SUPREME COURT OF THE UNITED STATES

No. 236.--October Term, 1960.

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

[April , 1961.]

MR. JUSTICE CLARK delivered the opinion of the Court.

Appellant stands convicted of knowingly having in her possession certain lewd and lascivious books, pictures, and photographs in violation of § 2905.34 of Ohio's Revised Code.[1/] The Supreme Court of Ohio in a syllabus to its opinion has found that her conviction is valid even 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. The State says that even though under our cases the search violated the Fourth Amendment, it is not prevented from using the seized evidence at trial, citing Wolf v. Colorado, 338 U.S. 25 (1949). This Court did 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." On this appeal, wherein we have noted probable jurisdiction, 346 U.S. 868, we have presented the recurring question of whether it is now timely to review that holding. ~~It is pointed out that~~ in Irvine v. California, 347 U.S. 128 (1954), this Court indicated that the states had not ~~at that time~~ had "adequate opportunity to adopt or reject the doctrine" of Weeks v. United States, 232 U.S. 383 (1914), since "Never until June 1949 did this Court hold the basic search and seizure prohibition in any way applicable to the states under the Fourteenth Amendment." At p. 134.

Only last Term in Elkins v. United States, 364 U.S. 206, the Court pointed out that "the controlling principles" as to search and seizure "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 Weeks ~~v. United States, supra~~. (At p. 213.) At the same time, as the Court pointed out, "the underlying constitutional doctrine

which Wolf established . . . that the Federal Constitution . . . prohibits unreasonable searches and seizures by state officers" 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. Thus was ~~This~~ eliminated one basic criticism of the federal rule as characterized ~~expostulated~~ by Mr. Justice (then Judge) Cardozo that "The Federal rule as it stands is either too strict or too lax." People v. Defore, 242 N.Y. 13, 22 (1926).

Moreover, since the Wolf decision there ~~other events~~ have occurred other events which undercut its basic reasoning. There it had been ~~was~~ 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, ~~this scorecard runs~~ the scales are weighted against the Wolf doctrine on admissibility. ~~Out~~ Of the 37 states that have passed on the Weeks exclusionary rule since the Wolf decision, ~~twenty-one~~ 21 have either adopted or adhered to the exclusionary rule. While in 1949 almost two-thirds of the states were opposed to the rule, now 57% of those passing upon it approve. See Elkins v. United States, supra, Appendix pp. 224-232. Significantly, among those now ~~adhering to~~ 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). We note that the second basis elaborated in Wolf in support of its doctrine is that "other means of protection" have been afforded "the right to privacy." The experience of California that such other remedies have been worthless

and futile is buttressed by ~~the~~ statistics from The City of Chicago where thousands of ~~unconstitutional~~ illegal searches and seizures by police officers occur each year. Still only one case ~~[cite]~~ (Monroe v. Pape, 365 U.S. —) has come to ~~our attention~~ this Court in which private remedies have been pursued in an effort to redress such invasions of privacy. ~~While statistics are not available from New York, reliable reports indicate a like situation there.~~ The ~~answer for the~~ obvious futility of other remedies ~~is~~ was well ~~put~~ stated by Mr. Justice Frankfurter, dissenting in Harris v. United States, 331 U.S. 145 (1947), in which he said:

"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;" ~~As~~ by Mr. Justice Jackson ~~found~~ dissenting in ~~his dissent 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;" by Mr. Justice Douglas dissenting in Draper v. United States, 358 U.S. 307, 314 (1959), "A rule protective of law abiding citizens is not apt to flourish where its advocates are usually criminal;" by Mr. Justice Brennan, dissenting in Abel v. United States, 362 U.S. 217, 248 (1960), "The Amendment's protection is thus made effective for everyone only by upholding it when invoked by the worst of men."

There have been — cases in Illinois Courts, and only

relegating the Fourth Amendment to the protection of

Likewise, time has set its face against the "weighty testimony" of Defore, ~~supra, the sole case~~ cited by the Court in support of its reasoning in Wolf. Besides the ~~line-up in the states heretofore mentioned~~ State trend towards weaker subsequent reversal in the, this Court ~~has since declared the Fourth Amendment "enforceable" against the states and in a series of some thirty~~ in more than a score of cases since Wolf has ~~eliminated the incongruities and clarified the obscurities then present~~ corrected the logical faults mentioned in Irvine as reason enough then to further postpone evaluation of the need for constitutionally documenting application of the basic rule to the States. ~~the doctrine of the~~ ~~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," but only last year that objection was ~~devitalized~~ disemboweled by our decision in Elkins v. United States, 364 U.S. 206. 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 have been "legitimately on the premises." At p. 267. Not long after Irvine, and as a consequence of withholding application of the Weeks rule, a weak extension of it to affect State judicial use of unlawfully seized evidence tendered by federal agents was effected not through constitutionally imposed restraints, but through exercise of a disciplining power over the agents. Rea v. United States, 350 U.S. 214. Even that exercise has narrow limits, however, and will not be made in every case. Wilson v. Schnettler, 365 U.S. 585.

