesos shall be imposed upon any public officer or employee who shall procure a search warrant without just cause, or, having legally procured the same, shall exceed his authority or use unnecessary severity in executing the same."

[95] *"Searching domicile without witnesses.* — The penalty of *arresto mayor* in its medium and maximum periods shall be imposed upon a public officer who, in cases where a search is proper, shall search the domicile, papers, or other belongings of any person, in the absence of the latter, any member of his family, or in their default, without the presence of two witnesses residing in the same locality."

[96] Kapunan, Revised Penal Code Annotated (1952) Vol. I p. 514.

[97] Alvarez v. Court of First Instance, 64 Phil 33.

[98] Act No. 2711 or the Revised Administrative Code of the Philippines.

[99] Sections 1141, 1321-1338, *op. cit.* note 98.

[100] Section 1434, *op. cit.* note 98.

[101] Sections 1935 to 1937, *op. cit.* note 98.

[102] Sections 1818 to 1819, *op. cit.* note 98.

[103] People v. Chan Fook, 42 Phil. 230.

larged.[104] Instead of prescribing an *application* supported by oath as General Orders No. 58 imposed, the Rules of Court allowed an *examination* under oath[105] which is satisfied by questions and answers between judge and petitioner without more.

The adoption of the Constitution of the Philippines in 1935[106] was an event that continued the development and growth of the judicial interpretations of the search law contained in General Orders No. 58. The Constitution reiterated the citizens' immunity against unreasonable searches and seizures.[107]

WARTIME PHILIPPINES 1942-1945

Pearl Harbor[108] indirectly cut short the further expansion of the search law as American supremacy was challenged in the Philippines. Enemy air raids over the country during the entire month of December 1941 brought the islands once more under alien domination beginning January 2, 1942. On that day the Commander-in-Chief of the Imperial Japanese Forces announced the occupation of Manila in a proclamation[109] that warned the inhabitants against "disturbing the thoughts" of the invading forces.

[104] Section 2 Rule 122: *"Personal property to be seized.* — A search warrant may be issued for the search and seizure of the following personal property:
(a) Property subject of the offense;
(b) Property stolen or embezzeld and other proceeds or fruits of the offense, and
(c) Property used or intended to be used as a means of committing an offense", as it modified Section 96, General Orders No. 58: "It may be issued upon either of the following grounds:
1. When the property was stolen or embezzled.
2. When it was used or when the intent exists to use it as the means of committing a felony."

[105] Section 3, Rule 122: *"Requisites for issuing search warrants.* — A search warrant shall not issue but upon probable cause to be determined by the judge or justice of the peace 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." as changed Section 97 General Orders No. 58: "A search warrant shall not issue except for probable cause and upon application supported by oath particularly describing the place to be searched and the person or thing to be seized."

[106] Congress of the United States passed a Philippine Independence Act (The Tydings-McDuffie Law) which President Franklin D. Roosevelt approved on March 24, 1934. By virtue of the said law, a Commonwealth of the Philippines was established for a transition period of ten years under a constitution that was eventually to rule the independent Philippines by the expiration on July 4, 1946 of the transition. The Constitution took effect in 1935. Zaide, *Philippine Political and Cultural History* Vol. 2 pp. 322, 3 (1949 edition).

[107] Text of the provision quoted in note 22.

[108] See George Morgenstern, *Pearl Harbor* (1947).

[109] [109a] Proclamation of January 2, 1942, Commander-in-Chief of the Imperial Japanese Forces, p. 1 *Official Journal of the Japanese Military Administration*, Vol. 1 (2d edition).

