SUPREME COURT OF THE UNITED STATES

No. 236.--October Term, 1960.

Dollree Mapp, etc.,	)	
	)	
Appellant,	)	On Appeal from the
	)	Supreme Court
v.	)	of Ohio.
	)	
Ohio.	)	

[April , 1961.]

MR. JUSTICE CLARK delivered the opinion of the Court.

As officially stated in the syllabus to the opinion supporting the judgment of the Supreme Court of Ohio in this case, brought here by appeal,[1/] the court has found that appellant's conviction was valid though "based primarily upon the introduction in evidence of lewd and lascivious books and pictures unlawfully seized during an unlawful search of defendant's home. . . ." 170 Ohio Stat. 427, 166 N.E.2d 387. It is said that although according to decisions of this Court the search violated the Fourth Amendment, the use of the unconstitutionally seized evidence at trial is not constitutionally prohibited, citing Wolf v. Colorado, 338 U.S. 25 (1949). In that case this Court did indeed hold, after reviewing the attending circumstances, "that in a prosecution in a state court

for a state crime the Fourteenth Amendment does not forbid the admission of evidence obtained by an unreasonable search and seizure." At p. ___. The present case once again presents for our consideration the recurring question of whether it is now timely to review that holding.

I.

Seventy-five years ago, in Boyd v. United States, 116 U.S. 616, 630 (1886), concerning the Fourth and Fifth Amendments as almost "running into each other" on the facts before it, this Court held that the doctrines of the Fourth Amendment

> "apply to all invasions, on the part of the government and its employees, of the sanctity of a man's home and the privacies of life. It is not the breaking of the doors and the rummaging of his drawers that constitutes the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty and private property. . . ."

Less than thirty years later, in Weeks v. United States, supra, the Court stated that

> "[T]he Fourth Amendment . . . put the courts of the United States and Federal officials in the exercise of

> their power and authority, under limitations and restraints . . . and to forever secure the people, their persons, houses, papers and effects against all unreasonable searches and seizures under the guise of law . . . and the duty of giving to it force and effect is obligatory upon all entrusted under our Federal system with the enforcement of the laws." At p. 383.

Specifically dealing with the use of the evidence unconstitutionally seized, the Court concluded:

> "If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment declaring his right to be secure against such searches and seizures is of no value, and, so far as those placed are concerned, might as well be stricken from the Constitution. The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land." At pp. 391-393.

Finally, the Court in that case clearly stated that use of the seized evidence "constituted a denial of the constitutional rights of the accused." At p. 398. Thus, in the year 1914, in the Weeks case,

this Court "for the first time" held that "in a federal prosecution the Fourth Amendment barred the use of evidence secured through an illegal search and seizure." Wolf v. Colorado, supra, at p. 28. This Court has ever since required of federal law enforcers a strict adherence to that implementation of the Fourth Amendment. More than a mere rule of evidence, the mandate of the Weeks case was a clear, specific, and constitutionally required -- even if judicially implied -- deterrent safeguard without insistence upon which the Fourth Amendment would have been reduced to "a form of words." Holmes, J., Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920). It meant, quite simply, that "conviction by means of unlawful seizures and enforced confessions . . . should find no sanction in the judgments of the courts. . . ." Weeks v. United States, supra, and that such evidence "shall not be used at all." Silverthorne Lumber Co. v. United States, supra, at 392.

Thirty-five years after Weeks was announced, this Court, again for the first time, discussed the effect of the Fourth Amendment upon the states by virtue of the Fourteenth Amendment.[2/]

In Wolf v. Colorado, supra, this Court said that

> "The security of one's privacy against arbitrary intrusion by the police -- which is at the core of the Fourth Amendment -- is basic to a free society. It is therefore implicit in "the concept of ordered liberty" and as such enforceable against the States through the Due Process Clause." 338 U.S. 25, at p. 27-28.