(4)

incongruity now facing us is the double standard this Court tolerates in the enforcement of the Amendment, a federal prosecutor may take no benefit from evidence illegally seized, but the state's attorney across the street, operating under the enforceable prohibitions of the

are thus invited and often, do, as our cases indicate, do in non-exclusionary states, in non-exclusionary states, step across the street to the state's attorney with their unconstitutionally seized evidence and The prosecution is on the basis of that evidence had there then in utter disregard of the Fourth Amendment. If the in a state court fruits of an unlawful unconstitutional search were inadmissible in both state and federal courts, this inducement to evasion would be eliminated, and federal-state cooperation in the solution of crime under constitutional standards would be promoted, if only by their then mutual recognition of obligation to respect the same fundamental criteria in their approaches. "However much in a particular case morality may approve as a technicality that inures to the benefit of a guilty person, the history of remand OVER

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." And in some cases this will undoubtedly may be the result. But, as was said in Elkins, in this regard, "there is another consideration -- the imperative of judicial integrity." The criminal goes free, if he must, does, but it is under the law. To say that a government should be able to use unconstitutionally seized evidence because an individual is permitted to do so is to overlook ignore the teaching experience of the ages. Nothing 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.

law proves that tolerance of shortcut 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 tends naturally to breed suspicion of "working arrangements" whose results are equally tainted. Cf. Byars v. United States 273 U.S. 28 (1927); Anderson v. United States 318 U.S. 583.

As Mr. Justice Brandeis said in Olmstead v. United States, 277 U.S. 438, 469: "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."

Seventy-five years ago, this Court in Boyd v. United States, 116 U.S. 616 (1886), 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. . . . Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods is within the condemnation of that judgment."

[This raises IV + V Amendments interrelation aspect which you want to avoid.]

If that be the case, does it adequately safeguard the "indefeasible right of personal security" to relegate him who suffers its invasion to a suit for damages for the "breaking of doors"?

And less than thirty years later, in Weeks v. United States, 232 U.S. 383 (1914), the Court stated explicitly that "the 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." Specifically dealing with the use of the evidence unconstitutionally seized, the Court concluded: [~~copy p. 209, bottom of page~~]

"... If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offence, 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." 232 U.S. 383, 391-393.

This Court has required strict adherence to this command of the [of federal law-enforcers a] Fourth Amendment ever since. ~~We need not pause to consider whether it has been by~~ [More than a mere] rule of evidence ~~or by~~ "judicial implication," [constitutionally required] for the mandate of the Weeks case is [a] clear, ~~and~~ specific, and [of a safeguard without insistence upon which the Fourth Amendment is reduced to "a form of words." Holmes, J., Silverthorne Lumber Co v. United States, 251 U.S. 385 (1920)]

means, quite simply,
It says that "conviction by means of unlawful seizures and enforced confessions . . . should find no sanction in the judgments of the courts. . . ." 232 U.S. at. 392

~~Now that~~ the Fourth Amendment is "enforceable against the States through the Due Process Clause," Wolf v. Colorado, supra, at p. 27, its violation by the States being condemned by the Fourteenth Amendment. In 1949 the Court was of the opinion that the sanction of exclusion of evidence illegally seized was not then ~~thought~~ necessary to meet the "minimal standards assured by the Due Process Clause." But as we have pointed out, conditions and circumstances have changed and "basic rights do not become petrified as of any one time. It is of the very nature of a free society to advance in its standards of what is deemed reasonable and right. Representing, as it does, a living principle, due process is not confined within a permanent catalogue of what may at a given time be deemed the limits or essentials of fundamental rights." & Wolf at p. 27. ~~Experience gleaned during the past twelve years makes it not only "reasonable and right," but necessary to~~ the proper administration of justice by dual sovereigns ~~in our dual federalism~~ that ~~we~~

incident

What has occurred in the course of maturation of the Wolf doctrine makes unnecessary any further quotation "to treat this remedy as an essential ingredient of the right" Ibid. If in Irvine the time was not yet ripe, the reasons for that judgment are neither so plausible nor so persuasive today. It is time "to advance in ... standards of what is deemed reasonable and right," to recognize as necessary to

have a single standard by which the requirements 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 declared by the same instrument as "basic to a free society." This Court has not hesitated to strictly enforce against the states the right of free speech, of press, of fair trial, counsel, confessions, etc. Our cases show that the enjoyment of such rights is wholly determined by the aggregate of the available remedies and enforcement devices which the individual and the community are able to muster in their defense. In not one has the Court exhibited such a high degree of judicial self-abnegation as the Wolf rule imposes on the Fourth Amendment. It appears strange that the force of the state exercised through lawless action is allowed to be brought to bear against the individual in this one field of search and seizure. The ignoble part thus played by the state tends to the destruction of the whole system of constitutional restraints on which the liberties of the people rest. This we cannot permit.