

# Ruling Asked on Police Search

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California is asking the United States Supreme Court to decide whether the American trash can is one of those things that the Constitution secures against police searches without court permission.

Protesting the loss of an "important investigative method" in law enforcement, the state has filed a petition seeking review and ultimate reversal of a State Supreme Court decision banning the use of evidence gathered from suspects' trash.

The petition, which the nine justices are expected to consider early next year and perhaps set for a full hearing, contends that the case of marijuana defendants Judith Krivda and Rogert T. Minor of Los Angeles also offers "an ideal vehicle" for re-examining the court's 50-year policy of excluding evidence which officials have obtained illegally.

No less a personage than Chief Justice Warren E. Burger has called for such a new look, State Attorney General Evelle Younger emphasized in the petition. He recalled also that as a judge on the U.S. Court of Appeals in Washington, Burger

filed one of his earliest dissents to a ruling similar to that of the California high court.

Another prominent jurist, Los Angeles appellate judge Mildred L. Lillie, has figured in the case. Mrs. Lillie, who recently underwent an American Bar Association check of her credentials for a possible Supreme Court nomination, wrote an opinion supporting the search but the state high court disagreed with her last summer in a 4 to 3 decision.

The FBI has no announced policy on trash searches in federal investigations. But director J. Edgar Hoover has voiced some strong feelings about syndicated columnist Jack Anderson, a constant critic who dispatched aides to examine the trash at Hoover's own Washington residence.

Anderson said he was imitating the FBI by snooping on Hoover. Hoover retorted that Anderson "is becoming increasingly confused between the trash he examines and the trash he writes."

The bureau nailed down the espionage conviction of the late Rudolf Abel, top Soviet agent, with incriminating material collected from the waste basket of his New York hotel room after he

left the hotel under arrest. The Supreme Court said in 1960 the goods were abandoned and thus properly seized.

Los Angeles police had the home in question under surveillance for possible narcotics violations when they enlisted the aid of sanitation workers. The collectors agreed to empty the wall of their trash truck so that when they picked up the home's trash, the police could inspect it after the truck had moved a block away.

Finding marijuana cigarettes, debris and seeds in the collected trash, police then followed Minor into the house after he had gone to the curb to take in the empty cans. The entry led to still more evidence against the defendants, but the validity of the entire case depended on whether the initial trash seizure would stand up in court.

The Fourth Amendment guarantees "the right of the people to be secure in their persons, houses, papers and effect against unreasonable searches and seizures" and forbids search warrants unless there is probable cause to believe a suspect is involved in crime.

Many court decisions on invasion of privacy have turned on whether officials

actually trespassed upon a person's privacy. More recently, however, the court has focussed more on whether the individual had a reasonable expectation of privacy because the Constitution protects people, not places or things.

Justice Lilly put the question this way:

"Is the householder also entitled to protection from a routine examination by police after the trash becomes the property of the refuse collector? The honest resident neither wants it nor needs it." She ruled:

"Under the circumstances of this case we do not think that the well of a trash truck on a public street a block away from defendants' residence constitutes a protected area or that the marijuana debris found therein was not abandoned by defendants. Nor does it appear to us that when the trash found its way into the well of the truck any expectation of privacy in regard thereto by defendants was reasonable."

Differing with Justice Lillie and her intermediate appellate court, the State Supreme Court declared, "We should hesitate to encourage a practice whereby our citizens' trash cans could be made the subject of police inspection without the pro-

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tection of applying for and securing a search warrant."

Younger's petition told the Supreme Court that if the ruling stands, police will lose "a method considered essential in combatting those criminal activities which, by their very nature, involving clandestine conditions and no victim, are already exceedingly difficult to investigate."

He cited Burger's 1957 dissent as expressing a good nationwide rule. In the case of Ella Mae Work of Washington, police had visited her home, illegally according to the appellate court majority, whereupon she tried to hide contraband drugs in the outdoor trash can.

Judge Charles Fahy, joined by the late Henry W. Edgerton, said it would be "unacceptably naive" to conclude that Mrs. Work's actions were not "the direct consequences" of the unlawful police entry. The majority said the trash can was an adjunct to the home, "however mean the home."

Burger, who was beginning his second year as a judge of the District of Columbia Circuit Court of Appeals, dissented in language now familiar to readers of his Supreme Court opinions.

Adopting the prosecution's theory that the prop-

erty has been abandoned, Burger protested:

"Honest citizens neither need nor, I think, want protection for their privacy extended to these artificial limits, and a presently confessed, previously convicted narcotics violator is not entitled to it. Of course the guilty should have the same protective safeguards as the innocent and I would afford them as much. But I refuse to join in what I consider an unfortunate trend of judicial decisions in this field which strain and stretch to give the guilty, not the same, but vastly more protection than the law-abiding citizen."

Concluded the future Chief Justice:

"In this balancing of rights of the individual and the whole public, which is admittedly a delicate process, society's vital stake too often is overlooked for reasons which I cannot justify as essential for the preservation of our important fundamental rights."

The California case thus could become a major battleground as the Supreme Court, now up to full strength, decides to what extent court authorization must be required for searches either in the underworld or in law-abiding communities.