Particularly impressed by "the contrariety of views of the States" on the desirability of the rule announced in Weeks, and mindful of the specific imbalance in those views strongly weighted against exclusion of otherwise respectable evidence, the Court deemed it fitting to hesitate in declaring the deterrent remedy of inclusion "an essential ingredient of the [Fourth Amendment] right." At p. 27. What had decades before been posited as the single rule adequately safeguarding enjoyment of the right to privacy undisturbed by agents of the federal government was not, in the face of prospectively available alternative remedies such as private damage suits, the pressure of an informed public opinion and internal police disciplinary measures, so clearly the only safeguard against invasion of privacy by local officers. In

construing the Fourteenth Amendment, therefore, the Court did not deem itself required to make as to state law enforcement techniques one permissive judgment it had made as to federal -- permissive in the sense that the Fourth Amendment afforded no specific safeguards for enjoyment of the right of privacy which it reserved to individuals, and required in its implementation a "judicial implication" of the minimum requisite curbs on its abuse by the federal government. Absent sufficient experience with the claimed alternative safeguards, the Court was hesitant to declare them unsatisfactory in their deterrence of police invasions of privacy. Implicit in the Court's judgment was its appreciation of the permissive-to-a-point demands of the Fourth Amendment. A state could not be presumed impotent to safeguard the right by its mere election to depend upon some other deterrent to its abuse. In short, what had been found necessary to curb the federal invasion of privacy could not be presumed necessary to meet abuse typical in local law enforcement. The Court, however, "stoutly adhere[d] to" the Weeks decision. At p. 28.

Not long after the Wolf decision, in Irvine v. California, 347 U.S. 128 (1954), this Court indicated that the States had not even then had "adequate opportunity to adopt or reject the doctrine" of Weeks. The evaluation of local safeguards in the light of the federal judgment could not be expected in such short order, and the federal solution was not without its own defects which had to be recognized as factors to be weighed in the selection of an appropriate and effective deterrent.

However, among the more than a score of cases since Wolf, this Court has corrected the logical faults mentioned in Irvine as reason enough then to further postpone evaluation of the need for constitutionally documenting application of the Weeks rule to the states. For, as of that time this Court had not "seen fit to exclude illegally seized evidence in federal cases unless a federal officer perpetrated the wrong," 347 U.S. at p. 136, but only last year that objection was devitalized by our decision in Elkins v. United States, 364 U.S. 206 (1960). Similarly, as of the Irvine decision, the limits on availability of the remedy of

exclusion required "some proprietary or possessory interest in that which was unlawfully searched or seized," at p. 136, whereas today, in light of Jones v. United States, 362 U.S. 257, all that is required is that the person asserting the right to exclusion, a procedure "ultimately referable to constitutional safeguards," have been "legitimately on the premises." At p. 267.

Not long after Irvine, and as a consequence of that further delay in requiring adherence to the Weeks rule, we were obliged through the use of a disciplinary power to require injunctive action against federal agents in order to prevent state judicial use of evidence previously found unlawfully seized and inadmissible in a federal court. Rea v. United States, 350 U.S. 214 (1956). But even that use of our supervisory power is often ineffective. Wilson v. Schnettler, 365 U.S. 585 (1961).

Then, last Term, in Elkins v. United States, 364 U.S. 206, the Court pointed out that "the controlling principles" as to search and seizure and the problem of admissibility "seemed clear" (at p. 212) until the announcement in Wolf "that the Due Process Clause of the Fourteenth Amendment does not itself require state

courts to adopt the exclusionary rule" of the Weeks case. (At p. 213.) At the same time, the Court pointed out, "the underlying constitutional doctrine which Wolf established . . . that the Federal Constitution . . . prohibits unreasonable searches and seizures by state officers" had undermined the "foundation upon which the admissibility of state seized evidence in a federal trial originally rested. . . ." This "constitutional doctrine of Wolf," the Court added, "operated to undermine the logical foundation of the Weeks admissibility rule. . . ." The Court, therefore, held that Weeks and Wolf together rendered inadmissible in a federal trial all evidence obtained by an unconstitutional search and seizure regardless of its source.

II.

In the dozen years since Wolf was decided, there has occurred a series of events which require a new appraisal of the continued vitality of the considerations which found expression in its basic reasoning.

