(1

Mapp

Boyd 255/pg (1921)

He papers "having been seized in an unconstitutional search, to permit them to be used would be, in effect, as much in the Boyd case, to compel the defendant to become a witness against himself" - p. 211

"Upon authority of the Boyd case ... the result is the same to one accused of crime, whether he be obliged to supply evidence against himself, or whether such evidence be obtained by an illegal search of his premises and seizure of his private papers." 306

Amos v US 255/313 (1921) The statement shows that the TC denied the petition for a return of the property, seized in the search of his home without a search warrant of any kind, in plain violation of the 4th Amendment as applied in Boyd - Weeks, Silverthorne ... the evidence "shows clearly the unconstitutional character of the seizure by which the property which it introduced was obtained ... the petition should have been granted" p 316-317

McDonald v US 335/451 (1948)

"In praying in the porch window and climbing into the landlady's bedroom they were guilty of breaking and entering - a felony in law and a crime far more serious than the one they were engaged in suppressing. Having forced an entry without either a search warrant or an arrest warrant to justify it, the felonious character of their entry, it seems to me, followed every step of their journey inside the house and tainted its fruits with illegality." Jackson 455-459.

"While the intrusion of jotting feet from their room by the numbers battery is one that might be suppressed, I do not think its suppression is more important to Society than the security of the people against unreasonable searches and seizures." p. 460 "I have no reluctance in condemning any unconstitutional method of law enforcement so reckless and so fraught with danger and discredit to the law enforcement agencies themselves." 461

"The prohibition of the 4th Amendment is against all unreasonable searches and seizures; and if a government officer to obtain entrance to a man's house or office by force, assuming to make seizure, and then to search for and seize his private papers, would be an unreasonable search and thereby commit a prohibited search & seizure."

"The guarantee of protection against unreasonable searches & seizures extends to the innocent & guilty, alike" p. 453

It warns the right of privacy as one of the unique values of our civilization ... and the law provides a sanction against the flouting of this constitutional safeguard the suppression of evidence secured as a result of its violation." Weeks -

(2

McDonald continued

"We are not dealing with formalities. The presence of a search warrant serves a high function. Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police. This was done not to shield criminals nor to make the home a safe haven for illegal activities. It was done so that an objective mind might weigh the need to invade that privacy in order to enforce the law. The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals." p 455-6

Palko 302/319 1937 - Cardoza -

In referring to 14th embodying Art 1-8 - said "As to the Fourth Amendment, one should refer to Weeks v United States" p. 324 - 14th embodied - First free speech, press, religion, peaceable assembly, benefit of counsel, "neither liberty nor justice would exist if they were sacrificed" 326 "Freedom of thought and speech ... is the matrix, the indispensable condition of every other freedom"

People v Defore 242 NY 13

"It (Adams v NY 192 US 585) is at variance [however] with later judgments of the Supreme Court of the United States. Those judgments do not bind us, for they construe provisions of the Federal Constitution, the Fourth & Fifth Amendments, not applicable to the states." Cignarella "means that the Supreme Court has overruled its own judgment in Adams v NY, for the facts were undisputed there.

"The criminal is to go free because the constable has blundered" 21 Mass - Conn Ohio Kans - Iowa & Va have rejected Weeks

"For the most part there has been adherence to the older doctrine" 4 Wigmore on Evid (2d Ed) 2183-4 - Harno 19 Ill Law Rev 303 - Knox 74 Pa Law Rev 139 Fraenkel 34 H.L.R. 361-386 - Contra Chafee 35 H.L.R. 673, 694 Atkinson 25 Col L.R. 11. With authority thus divided there must be some overmastering consideration of principle or of policy that should move us to a change - something more than uncertainty must be added to the scales.

(3)

Nordone 308/338

Weeks case is a 1st step

People v. Defore — 21 - Official & private trespass not differentiated - Evidence not excluded because private litigant has gathered it by force. The nation may keep what the servants of the nation supply.

The professed object of the trespass rather than the official character of the trespasser showed that the rights government. Does the prohibition of

The search — Anathematize the evidence yielded. We scan the statute in vain for any token of intention that search by intruders wearing a badge of office shall have any different consequencies in respect to the law of evidence

The stat in Eng is the creator of the immunity not the Constitution

We are convinced when we think how far reaching in its effect upon society a change would be - ~~Courts~~ officers could confer immunity - Absence of warrant means freedom of the criminal -

Stat becomes a form and its protection an illusion.

Rule was outcome of Wilkes & Entick prosecutions.

