SUPREME COURT OF THE UNITED STATES

No. 236.—October Term, 1960.

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

[May —, 1961.]

Mr. Justice Clark delivered the opinion of the Court.

Appellant stands convicted of knowingly having had in her possession and under her control certain lewd and lascivious books, pictures and photographs in violation of § 2905.34 of Ohio's Revised Code.[1] As officially stated in the syllabus to its opinion, the Supreme Court of Ohio found that her 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 St. 427, 166 N. E. 2d 387. The State says that even ~~though under our cases~~ the search ~~violated the Fourth Amendment,~~ it is not prevented from using the unconstitutionally seized evidence at trial, citing *Wolf* v. *Colorado*, 338 U. S. 25 (1949), in which this Court did indeed hold "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

[1] The statute provides in pertinent part that

"No person shall knowingly . . . have in his possession or under his control an obscene, lewd, or lascivious book [or] . . . picture. . . .

"Whoever violates this section shall be fined not less than two hundred nor more than two thousand dollars or imprisoned not more than seven years, or both."

[2] "The right of the people to be secure in their person, 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."

search and seizure." At p. 33. On this appeal, of which we have noted probable jurisdiction, 364 U. S. 868, it is urged once again that we review that holding.[3]

I.

Seventy-five years ago, in *Boyd* v. *United States*, 116 U. S. 616, 630 (1886), considering the Fourth and Fifth Amendments as running "almost 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 employés of the sanctity of a man's home and the privacies of life. It is not the breaking of his 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 . . . ."

The Court noted that

> "constitutional provisions for the security of person and property should be liberally construed. . . . It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon, ..." At p. 635.

[3] Other issues have been raised on this appeal, but in the view we have taken of the case they need not be decided.

[4] The close connection between the concepts later embodied in these two Amendments had been noted at least as early as 1765 by Lord Camden, on whose opinion in *Entick* v. *Carrington*, 19 Howell's State Trials, col. 1029, the *Boyd* court drew heavily. Lord Camden had noted, at col. 1073:

"It is very certain, that the law obligeth no man to accuse himself; because the necessary means of compelling self-accusation, falling upon the innocent as well as the guilty, would be both cruel and unjust; and it should seem, that search for evidence is disallowed upon the same principle. There too the innocent would be confounded with the guilty."

In this the Court was following Madison's prediction that "independent tribunals of justice . . . will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights." I Annals of Cong. 439 (1789). Finally, the Court specifically referred to the use of the evidence there seized as "unconstitutional." At p. 638.

Less than 30 years after *Boyd*, this Court in *Weeks* v. *United States*, 232 U. S. 383 (1914), stated 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] . . . forever secure[d] 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 pp. 391–392.

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 thus 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 p. 393.

Finally, the Court in that case clearly stated that use of the seized evidence involved "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 28. This Court has ever since required of federal law officers a strict adherence to that command which this Court has held to be 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, 392 (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,* at 392, and that such evidence "shall not be used at all." *Silverthorne Lumber Co.* v. *United States, supra,* at 392.

There are in the cases of this Court some passing references to the *Weeks* rule as being one of evidence. But the plain and unequivocal language of *Weeks*—and its later paraphrase in *Wolf*—to the effect that the *Weeks* ~~rule~~ remedy is of constitutional origin, remains entirely undisturbed. In *Byars* v. *United States,* 273 U. S. 28 (1927), a unanimous Court declared that "the doctrine [cannot] . . . be tolerated *under our constitutional system,* that evidences of crime discovered by a federal officer in making a search without lawful warrant may be used against the victim of the unlawful search where a timely challenge has been interposed." At pp. 29–30 (emphasis added). The Court, in *Olmstead* v. *United States,* 277 U. S. 438 (1928), in unmistakable language restated the *Weeks* rule:

> "The striking outcome of the *Weeks* case and those which followed it was the sweeping declaration that

> the Fourth Amendment, although not referring to or limiting the use of evidence in courts, really forbade its introduction if obtained by government officers through a violation of the Amendment." At p. 462.