The next day another proclamation declared overwhelming portions of the Philippines under martial law.[110] Furthermore, the Filipinos were cautioned to obey faithfully all military commands.[111] All laws then in force were to continue in effect "for the time being" "so far as the Military Administration permitted."[112] Of their fundamental rights, Filipinos were practically denied any except freedom of religion and residence, and these, qualified again "so far as the Military Administration permits."[113]

In another month, the Military Administration declared public order restored.[114] Order No. 1 of January 23, 1942 from the Commander-in-Chief of the Japanese Forces gave that personage "jurisdiction over judicial courts".[115] As in all cases "foremost importance" was to be given to the "demands of the Imperial Japanese Forces[116] on pain of death.[117]

Corroborating the foregoing orders, that of February 20, 1942[118] declared "activities" in the procedural courts to be subject to existing statutes "provided they are not inconsistent with the present circumstances under the Japanese Military Administration."

Before April 29, 1942,[119] "Guiding Principles of Administration"[120] had been issued which made plain that the Commander-in-Chief of the Imperial Forces had relieved himself of the run-of-the-mill criminal cases, turning them over to the courts and limiting himself to those with military

[110] Par. 1, Proclamation of January 3, 1942, *op. cit.* note 109, p. 1: "As a result of the Japanese military operations, the sovereignty of the U.S.A. over the Philippines has completely disappeared and the Army hereby proclaims the Military Administration under martial law over the districts occupied by the Army." (par. 1)

[111] *Idem.* Par. 3: "The Authorities and the people of the Commonwealth should sever their relations with the U.S.A. and trust the just and fair administration of the Army, obeying faithfully all its commands, cooperating voluntarily with it in its stationing and activities here and supplying military needs when asked."

[112] *Idem.* Par. 4: "So far as the Military Administration permits, all laws now in force in the Commonwealth as well as executive and judicial institutions shall continue to be effective for the time being as in the past. Therefore all public officials shall remain in their present posts and carry on faithfully their duties as before."

[113] *Idem.* Par. 5: "The Army recognizes the freedom of your religion and residence and has a regard for your usual customs, so far as the Military Administration permits. Accordingly, all the people in the Commonwealth are requested to comprehend the real intentions of the Army and never be deceived by propagandas of the U.S.A. and Great Britain, and you should never disturb public peace in any way, warning yourselves against rashness and refraining from spreading fabulous, wild rumors. Such actions shall be regarded as hostile operations and offenders shall be severely punished, the greatest offense being punishable by death, according to martial law."

[114] Notification of February 7, 1942, Office of the Military Administration, *op. cit.* note 109, p. 5.

[115] p. 7, *Op. cit.* not 109.

[116] p. 8, *Op. cit.* note 109.

[117] pp. 32-34, *Op. cit.* note 109.

[118] p. 34, *op. cit.* note 109, Order No. 3.

[119] "The Auspicious Celebration of the Emperor's Birthday," p. 111, Vol. *op. cit.* note 109.

[120] pp. 29-38, Vol. 2, *op. cit.* note 109.

significance and political complexion.[121] It can be presumed that the law on search and seizure was in operation in the courts as part of the regular judicial machinery. With respect to those cases that were coursed to the Commander-in-Chief as representative of his emperor, it is likewise safe to presume that the law on search was suspended, if not totally ignored.

By September 4, 1943 a Constitution[122] of the Republic of the Philippines was adopted by the Preparatory Commission for Philippine Independence composed of twenty members "elected" upon order of the Japanese Military Administration. "Ratified" by the Association for Service to the New Philippines,[123] the provision on search was narrowed by "interests of peace, morals, health, safety or *public security*."[124]

Japan's rising sun set on the Philippines with General Douglas MacArthur's return.[125] The law on search and seizure was now put in the service of decisions raising questions of war and occupation.

Last Days of the Commonwealth 1945-1946

One final decision was rendered by the Supreme Court of the Philippines relating to search and seizure as America withdrew her sovereignty on July 4, 1946. The case of *Alvero v. Dizon*[126] involved a search without warrant by officers and men of the United States Army in the course of arresting a Japanese collaborator. The right to the seized objects was held unquestionable under the circumstances taking into account the Hague Conventions of 1907[127] and the proclamation of December 29, 1944 issued by General MacArthur declaring his purpose to hold in restraint those who

[121] *Idem.* p. 37, "VII. *Regarding the Department of Justice.* Criminal Cases which are punishable as acts in violation of the Martial Law or proclamations of the Imperial Japanese Forces, shall be promptly transferred to the Japanese Military Authorities and necessary cooperation shall be extended to the said authorities."

