SUPREME COURT OF THE UNITED STATES

No. 236. -- October Term, 1960

Dollree Mapp, Etc.,	)	
	)	
Appellant	)	On Appeal from the
	)	Supreme Court of
v.	)	Ohio.
	)	
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 has found that her conviction was "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 State 427, 429. Among other defenses[2/] appellant asserts that the use of such evidence violated her rights under the Fourth Amendment, enforceable against the States through the Due Process

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 US 25 (1949). This Court did so hold ~~at that time~~ under the circumstances existing at that time.

However, on this appeal wherein we have noted probable jurisdiction, 346 US 868, we have presented the recurring question of whether it is now timely to review that holding. ~~In the light of the changed conditions~~ It is said that the conditions on which that case was premised have changed, that ~~development of other and that~~ to such an extent that there is now no sufficient reason for it. ~~We have given the problem careful study and find much plausible ground~~

~~It is said that in the subsequent case of~~

It is pointed out that in Irvine v California, 347 US 128 (1954) this Court indicated that the states had not had at that time "adequate opportunity to adopt or reject the ~~rule~~ doctrine" of Weeks v United States, 232 US 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.

~~In her Justice Jackson~~ Subsequent to ~~we~~ In addition, it is said, that in the past twelve years the basic reasoning of Wolf has been undercut by changed conditions as well as the subsequent development of the case law as to the search and seizure, not only ~~in the field of our dual federalism but~~ in relation to the exceptions previously recognized in the field but also ~~in the new concept of due process, the application~~ in its application in the administration of justice in our dual federalism. We find much ~~plausibility~~ plausible ground in this contention, ~~and in the light of the indications~~

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"the contrariety of views of the States" which Wolf found "particularly impressive" has reversed itself; "the remedies of private action and such protection as the internal discipline of the police" which led the Court to find the exclusionary rule not necessary to "minimal standards assured by the Due Process Clause" have proven to be [so worthless and futile that they are of no earthly use in protecting the people in their right to privacy; likewise time has proven the "weighty testimony" incorporated from People v Defore, 242 NY, 13, to be counterveiling and by hindsight unsupportable in practice; and, finally, the cases of this Court in the past few years have brushed aside many of the technical exceptions to the exclusionary rule ~~cited~~ in Irvine v California, supra, at p. 136, ~~which led our~~ honored brother Jackson, who authored that opinion, to propose ~~to impose upon the state courts "the hazardous forbearance reversal for non compliance with standards by which the Court sees its~~ as additional reasons for continuing in effect at that time the doctrine of the Wolf case. While as was pointed out in People v Defore, supra, "There are dangers in any choice", at p. ___, and the enforcement of the exclusionary rule may not prove to be an effective bar to police defiance of a constitutional mandate "second to none in the Bill of Rights", Harris v United States, 331 US 145, dissenting opinion p. 157, we do know that it will afford the people protection against be an effective sanction for the people against whom its violation is visited. Weeks v United States, 232 US 383 (1914), supra, at p. ___. We, therefore, have "no reluctance in condemning as unconstitutional a method of law enforcement so reckless

not do we find that more protection is secured by through the exertion of "local opinion, sporadically aroused ... against ~~police~~ oppressive conduct on the part of the police;" ~~to afford any such protection~~

and so fraught with danger and discredit to the law enforcement agencies themselves," Mr Justice Jackson in Mc Donald v U S 335 US 451, 461 (1948), and in rendering the fruits of such practice unavailable against its victims in the enforcement of our criminal laws.

We start with the proposition