(1) There it had been found that "the contrariety of views of the states" on the adoption of the exclusionary rule of Weeks was "particularly impressive." The Court said that it could not

"brush aside the experience of the states which deem the incidence of such conduct by the police too slight to call for a deterrent remedy . . . by overruling the relevant rules of evidence." At pp. 31-32. Now, however, the scales are weighted in favor of the Weeks doctrine. Of the 37 states passing on the Weeks exclusionary rule since the Wolf decision, 21 have either adopted or adhered to the rule. While in 1949 almost two-thirds of the states were opposed to the rule, now 57% of those passing upon it approve. Thus, while 66% admitted the evidence in 1949, only 48% presently adhere to that rule. See Elkins v. United States, 364 U.S. 206 (1960), Appendix pp. 224-232. Significantly, among those now following the rule is California which, according to its highest court, was "compelled to reach that conclusion because other remedies have completely failed to secure compliance with the constitutional provisions. . . ." People v. Cahan, 44 Cal. 2d 434 (1955).

(2) The second basis elaborated in Wolf in support of its doctrine was that "other means of protection" could be afforded "the right to privacy." The experience of California that such other remedies have been worthless and futile is buttressed by

statistics from the City of Chicago where thousands of illegal searches and seizures by police officers occur each year.[3/] Still there have been only ____ cases in Illinois Courts, and only one case [Monroe v. Pape, 365 U.S. 167] has come to this Court in which private damage remedies have been pursued in an effort to redress such invasions of privacy. In any event, mindful of the sentiments expressed in the Boyd case, supra, how can we expect to defend "the indefeasible right of personal security" by telling him who suffers its invasion to seek damages for "the breaking of doors"? The obvious futility of any longer seeking to relegate the Fourth Amendment to the protection of other remedies was anticipated by Mr. Justice Frankfurter, dissenting in Harris v. United States, 331 U.S. 145, 156 (1947): "Freedom of speech, of the press, of religion, easily summon powerful support against encroachment. The prohibition against seizure is normally invoked by those accused of crime, and criminals have few friends"; and by Mr. Justice Jackson, dissenting in Brinegar v. United States, 338 U.S. 160, 181 (1949): "Courts can protect

the innocent against such invasions only indirectly and through the medium of excluding evidence obtained against those who frequently are guilty."

(3) An aroused public opinion and internal police discipline are equally without the deterrent value which, in lieu of accession to the federal exclusionary rule, a state is required by the Due Process Clause to provide in its reliance upon some other remedy. That they exist widely enough to be credited is doubtful at best.[4/] Moreover, it appears hopelessly impractical to consider formulation of an effective body of public opinion as a remedy practicably available to those who suffer unconstitutional invasions of their privacy. They are in large measure criminal defendants, and more unlikely organizers of an effective and respectable public opinion would be difficult to find, for "A rule protective of law abiding citizens is not apt to flourish where its advocates are usually criminal." Draper v. United States, 358 U.S. 307, 314 (dissenting opinion).

We are then at another time for decision. The judgment which was deferred in Wolf, and further postponed in Irvine and Rea, must now be made. The question is whether there presently exists available to citizens of the non-exclusionary states any remedy which can be said to meet "the minimal standards of Due Process." One fails of discovery, and we are bound to require adherence to the constitutionally mandated rule of Weeks.

III.

We recognize no longer the basic incongruity facing us until today, the double standard tolerated in enforcement of the Amendment. A federal prosecutor may make no use of evidence unconstitutionally seized, but a state's attorney may, although he operates under the enforceable prohibitions of the same Amendment. A state, by admitting evidence unlawfully seized, indirectly, but no less actually, serves to encourage disobedience to the federal Constitution which it is bound to uphold. Moreover, as was said in Elkins, "the very essence of a healthy federalism depends upon the avoidance of needless conflict between state and