"No doubt the ~~prosecution~~ protection of the statute would be greater from the point of view of the individual whose privacy had been invaded if the government were required to ignore what it learned through the invasion" p 24 but it would be gained "at a disproportionate loss of protection for society." On one hand is the social need that crime must be repressed - on the other laws shall not be flouted by the insolence of office. "There are dangers in any choice" 25

The 4th Amendment 14 Son Calif L.R. 362

Marshall definition of probable cause - It is contended that probable cause means prima facie evidence, or in other words, such evidence as, in the absence of exculpatory proof, would justify condemnation. This ~~argument~~ has been very satisfactorily answered The terms 'probable cause' according to its usual acceptation, means less than evidence which would justify condemnation; and in all cases of seizure, has a fixed and well-known meaning. It imports a

Re point of exceptions:
① ownership of property
② cooperation state + fed

possession — Carroll 267/132, 162

seizure made under circumstances which warrant suspicion" -
Locke v US 7 Cranch 339, 348 (3 L Ed 364, 367) (1813)

"Search warrants were unknown to early common law, and according to Lord Camden, writing in the famous case of Entick v Carrington 19 How. St. Tr. 1029, 1067 (1765), "they crept into the law by imperceptible practice" But Coke lost and Hale justified their use on dual grounds 1st preparatory to the discovery of felons & preparing evidence against them - 2nd necessary to the keeping of persons robbed" to secure return of their property. Search warrants were in familiar use by 1789. The Court has stated in Gouled v US 255 US 298, 308 - (1921) held "at the time the Constitution was adopted stolen or forfeited property, or property liable to duties and concealed to avoid payment of them, excisable articles and books required by law to be kept with respect to them, counterfeit coin, burglars' tools and weapons, implements of gambling 'and many other things of like character' might be searched for in a home or office and if found might be seized, under search warrants."

Strange people who will tolerate third degree & whose courts will sanctify its results should shudder at a "proper search" —

Remedy - may sue trespassing officer in tort - suppress the use of the evidence & may secure return of his property

210/465
273/28 497

If SC in 1st establishing exclusion rule was correct in saying "The protection of the 4th Amend - is of no value and might as well be stricken from the Constitution are we not forced to conclude that except to save the Amend is of little practical use - Weeks - 232/393

also Davis 328/582, 594 & Rabinowitz in writer 339/507, 521

(5)

Harris – 331/145, 157 — 77 S+S "Second to none in the Bill of Rights" –

Trupiano 334/699, 715 — CJ Vinson – inefficient law enforcement measures – "the effective operation of government which is an essential precondition to the existence of all civil liberties"

The Wolf Case – Enforcement long required in federal cases in denial of admission of evidence seized – "strictly adhered" to the exclusionary rule

But the federal rule while having constitutional basis does not of itself appear in the explicit language of the 4th Amend – Rule springs from judicial implication & might be abrogated by Congress

That S+S provisions must be enforced by exclusion of evidence seems to be doubtful – 2/3 of states do not have exclusion

Evidence unlawfully seized may be used against those other than deft so ~~and~~ "no departure from basic standards" in permitting state to enforce amendment otherwise than exclusion – public opinion more effective at local level – Black says merely a rule of evidence –

but says "basic rights of privacy against invasion by "overzealous ~~and~~ or ruthless state officers" is any less essential than against similar abuse by federal officials.

Where rights "basic to a free society" are involved the court cannot escape having a national interest in preservation of individual rights of privacy – unless requirements in this field are merely precatory – must consider means whereby national interest can be asserted effectively –

Would be better to refuse verbal recognition to a federal right –

Has given entirely different character to the rights of the individual under 14th from that to his rights under 4th

[Left margin:] USV Carolene Products 304/144 n4 1938 — ~~[illegible]~~ When action appears to be within a specific prohibition of the Constitution such as those of the 1st ten amendments which are deemed equally specific when held to be embraced within the 14th"

No minimum standards set to test the federal right from wish to reality.

Leaves for local determination - unimpeded by federal supervision - the matter of making effective a federal guarantee of a basic constitutional immunity -

Stands in marked contrast to other cases involving rights "basic to a free society." none here required such a high degree of judicial self-abnegation — printers - circulation of dubious literature — conceptions of "fair trial" - "right to counsel" imposed in search & seizure judicial intervention comes after the fact of seizure - how can the constitutional guarantees be made meaningful - Privacy has already been invaded - judicial action is motivated by the purpose of deterring future invasions of privacy & by the desire to prevent judicial power from being employed as an instrument of the lawless enforcement of the criminal state.