[122] Information about the 1943 Constitution comes from the custodian of the original of that document now forming part of the Filipiniana library of Jorge B. Vargas, Chairman of the Philippine Executive Commission under the Japanese administration.

[123] The assembly was named *Kapisanan sa Paglilingkod sa Bagong Pilipinas*. A Filipino historian pictures the members as disliking their task and delaying the job whereas the Japanese were rushing the process. *Op. cit.* note 106, at 361.

[124] Italics supplied. The complete text is furnished by the librarian of the Vargas Filipiniana Collection: "Section 11. — Subject to such limitations as may be imposed by law in the interest of peace, morals, health, safety or public security:

(1) The right of the people to be secure against unreasonable searches and seizures shall not be violated."

[125] Landing on October 20, 1944 at Tacloban, Leyte with his historical words: "I have returned". Zaide, *Philippine Political and Cultural History*, Vol. 2, pp. 368-369 (1949).

[126] 76 Phil. 637 and 41 O.G. No. 2 p. 148.

[127] Article 4, Chapter II, section 1 of the Regulations relative to the Laws and Customs of War on Land.

voluntarily gave aid and comfort to the enemy in violation of their allegiance due the United States and the Philippines.

An Independent Philippines 1946 —

The area of the law on search which flourished after political ties between the United States and the Philippines ended in 1946 relates to the question of admissibility of evidence despite illegality of the seizure. Up until 1925, the Supreme Court had no occasion to rule on the issue. In that year it examined in connection with the case of *People v. Carlos*[128] the Boyd[129] and Silvertone[130] doctrines in the United States jurisdiction holding that documents obtained by illegal searches are not admissible in evidence. As it was able to decide the *Carlos* case on the basis of the question of privileged communications rather than on the basis of search, the issue was left unresolved until it reappeared after the advent of Philippine independence in the case of *Moncado v. People's Court*.[131] The Boyd[132] and Silvertone[133] doctrines, later reinforced by the case of *Weeks v. United States*[134] were rejected in favor of the opposite rule adopted by the individual states and expressed in *People v. Defore*.[135] The Moncado case held: "The doctrine of *Weeks v. United States* is not acceptable in this jurisdiction. It is contrary to the sense of Justice[136] and the well-ordered and healthy administration of justice.... The guilty should receive merited punishment even if the proofs against them had been obtained illegally. And those who, in violation of law and of the Constitution, force-

[128] 47 Phil. 630.

[129] Boyd v. United States, 116 U.S. 616.

[130] Silvertone Lumber Co. and Silvertone v. United States, 251 U.S. 385.

[131] 80 Phil. 1.

[132] See note 129.

[133] See note 130.

[134] 232 U.S. 383.

[135] 242 N.Y. 13, 150 N.E. 575.

[136] See 4 Wigmore on Evidence 2d ed. par. 2184: "The foregoing doctrine was never doubted until the appearance of the ill-starred majority opinion of Boyd v. United States, in 1885, which has exercised unhealthy influence upon subsequent judicial opinion in many states."

"The progress of this doctrine of Boyd vs. United States was as follows: (a) The Boyd Case remained *unquestioned* in its own Court for twenty years; meantime receiving frequnt disfavor in the State Courts. (b) Then in Adams vs. New York, 1904, was virtually *repudiated* in the Federal Court, and the orthodox precedents recorded in the State Courts were expressly approved. (c) Next, after another twenty years, in 1914 — moved this time, not by erroneous history, but by misplaced sentimentality — the Federal Supreme Court, in Weeks v. United States, *reverted to the original doctrine* of the Boyd case, but *with a condition, viz.*, that the illegality of the search and seizure should first have been directly litigated and established by a motion, made before trial, for the return of the things seized; so that, after such a motion, and then only, the illegality would be noticed in the main trial and the evidence thus obtained would be excluded.

fully and without right seized such proofs must also be punished." The Moncado doctrine has been the uniform ruling in the Philippines[137] since 1946.

