

## SEARCH AND SEIZURE: WHAT CONSTITUTES A "RESPONSIBLE OFFICER AUTHORIZED BY LAW"

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Probably the single most significant innovation to the search and seizure clause is the grant of authority to determine probable cause to "such other responsible officer as may be authorized by law." Under the 1935 Constitution, only a judge was authorized to determine probable cause and it was not within the power of the legislative to authorize a non-judicial officer to determine probable cause needed for the issuance of a warrant.<sup>1</sup>

Thus, Article IV, Section 3 of the 1973 Philippine Constitution provides:

"Section 3. The 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, 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."

On May 4, 1984, the President of the Philippines, by virtue of the powers vested by the Constitution and PD 1416<sup>2</sup>, as amended, issued Executive Order No. 953 entitled "Strengthening the Presidential Anti-Dollar Salting Task Force." The aforementioned Executive Order provides, in part, that "(t)he Chairman of the Presidential Anti-Dollar Salting Task Force<sup>3</sup> is x x x authorized to issue a search warrant or warrant of arrest in connection with a dollar-salting or dollar blackmarketing charge, upon probable cause to be determined by him, after examination under oath or affirmation of a complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized<sup>4</sup>."

The question, therefore, is whether the Chairman of the Presidential Anti-Dollar Salting Task Force (i.e. the Minister of Trade and Industry), after having been conferred the power and authority to issue search warrant or warrant of arrest, is within the contemplation of "responsible officer" referred to in the search and seizure clause.

In order to appreciate the awesome responsibility bestowed upon said officer, it is necessary to inquire into the underlying reasons of such authoriza-

tion. Executive Order No. 934 dated February 13, 1984, issued by the President of the Philippines, which gave rise to the creation of the Anti-Dollar Salting Task Force, noted that "(T)he nation is in the midst of economic difficulties occasioned by the influence of unfavorable international and domestic circumstances" and that "a major contributing factor to these economic difficulties has been the salting away of foreign exchange by (some) unscrupulous businessmen." Further, it justified the creation due to the fact that "dollar salting aggravates the balance of payment problems, increases pressure on the foreign exchange rate x x x and that estimates for 1983 alone indicate(d) that over \$1 billion (had) been salted away x x x."<sup>5</sup>

It may likewise be noted that Sec. 3 of Executive Order No. 953 practically reproduces the requirements for a valid search warrant/warrant of arrest as provided for in the constitution<sup>6</sup> and the Rules of Court<sup>7</sup>. The Minister of Trade and Industry, as Chairman of the Task Force, must therefore issue the search warrant or warrant of arrest only upon probable cause as may be determined by him. He must also examine under oath or affirmation the complainant and the witnesses the latter may produce. Finally, the warrant must particularly describe the place to be searched and the person or things to be seized.

Heretofore, Philippine law and jurisprudence thought it unimaginable that authority to issue search warrants or warrants of arrest, and the power to determine probable cause, would be bestowed upon any officer other than the judge. In fact, in *Lim v. Ponce de Leon*<sup>8</sup>, it was held that a provincial Fiscal was without authority to issue a search warrant as there was no law or rule that recognized such authority. It however left unanswered the question on what specific guidelines were to be observed by the legislature when authorizing a "responsible officer" to issue warrants.

An American case<sup>9</sup> (*Shadwick v. City of Tampa*, 40LW 4758) seems to provide a sound and reasonable rule in interpreting the search and seizure clause when it held:

"... We find no commandment x x x that all warrant authority must reside exclusively in a lawyer or judge. Such a requirement would have been incongruous when even within the federal system warrants were until recently issued by non-lawyers. The substance of the Constitution's warrant requirement does not turn on the labelling of the issuing party. The warrant traditionally has represented an independent assurance that a search and arrest will not proceed without probable cause to believe that a crime has been committed and that the person or place named in the warrant is involved in the crime. (Sic) Thus, an issuing magistrate must meet two tests. *He must be neutral and detached, and he must be capable of determining whether probable cause exists for the requested search or arrest* (underscoring supplied). (The) Court long has insisted that influences of probable cause be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime x x x the Court voided a search warrant issued by the State Attorney General who was acting in charge of the investigation and later was to be chief prosecutor at trial. If on the other hand, detachment and capacity do cojoin, the magistrate has satisfied the Fourth Amendment purpose x x x."