Unless one is content to view the right to privacy as merely a platonic abstraction, the reality and content of such rights are determined by the aggregate of available remedies & enforcement devices through which the individual & the community in the preservation of such rights, may be asserted -

Leaves the power to hold or withhold content & reality to a federal right -

Local enforcement officers subject to local ~~pressures~~ public opinion - not sound - if that true perhaps the right should not be recognized - public opinion without more would be little check

In no other area of civil liberties was public opinion so trusted

Harris dissent: "Freedom of speech, of the press of religion rarely summon powerful support against encroachment. The prohibition vs ~~unreasonable search~~ seizure is normally invoked by those accused of crime, and criminals have few friends."

(7

Perhaps the values sought to be preserved are of less importance - "The Fourth Amendment was directed only against the new and autocratic government, and any really dangerous threat to the general liberties of the people can come only from this source" - Brinegar v US 338/160, 181 (Jackson) dissent
Rights of privacy preserved at national level but not local is hard to accept - local contacts more frequent - widespread police abuse ~~more~~ cannot be less ominous.

Relationship between 4th & 5th first in Boyd - 116/616 (886)
"We have already noticed the intimate relationship between the two amendments" with Mr Justice Bradley - "... And we have been unable to perceive that the seizure of a man's private books and papers to be used in evidence against him is substantially different from compelling him to be a witness against himself." at 633 -
28 years later Weeks established the rule of exclusion vertually in its present form - heavy reliance on intimate relationship between 4th & 5th and it is conceived that the rule derives in same manner from the privilege of self incrimination.
Agnello :- "It is well settled that, when properly invoked, the Fifth Amendment protects every person from any incrimination by the use of evidence ~~made that~~ obtained thru a search & seizure made in violation of the 4th Amendment" 269 US 20 - 33-34 (1925) -
"The law of searches and seizures as revealed by the decisions of the Court is the product of the interplay of these two constitutional provisions - Doris v US. 328/582, 587 (1946) -
"Judicial implication" - rule is inherent part of 4th Amend -

If exclusionary rule is not regarded as essential to the protection of rights "basic to a free society" it may not be included within the limitations of the 14th Amend — source is academic

Effective law enforcement does not require police misconduct attack should be on the amendment not on the rule — police should obey the amendment - Wagner argument — p 19 note the Wolf Case

Rejection of exclusionary rule results in admission of evidence seized by an officer in flagrant disregard of privacy in cases where the offense is trivial -
The argument is less directed to the rule than the substantive right
Scope of the right might need reexamination - conceding such does not counsel the abandonment of the rule -
The rule subjects the officer to the pressure of those charged with making an efficient record of criminal convictions to avoid conduct that imperils successful prosecution — and the effect of public opinion becomes a reality where invasion of privacy deprives state of power to secure conviction

Should not allow "public force" to be brought to bear on individual where govt to prove guilt must rely on lawless action
More involved than "ignoble part" — any process of law which sanctions the imposition of penalties thru the use of official lawlessness tends to the destruction of the whole system of restraints on the exercise of public force which seem inherent in the concept of civil liberty -

Silverthorne Lumber Co v US 338/74

(9

"To permit an officer of the State to acquire evidence illegally and in violation of sacred constitutional guaranties and then use the the illegally acquired evidence in prosecution of the person ... strikes at the very foundation of the administration of justice, and where such practices prevail makes law enforcement a mockery ..." Atty v Andrews 84 Fla 43, 52 (1922) — compare to perjured testimony - distinction not in Kind but in degree —

"It seems to us that a practice like this would do infinitely more harm than good in the administration of justice; that it would surely create in the minds of the people the belief that courts had no respect for the constitution or laws, when respect interfered with the ends desired to be accomplished. We cannot give our approval to a practice like this. It is much better that a guilty individual escape punishment than that a court of justice should put aside a vital fundamental principle of the law in order to secure his conviction" Youman v Commonwealth 189 Ky 152, 166 (1920)

Acceptance of evidence encourages state invasion of privacy -

The confession cases — confession likely to be unreliable?
But we enforce regardless of reliability see — Richmond v Rogers
perils of convicting innocent —
Reason is desire to discourage subjection of suspects to police brutality
brutal methods of law enforcement are self defeating - Watts v Indiana
338/49; 54-55 (1949) = 4/ also 338/62 and 338/68 SAME DAY
Double standard —

Indictment — "knowingly had in her possession and under her control, certain lewd and lascivious Books, Pictures and Photographs, said Books, Pictures and Photographs being so indecent and immoral in their nature that the same would be offensive to the Court and improper to be placed upon the records thereof..."