CONCLUSION

In recent years the Supreme Court of the United States, observes Justice Jackson, has promulgated a philosophy that some rights have a "preferred position"[138] while that guaranteed by the Fourth Amendment has been relegated "to a deferred position."[139] Perhaps Philippine jurisprudence has not yet advanced as far as the decided controversies in the United States have done as to be involved with issues of preferences among the constitu-

[137] People v. Arevalo, (C.A.) 45 O.G. (Sup. 5) 39 citing People v. Martin Tiujuico, G.R. No. L-34553. People v. Orozco, (C.A.) G.R. No. 17324-R August 23, 1957: "As one of the assignments of error, defendant argued that the trial court erred in admitting the carbine in evidence on the theory that same was procured through an illegal search warrant.

This contention is devoid of basis. The warrant was issued with the formality of the law, and appellant is unable to point any detail which would show the illegality of the warrant. Appellant's contention is predicated on the fact that the inventory of the confiscated property returnable to the court that issued the search warrant was not sworn to. The lack of oath on the inventory does not render irregular or illegal the issuance of the search warrant. The illegality, if at all, would be in the manner of making the return but not in the issuance of the warrant itself. Be that as it may, the admissibility in evidence of the carbine, magazine and ammunition is not affected and will remain unaltered, for the rule is that the admissibility of evidence is not affected by the illegality of the means with which it was secured."

[138] See dissenting opinion of Justice Jackson, Murdock v. Pennsylvania 319 U.S. 105, Martin v. Struthers, 319 U.S. 151 at Douglas v. Jeannette 319 U.S. 175 at p. 166.

[139] Dissenting opinion of Justice Jackson in Brinegar v. U.S. 338 U.S. 160 at 160, in which he states: "When this Court recently has promulgated a philosophy that some rights derived from the Constitution are entitled to a preferred position", Murdock v. Pennsylvania, 319 U.S. 105, 115 dissent at p. 166, 87 L. ed. 1292, 1299, 1330, 63 S. Ct. 870, 882, 891, 146 ALR 82 Saia v. New York, 334 U.S. 558, 562, L. ed. 1574, 1578, 68 S. Ct. 1148, I have not agreed. We cannot give some constitutional rights a preferred position without relegating others to a deferred position; we can establish no first without thereby establishing seconds. Indications are not wanting that Fourth Amendment freedoms are tacitly marked as secondary rights, to be relegated to a deferred position. The Fourth Amendment states: 'The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.'

These, I protest, are not mere second-class rights but belong in the catalog of indispensable freedoms. Among deprivations of rights, none so effective as cowing a population, crushing the spirit of the individual

tional rights. These can be said to continue being enjoyed without rivalry among themselves in their respective spheres. If any statement about preferred positions needs to be made, it is that the privilege against unreasonable search and seizure enjoys a preferred position[140] which it does not seem to have in the American jurisdiction judging by the cited dissents of Justice Jackson. The reason may be that the Philippines have been oppressed in the way that the United States has not known in its existence.

putting terror in every heart. Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government. And one need only briefly to have dwelt and worked among a people possessed of many admirable qualities but deprived of these rights to know that the human personality deteriorates and dignity and self-reliance disappear where homes, persons and possessions are subject at any hour to unheralded search and seizure by the police."

[140] *"Of all the rights of a citizen, few are of greater importance or more essential* to his peace and happiness than the right of personal security and that involves the exemption of his private affairs, books and papers from the inspection scrutiny of others. Alvarez v. Court of First Instance, 64 Phil. 33. (Italics supplied)