In *McNabb* v. *United States*, 318 U. S. 332 (1943), we note this statement:

> "[A] conviction in the federal courts, the foundation of which is evidence obtained in disregard of liberties deemed fundamental by the Constitution cannot stand. . . . *Boyd* v. *United States* . . . *Weeks* v. *United States* . . . . And this Court has, on Constitutional grounds, set aside convictions, both in the federal and state courts, which were based upon confessions 'secured by protracted and repeated questioning of ignorant and untutored persons, in whose minds the power of officers was greatly magnified' . . . or 'who have been unlawfully held incommunicado without advice of friends or counsel' . . . ." At pp. 339–340.

Significantly, in *McNabb*, the Court did then pass on to formulate a rule of evidence, saying, "[i]n the view we take of the case, however, it becomes unnecessary to reach the Constitutional issue [for] . . . [t]he principles governing the admissibility of evidence in federal criminal trials have not been restricted . . . to those derived solely from the Constitution." At pp. 340–341.

II.

In 1949, 35 years after *Weeks* was announced, this Court, in *Wolf* v. *Colorado*, *supra*, again for the first time,[6] discussed the effect of the ~~Fourth Amendment~~ upon

[6] See, however, *National Safe Deposit Co.* v. *Stead*, 232 U. S. 58 (1914), and *Adams* v. *New York*, 192 U. S. 585 (1903).

the States by its incorporation through the Due Process Clause of the Fourteenth Amendment. It said:

> "[W]e have no hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it would run counter to the guaranty of the Fourteenth Amendment." At p. 28.

Nevertheless, after declaring the Fourth Amendment "implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause," cf. *Palko* v. *Connecticut*, 302 U. S. 319 (1937), and announcing that it "stoutly adhere[d]" to the *Weeks* decision, the Court decided that the *Weeks* exclusionary rule would not then be carried over against the States as "an essential ingredient of the [Fourth Amendment] right." At pp. 27–29. The Court's reasons for not incorporating in the Fourth Amendment, as carried over against the States by the Due Process Clause, that which decades before had been posited as part and parcel of the Fourth Amendment's limitation upon federal encroachment of individual privacy were bottomed entirely on factual considerations.

While they are not essentially relevant to a decision that the exclusionary rule is an essential ingredient of the Fourth Amendment as it is visited upon the States through the Due Process Clause, we will consider the current validity of the factual grounds upon which *Wolf* was based.

The Court in *Wolf* first stated that "[t]he contrariety of views of the States" on the adoption of the exclusionary rule of *Weeks* was "particularly impressive" (at p. 29); and, in this connection, that it could not "brush aside the experience of States which deem the incidence of such conduct by the police too slight to call for a deterrent remedy . . . by overruling the [States'] relevant rules of

evidence." At pp. 31–32. We note, however, that since 1949 and without the assistance of this Court, 21 of the 37 States that have passed on the *Weeks* exclusionary rule have by their own decision either adopted or adhered to it. While in 1949, prior to the *Wolf* case, almost two-thirds of the States were opposed to the use of the exclusionary rule, now, despite the *Wolf* case, 57% of those passing upon it have adopted the *Weeks* rule. See *Elkins* v. *United States*, 364 U. S. 206, Appendix, pp. 224–232 (1960). 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, 445, 282 P. 2d 905, 911 (1955). In connection with this California case, we note that the second basis elaborated in *Wolf* in support of its failure to enforce the exclusionary doctrine against the States as part of the ~~Fourth~~ Amendment was that "other means of protection" have been afforded "the right to privacy." [6]

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[6] Less than half of the States have any criminal provisions relating directly to unreasonable searches and seizures. The punitive sanctions of the 23 States attempting to control such invasions of the right of privacy may be classified as follows:

Criminal Liability of Affiant for Malicious Procurement of Search Warrant.—Ala. Code, 1958, Tit. 15, § 99; Alaska Comp. Laws Ann., 1949, § 66–7–15; Ariz. Rev. Stat. Ann., 1956, § 13–1454; Cal. Pen. Code § 170; Fla. Stat., 1959, § 933.16; Ga. Code Ann., 1953, § 27–301; Idaho Code Ann., 1948, § 18–709; Iowa Code Ann., 1950, § 751.38; Minn. Stat. Ann., 1947, § 613.54; Mont. Rev. Codes Ann., 1947, § 94–35–122; Nev. Rev. Stat. §§ 199.130, 199.140; N. J. Stat. Ann., 1940, § 33:1–64; N. Y. Pen. Law § 1786, N. Y. Code Crim. Proc. § 811; N. C. Gen. Stat., 1953, § 15–27 (applies to "officers" only); N. D. Century Code Ann., 1960, §§ 12–17–08, 29–29–18; Okla. Stat., 1951, Tit. 21, § 585, Tit. 22, § 1239; Ore. Rev. Stat. § 141.990; S. D. Code, 1939 (Supp. 1960), § 34.9904; Utah Code Ann., 1953, § 77–54–21. [*Footnote 6 continued on p. 8.*]

At p. 30. The experience of California that such other remedies have been worthless and futile is buttressed by the experience of other States. In fact, this Court has decided only one case (*Monroe* v. *Pape*, 365 U. S. 167 (1961)) in which private remedies have been pursued in an effort to redress such invasions of privacy. The obvious futility of relegating the ~~Fourth Amendment~~ right to the protection of other remedies has, moreover, been recognized by this Court since *Wolf*. See *Irvine* v. *California*, 347 U. S. 128, 137 (1954).

Likewise, time has set its face against what *Wolf* called the "weighty testimony" of *People* v. *Defore*, 242 N. Y. 13, 150 N. E. 585 (1926). There Justice (then Judge) Cardozo, rejecting the use of the *Weeks* exclusionary ~~rule~~ remedy in New York, had said that "[t]he Federal rule as it stands is either too strict or too lax." 242 N. Y., at 22, 150 N. E., at 588. However, the force of that reasoning has been largely vitiated by recent decisions of this Court. These include the recent discarding of the "silver

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Criminal Liability of Magistrate Issuing Warrant Without Supporting Affidavit.—N. C. Gen. Stat., 1953, § 15–27; Va. Code Ann., 1960 Replacement Volume, § 19.1–89.

Criminal Liability of Officer Willfully Exceeding Authority of Search Warrant.—Fla. Stat. Ann., 1944, § 933.17; Iowa Code Ann., 1950, § 751.39; Minn. Stat. Ann., 1950, § 613.54; Nev. Rev. Stat. § 199.450; N. Y. Pen. Law § 1847, N. Y. Code Crim. Proc. § 812; N. D. Century Code Ann., 1960, §§ 12–17–07, 29–29–19; Okla. Stat., 1951, Tit. 21, § 536, Tit. 22, § 1240; S. D. Code, 1939 (Supp. 1960), § 34.9905; Tenn. Code Ann., 1955, § 40–510; Utah Code Ann., 1953, § 77–54–22.

Criminal Liability of Officer for Search with Invalid Warrant or no Warrant.—Idaho Code Ann., 1948, § 18–703; Minn. Stat. Ann., 1947, §§ 613.53, 621.17; Mo. Ann. Stat., 1953, § 558.190; Mont. Rev. Codes Ann., 1947, § 94–3506; N. J. Stat. Ann., 1940, § 33:1–65; N. Y. Pen. Law § 1846; N. D. Century Code Ann., 1960, § 12–17–06; Okla. Stat. Ann., 1958, Tit. 21, § 535; Utah Code Ann., 1953, § 76–28–52; Va. Code Ann., 1960 Replacement Volume, § 19.1–88; Wash. Rev. Code §§ 10.79.040, 10.79.045.