Motion to Suppress — - on ground the evidence was not procured by a proper search warrant as provided by § 2905.35 of the Ohio Revised Code...
based upon § 2905.35 of Ohio Revised Code effective 10/6/55...
we say that the State of Ohio did not have a search warrant setting forth the items that are mentioned in this indictment, and that the State of Ohio intends to use as evidence in this cause against this defendant, and for that reason we are asking that particular evidence be suppressed.

Evidence — confidential information that person was hiding out in the home who was wanted for questioning in connection with a recent bombing + that there was a large amount of policy paraphernalia being hidden in the home —
a search warrant was brought out ... and the officers were admitted by Mrs Mapp from the vestibule.
Lt White arrived with search warrant (p 19)
Lt White came out with search warrant - p 24
Dolan said had search warrant p 30
Sgt tried to kick in the door - broke glass in door - someone reached in + pulled door + let them in
She (Mapp) had taken search warrant + showed it down her bosom p 36

DeFore 1926 - "There is no rule that homes may be ransacked without process to discover the fruits or the implements of a crime..." [18] The warrant does not issue for things of evidential value merely..." [19] To dispense with process in the pursuit of contraband is to dispense with it in the one case in which it may ever issue in the pursuit of anything." 19

176 NY 351 People v Adams — non exclusion rule — "It is at variance, however, with later judgments of the Supreme Court of United States. Those judgments do not bind us, for they construe provisions of the Federal Constitution, the Fourth and Fifth Amendments, not applicable to the States. Even though not binding, they merit our attentive scrutiny..." [20] This means that the Supreme Court has reversed its own judgment in Adams v. N.Y... The procedural condition of a preliminary motion has been [21] substantially abandoned, or, if now enforced at all, is an exceptional requirement. There has been no blinking the consequencies. The criminal is to go free because the constable has blundered..." 21

"The new doctrine has already met the scrutiny of Sister States... Fourteen states have adopted the rule of the Weeks case... Thirty one have rejected it" citing Mass. Conn. Colo Kansas Iowa + Va. "For the most part, there has been adherence to the older doctrine... With authority thus divided, it is only some overmastering consideration of principle or policy that should move us to a change. The balance is not swayed until something more persuasive than uncertainty is added to the scales."

Official + private trespasses not differentiated

Evidence not excluded because private litigant has gathered it by lawless force... the state in prosecuting an offender against society incurs no heavier liability -

Watson on the Constitution pp 1414-15

The origin of the Amendment runs back in English History to the 17th Century, when Charles II was placed on the throne. It had been the practice in the office of the Secretaries to the Crown, after the Restoration, to issue warrants for the arrest of persons without inserting their names in the warrants, especially authors printers and publishers of obscene and seditious libels 2 Cooley Blackstone 290 and to invade the homes and search for private papers of individuals to obtain evidence against them on imaginary charges. This practice continued until the latter part of the 18th Century when the validity of such warrants was contested and it was held by the Court of King's Bench in Money v Leach, 3 Burrows, 1742, that the warrant must be issued upon the oath of an accuser, setting forth the name of the offender the time place and nature of the offense with a reasonable degree of certainty -

While officers of the Crown were issuing and using such warrants in England they were doing the same in the American colonies - and this contributed much to that public sentiment which eventually demanded the adoption of this amendment" - James Otis was Advocate General of the Crown at Boston Resigned office & defended - Tried 30 years before amendment -

Black joined Harvey ↓ | 2 Adams Works 523-25 2 Watson on Constitution 1414
10 " " 247

Harris v US | Otis made epochal argument vs general warrants in 1761 —
331/157 | Mass - Va put it in constitution - Madison used Mass
dissent FF | form - see 331/158 for Mass Form - prey Cong intended to give
1947 | wide scope to this protection vs police intrusion —
Every state has constitutional provision same as 4th Amend
NY put it in only in 1938

Murphy - | General warrant — writ of assistance

Weeks v US | History of amendment in Boyd v US 116 US 616
232/383 | "If letters and private documents can thus be seized & held & used
1914 | in Evidence vs. a citizen accused of an offense the protection of the
Day — | 4th Amendment declaring his right to be secure against such
searches & seizures is of no value and so far as those thus
placed are concerned might as well be stricken from the Const — 393

In 1759 when British took Montreal & repressed French in America they decided
to subject colonies to unlimited authority of Parliament - Instructions sent to
Collector of Customs in Boston, Mr Charles Paxton, to apply to civil authority for
writs of assistance to enable custom house officers to command all officers
to attend and aid them in breaking open houses, stores, shops etc. to search
for goods wares & merchandise which had been imported against the prohibitions
without paying tax — Deputy Collector at Salem Mr Cockle applied to
Superior Court in Nov ~~16~~ 1760 — great doubts expressed — James Otis
argued — "American Independence was then & there born; the seeds of patriots and
heroes were then and there sown, ... Every man of an audience op-
pressed by an ~~~~ ready to take up arms against the writs of assistance
There & there was the first scene of the first act of opposition to the
arbitrary claims of Great Britain. Then & there the child Independence
was born". Adams 248 (X)