Fr. Joaquin Bernas, in his eminent treatise on the Philippine Constitution, interpreted the American rule thus: "This rule of American jurisprudence is a requirement of due process. Due process is basically a rule of fair play, and fair

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play demands that the arbiter of human rights be both competent and impartial. Due process, as a rule of fair play, is also a basic principle of Philippine Constitutional law . . . (T)he term "responsible officer" in the revised search and seizure clause must (therefore) be given a meaning that does not do violence to due process.<sup>10</sup>

Based on the foregoing, it would seem that the Chairman of the Presidential Anti-Dollar Salting Task Force may legally issue search warrants or warrants of arrest.

### 1. On the question of neutrality and detachment

As stated in *Shadwick v. City of Tampa*<sup>11</sup> it is clear that neutrality and detachment requires "severance and disengagement from activities of law enforcement." Although the Task Force is "empowered to gather evidence, investigate, and to prosecute all cases of dollar salting activities<sup>12</sup>, such would not militate against the Chairman's own neutrality and detachment. The Task Force was constituted as an inter-agency coordinating body tasked with the speedy investigation and prosecution of all cases of dollar salting activities, including the overvaluation of imports and underdeclaration of exports. Its members include the Minister of Natural Resources, the Minister of Justice, the Governor of the Central Bank, the AFP Chief of Staff, the Commissioner of Customs and the Commissioner of Internal Revenue.

In creating the Task Force, the President divided the *ad hoc* agency into three (3) areas of activities. The Central Bank and Ministry of Trade and Industry to handle investigation, the Chief of Staff of the Armed Forces of the Philippines, to handle law enforcement, and the Ministry of Justice as the prosecution arm. By disengaging himself from the day to day activities of prosecution and law enforcement, the Minister of Trade and Industry has confined himself to determination of probable cause. This has negated the taint of unconstitutionality of such authorization. It may likewise be worthy of note that upon determining probable cause, the issuance and service of warrants, corresponding complaints for purposes of preliminary investigation are filed by the Task Force with appropriate Court and/or Fiscal's Office.

The role of the Chairman is therefore only *supervisory and coordinative* and definitely not as an active participant in the investigation and prosecution of the offense. There likewise can be no "partiality or affiliation x x x with prosecutors or police<sup>13</sup> due to the nature of the office of the Minister of Trade and Industry as a high official in the government echelon. It is clear that the Minister of Justice and the AFP Chief of Staff, organizational heads of prosecutors and investigative personnel, respectively, are directly responsible for the conduct of their subordinates to the exclusion of the Task Force Chairman. It is submitted therefore that the Chairman satisfies the requirement of neutrality and detachment.

### 2. On the question of capacity to determine probable cause

Probable cause may be defined as such reasons, supported by facts and circumstances, as will warrant a cautious man in the belief that his action, and the

means taken in prosecuting it, are legally just and proper<sup>14</sup>. It may also be defined as a "state of facts found to exist upon reasonable inquiry which would induce a reasonably intelligent and prudent man to believe in a criminal case that the accused person had committed the crime charged" or "a reasonable ground for belief in the existence of facts warranting the proceedings complained of<sup>15</sup>." The Chairman of the Task Force undoubtedly has the capacity to determine probable cause. Firstly, the authority to issue a search warrant/warrant of arrest is limited only to that which is "in connection with a dollar salting or dollar black-marketing charge<sup>16</sup>." Secondly, the limited scope of this authority is clearly within the field of competence of the Minister of Trade and Industry who "advises the President on matters concerning commerce and industry in the Philippines" and "formulates plans and policies for the effective promotion, development, and regulations of commerce and industry." Thirdly, with such awesome responsibilities as a Cabinet member, requiring a high level of discretion and intellectual capacity, probable cause could be determined with ease. While admittedly not a lawyer, capacity to determine probable cause of violation of a special law<sup>19</sup> is definitely not a difficult task for one with exceptional mental faculties.

### 3. On the question of due process

There are two parts of due process: the procedural and substantive aspects. Substantive due process is deemed satisfied by constitutional mandate itself, that is, by the very wording of Sec. 3 of the Bill of Rights which provides that issuance of warrant of arrest/search warrant shall be upon probable cause to be determined by the Judge or other responsible officer as may be authorized by law. Likewise, the requirement of procedural due process is satisfied by the wordings of Sec. 3 of Executive Order 953 which provides that the Chairman shall issue a warrant upon probable cause only "after examination under oath or affirmation of a complainant and the witnesses he may produce and particularly describing the place to be searched, and the persons or things to be seized."

In fine, it appears that the Minister of Trade and Industry is a "responsible officer" within the meaning of the search and seizure clause and may be authorized to issue search warrant/warrant of arrest after determining probable cause.

However, on June 22, 1984, PD 1931 was issued "delegating the authority to issue a search warrant/warrant of arrest to a Fiscal/State Prosecutor to be designated by the Chairman of the Presidential Anti-Dollar Salting Task Force.

What now?