platter" doctrine which allowed federal judicial use of evidence seized in violation of the Constitution by state agents, *Elkins* v. *United States, supra;* and relaxation of the formerly strict requirements as to standing to challenge use of evidence thus seized, so that now the procedure of exclusion, "ultimately referrable to constitutional safeguards," is available to anyone even "legitimately on the premises" unlawfully searched, *Jones* v. *United States,* 362 U. S. 257, 266–267 (1960); and recognition of a method to prevent state use of evidence unconstitutionally seized by federal agents, *Rea* v. *United States,* 350 U. S. 214 (1956). Because there can be no fixed formula, we are admittedly met with "recurring questions of the reasonableness of searches," but less is not to be expected when dealing with a Constitution, and, at any rate, "[r]easonableness is in the first instance for the [trial court] . . . to determine." *United States* v. *Rabinowitz,* 339 U. S. 56, 63 (1950).

It, therefore, plainly appears that the factual considerations supporting the failure of the *Wolf* Court to include the *Weeks* exclusionary rule when it recognized the enforceability of the Fourth Amendment against the States in 1949, while not basically relevant to the constitutional consideration, could not, in any analysis, now be deemed controlling.

III.

Some five years after *Wolf,* in answer to a plea that we overturn its doctrine on applicability of the *Weeks* exclusionary rule, this Court indicated that such should not be done until the States had had "adequate opportunity to adopt or reject the doctrine." *Irvine* v. *California, supra,* at 134. There again it was said:

> "Never until June of 1949 did this Court hold the basic search-and-seizure prohibition [of the Fourth Amendment] in any way applicable to the states under the Fourteenth Amendment." At p. 134.

And only last Term in *Elkins* v. *United States, supra,* 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 . . . ." *Ibid.* This "constitutional doctrine of *Wolf*," the Court added, "operated to undermine the logical foundation of the *Weeks* admissibility rule . . . ." At p. 214. The Court concluded that it was therefore obliged to hold, although it chose the narrower ground on which to do so, that all evidence obtained by an unconstitutional search and seizure was inadmissible in a federal court regardless of its source. Today the *Wolf* holding leads us to close the only courtroom door remaining open to evidence secured by official lawlessness in flagrant abuse of a basic right reserved to all persons as a particular assurance against that very same lawlessness. We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by ~~that~~ same authority, inadmissible in a state court.

IV.

Since the ~~Fourth Amendment~~ has been ~~incorporated~~ applied through the Due Process Clause of the Fourteenth, it is enforceable against the States in the same manner and to the same extent as it is against the Federal Government. At the time that the Court held in *Wolf* that the Amendment was applicable to the States through the

Due Process Clause, the cases of this Court, as we have seen, had steadfastly held that as to federal officers the Fourth Amendment included ~~the exclusion of the evidence seized in violation of its provisions~~. Even *Wolf* "stoutly adhered" to that proposition. The Fourth Amendment, when conceded operatively enforceable against the States, was not susceptible of destruction by avulsion of the sanction upon which the protection of the constitutional right and its enjoyment had always been deemed dependent under the *Boyd*, *Weeks* and *Silverthorne* cases. Therefore, in extending the substantive protections of due process to all constitutionally unreasonable searches—state or federal—it was logically and constitutionally necessary that the exclusion doctrine—~~part~~ of the Fourth Amendment—be also transmitted as an essential ingredient of the right newly recognized by the *Wolf* case. In short, the admission of the new constitutional right by *Wolf* could not consistently tolerate denial of its ~~most important~~ constitutional ~~privilege~~, namely, the exclusion of the evidence which an accused had been forced to give by reason of the unlawful seizure. To hold otherwise is to grant the right but withhold its ~~privilege and enjoyment~~.