Rabinowitz
339/56, 66

Black dissenting

The framers of the Fourth Amendment must have concluded that reasonably strict search and seizure requirements were not too costly a price to pay for protection against the dangers incident to invasion of private premises and papers by officers" -

Zeldman v US
329/487, 500-2

4th & 5th (self incrimination linked together) -

Boyd Weeks
Gouled etc

Conviction in fed cts the foundation of which is evidence obtained in disregard of liberties deemed fundamental by the Constitution cannot stand

Weeks (1914)
338/25

Does conviction by a state court for a state offense deny due process required by 14th Amend solely because evidence ~~was~~ admitted at trial was obtained under circumstances which would have rendered it inadmissible in a trial in a court of the US because there seemed to be an infraction of the 4th Amend as applied in courts -

Security of one's privacy against arbitrary intrusion by police - which is the core of the 4th Amend - is basic to a free society - It is therefore implicit in "the concept of ordered liberty" & so enforceable vs. the states thru the due process clause

But ways of enforcing this right raise different questions -

In Weeks ~~it was held~~ this Court held that in a federal prosecution the 4th Amendment barred the use of evidence secured through an illegal search -

State Rhinelander
Evidence too slight
to call for
deterrent remedy
vs. Evidence

It was not derived from the explicit ~~use~~ requirements of the 4th Amend - it was not based on legislation ~~of~~ reflecting Cong. policy - The decision was a matter of judicial implication

Though we have interpreted the 4th Amendment to forbid the admission of such evidence 233 Cardozo opinion in dissent

"The Federal rule as it stands is either too strict or too lax" 22
the federal prosecutor "does not have to be so scrupulous
about evidence brought to him by others... The state may
keep what the servants of the States supply..." 22
"In this State the immunity is the creature, not of constitution, but
of statute (Civil Rights Law §8) The Legislature, which created it,
has acquiesced in the ruling of this court that the prohibition
of the search did not automatically the evidence yielded
through the search.." 23 It could amend statute -

"The pettiest peace officer would have it in his power through
over zeal or indiscretion to cooper immunity upon an offender
for crimes the most flagitious..." search and body of murdered
man found - murderer goes free - freedom of forger
"This has a strange sound when the immunity is viewed
in the light of its origin and history" Holds adhere to the the
law - it "strikes a balance between opposing interests."

Wolf - "Weeks requirement" "was a matter of judicial implication" 25
Since then it has been frequently employed and we
"firmly adhere to it" 28

1. "Most of the English speaking world does not regard as
vital to such protection the exclusion of evidence thus
obtained, we must hesitate to treat this remedy as an essential
ingredient of the right." -

2. Contrariety of views of States

BW. 1 state anticipated Weeks rule (Iowa)

26 opposed -

Motion to suppress O/V before jury empaneled

" for new trial O/V – Notice of appeal

2 - § 2905.34 unconstitutional

4 Erred in O/V motion to suppress

Mrs Mapp's home forced – entry sought by search warrant

never allowed to be seen – but alone read to dept. them to

atty or produced in court

No claim dwelling entered or purpose of search was 2905.34

Assignments of Error

5 – RC 2905.34 unconstitutional

6 – ... the police officers entering into appellant's premises

& their conduct thereafter & the production of the papers books etc

as evidence contrary to 14th Amend §1

State Brief 3

"The only issue raised on the motion to suppress the evidence was that a proper search warrant was not secured setting forth the confiscated evidence on which appellant was charged by indictment – And it is admitted that such a search warrant was not secured"

A.W. 47 states passed a Weeks doctrine since 1914
20 1st time - 6 followed 14 rejected
26 reviewed prior decisions 10 followed 16 rejected
as of today (Wolf) 31 reject - 16 agree

3- Other means of protection Damages - use force to resist - punishment for one maliciously doing so - Trespass - Oppression - removal - discipline -

4- Before - disproportionate loss of protection to society social need crime be repressed vs social need that law shall not be flouted by officials
"There are dangers in any choice"

Reasons
1- Cannot brush aside experience of States
2. Reasons for excluding evidence unreasonably obtained by fed. officers which are less compelling - public opinion stronger in local than nat'l - (remoteness) -