federal courts." At p. 221. Yet the double standard heretofore recognized hardly put such a thesis into practice. In non-exclusionary states, federal officer, being human, were by it invited to, and did, as our cases indicate, step across the street to the state's attorney with their unconstitutionally seized evidence. Prosecution on the basis of that evidence was then had in a state court in utter disregard of the enforceable Fourth Amendment. Rea and Schnettler point up the hazards of an ambivalent approach to this apsect of the problem. If the fruits of an unconstitutional search had been inadmissible in both state and federal courts, that inducement to evasion would have been sooner eliminated. Federal-state cooperation in the solution of crime under constitutional standards will be promoted, if only by joint recognition of a now mutual obligation to respect the same fundamental criteria in their approaches. "However much in a particular case insistence upon such rules may appear as a technicality that inures to the benefit of a guilty person, the history of criminal law proves that tolerance of short-cut methods in law enforcement impairs

its enduring effectiveness." Miller v. United States, 357 U.S. 301, 313 (1958). Barring shortcuts to only one of two cooperating law enforcement agencies tended naturally to breed legitimate suspicion of "working arrangements" whose results were equally tainted. Cf. Byars v. United States, 273 U.S. 28 (1927); Anderson v. United States, 318 U.S. 583.

There are those who say, as did Mr. Justice (then Judge) Cardozo, that under such a doctrine "The criminal is to go free because the constable has blundered." People v. Defore, 242 N.Y. at ___, 150 N.E. at ___. In some cases this will undoubtedly be the result, but "the Amendment's protection [can be] . . . made effective for everyone only by upholding it when invoked by the worst of men." Abel v. United States, 362 U.S. 217, 248 (dissenting opinion). And more importantly, as was said in Elkins, "There is another consideration -- the imperative of judicial integrity." The criminal will go free, if he must, but he will be freed by the law. Even Titus has rights.

To say that a government should be able to use unconstitutionally seized evidence because there is no fundamental prohibition against its use of evidence seized unlawfully by private persons, is to ignore the experience of ages. What can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence? As Mr. Justice Brandeis, dissenting, said in Olmstead v. United States, 277 U.S. 438, 469 (1928): "Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by example. . . . If the government becomes a lawbreaker, it breeds contempt for law; it invites everyman to become a law unto himself; it invites anarchy."

What has occurred in the course of maturation of the Wolf doctrine makes unnecessary our further hesitation "to treat this remedy as an essential ingredient of the right." If as of Irvine the time was not yet ripe, the reasons for that judgment are neither so plausible nor so persuasive today. It is time to go beyond Wolf, to make a further "advance in . . . standards of what

is deemed reasonable and right," to recognize as necessary to the proper administration of justice by dual sovereigns that there be a single standard under which the fundamental right of the Fourth Amendment be enforced.

We know of no restraints being placed upon the enforcement of any other basic right. The right to privacy, "second to none in the Bill of Rights," Harris v. United States, 331 U.S. 145, 157 (dissenting opinion), would stand in marked contrast to all other rights "basic to a free society." Wolf v. Colorado, supra, at p. 27. This Court has not hesitated to enforce as strictly against the states as it does against the federal government the right of free speech and of a free press, the right to a fair trial, including, as it does, the right not to be convicted by use of a coerced confession, however "logically relevant" it be, and without regard to its reliability. Cf. Rogers v. Richmond, 365 U.S. ___ (1961). And nothing could be more certain than that when a coerced confession is involved, "the relevant rules of evidence" are overridden without regard to whether quantitatively "the incidence of such conduct by the police" would justify a state court

in choosing some "deterrent remedy" other than total exclusion. We can wait no longer in demanding that the states provide the assurance involved in the Weeks rule.

Our cases show that the honest and real enjoyment of such rights is wholly determined by the aggregate strength of the available remedies and enforcement devices which an individual and his community are able to muster in their defense. In not one has the Court exhibited such a high degree of judicial self-abnegation as would be involved in our further hesitation to take a step made necessary by Wolf and promised by Irvine. In violations of what other right do we abide unfettered judicial employment of the fruits of official lawlessness? In none, save those of the "core of the Fourth Amendment." The ignoble but doubtless efficient route to conviction left open to the state tends by its very efficiency to destroy the entire system of constitutional restraints on which the liberties of the people rest. Having once recognized, as was done in Wolf, that the right is nothing less than constitutional in origin, we can no longer abstain from drawing upon the same

source for its safeguard. No longer can we permit it to be revocable at the whim of every policeman who, in the name of law enforcement itself, chooses to suspend its enjoyment.

Reversed.