Indeed, we are aware of no restraint similar to that rejected today being placed upon the enforcement of any other basic constitutional right. The right to privacy, no less important than any other right carefully and particularly reserved to the people, would stand in marked contrast to all other rights declared as "basic to a free society." *Wolf* v. *Colorado*, *supra*, at 27. This Court has not hesitated to enforce as strictly against the States as it does against the Federal Government the rights of free speech and of a free press, the rights to notice and to a fair, public 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 relia-

bility. *Rogers* v. *Richmond*, 365 U. S. 534 (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 "the incidence of such conduct by the police," slight or frequent. Why should not the same rule apply to what is tantamount to coerced testimony by way of unconstitutional seizure of goods, papers, effects, documents, etc.? We find that the Fourth and Fifth Amendments do enjoy an "intimate relation" in their perpetuation of "principles of humanity and civil liberty [secured] . . . only after years of struggle," *Bram* v. *United States*, 168 U. S. 532, 543–544 (1897). They express "supplementing phases of the same constitutional purpose—to maintain inviolate large areas of personal privacy." *Feldman* v. *United States*, 322 U. S. 487, 489–490 (1944). The philosophy of each Amendment is complementary to, although not dependent upon, that of the other—no man is to be convicted on unconstitutional evidence. Cf. *Rochin* v. *California*, 342 U. S. 165, 173 (1952).

V.

Moreover, our holding that the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments is not only the logical dictate of prior cases, but it also makes very good sense. There is no war between the Constitution and common sense. Presently, a federal prosecutor may make no use of evidence illegally seized, but a State's attorney across the street may, although he supposedly is operating under the enforceable prohibitions of the same Amendment. Thus the State, by admitting evidence unlawfully seized, serves to encourage disobedience to the Federal Constitution which it is bound to uphold. Moreover, as was said in *Elkins*, "[t]he very essence of a healthy federalism depends upon the avoidance of needless conflict between

state and federal courts." At p. 221. Such a conflict, hereafter needless, arose this very Term, in *Wilson* v. *Schnettler,* 365 U. S. 581 (1961), in which, and in spite of the promise made by *Rea,* we gave full recognition to our practice in this regard by refusing to restrain a federal officer from testifying in a state court as to evidence unconstitutionally seized by him in the performance of his duties. Yet the double standard recognized until today hardly put such a thesis into practice. In non-exclusionary States, federal officers, 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. If the fruits of an unconstitutional search had been inadmissible in both state and federal courts, this inducement to evasion would have been sooner eliminated. There would be no need to reconcile such cases as *Rea* and *Schnettler,* each pointing up the hazardous uncertainties of our heretofore ambivalent approach.

Federal-state cooperation in the solution of crime under constitutional standards will be promoted, if only by recognition of their 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 the criminal law proves that tolerance of shortcut methods in law enforcement impairs its enduring effectiveness." *Miller* v. *United States,* 357 U. S. 301, 313 (1958). Denying shortcuts to only one of two cooperating law enforcement agencies tends naturally to breed legitimate suspicion of "working arrangements" whose results are equally tainted. *Byars* v. *United States,* 273 U. S. 28 (1927); *Lustig* v. *United States,* 338 U. S. 74 (1949).

There are those who say, as did Justice (then Judge) Cardozo, that under our constitutional exclusionary doctrine "[t]he criminal is to go free because the constable has blundered." *People* v. *Defore,* 242 N. Y., at 21, 150 N. E., at 587. In some cases this will undoubtedly be the result. But, as was said in *Elkins,* "there is another consideration—the imperative of judicial integrity." 364 U. S., at p. 222. The criminal goes free, if he must, but it is the law that sets him free. 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. As Mr. Justice Brandeis, dissenting, said in *Olmstead* v. *United States,* 277 U. S. 438, 485 (1928): "Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. . . . If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." The ignoble but doubtless efficient shortcut to conviction left open to the State tends to destroy the entire system of constitutional restraints on which the liberties of the people rest. Having once recognized that the Fourth Amendment is enforceable against the States and that the right to be secure against rude invasions of privacy by state officers is, therefore, constitutional in origin, we can no longer permit that right to remain an empty promise. Because it is enforceable in the same manner and to like effect as other basic rights secured by our great charter, we can no longer permit it to be revocable at the whim of every policeman who, in the name of law enforcement itself, chooses to suspend its enjoyment.

The judgment of the Supreme Court of Ohio is vacated and the cause remanded for further proceedings not inconsistent with this opinion.

Vacated and remanded.