

By John P. MacKenzie
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The Supreme Court agreed yesterday to consider giving police and prosecutors broader powers to seize and use evidence they obtain in the course of a lawful search.

At the urging of the Maryland Attorney General's office, of the judges of the Fourth U.S. Circuit Court of Appeals and of numerous law commentators, the Court will re-examine a rule that forbids authorities to seize "mere evidence" of crime.

The rule, imposed by most state courts and required by law for Federal officers, limits seizures to the instruments or fruits of crime—such as a weapon or stolen goods—and contraband material such as narcotics.

"Mere evidence" could include an incriminating personal document that is not itself used in commission of a crime or clothing worn by a suspect and discarded in a getaway.

Such materials, if seized, may not be offered in evidence at the trial.

Relaxing the scope of searches and seizures—in cases where the search itself is lawful—could be another step to take some of the sting out of the Supreme Court's restrictions on the use of confessions.

The Court took such placating steps in June by refusing to make its confession guidelines retroactive and by allowing the use of blood samples taken over the protest of a drunk-driving suspect.

The use of clothing in evidence is the issue in the case the Court agreed to review.

The clothing was shed by Bennie Joe Hayden after the \$363 armed holdup of a Baltimore taxicab company on March 17, 1962. Evidence showed that Hayden shed a teletale cap, jacket and trousers after an escape that was witnessed by two cab drivers.

Ruling on Hayden's habeas corpus petition, the Fourth Circuit upheld the use as evidence of a shotgun and pistol seized in a search of the suspect's home. But the divided court said the "mere evidence" restriction banned the use of the clothing.

Maryland's petition to the Supreme Court said the old rule deters what the Court has been trying to promote—use of scientific evidence that can be gathered through laboratory analysis of clothing.

The State said the "mere evidence" distinction has been blurred anyway, with some courts ruling that clothing was an "instrument" of crime on the theory that criminals can't go naked when they walk the streets looking for trouble.

In other actions:

Federal Agencies

The Court agreed to decide how far a Federal regulatory agency should go to gather evidence where the parties, including the Secretary of the Interior, fail to volunteer the evidence as adversaries.

Over belated objections from the Interior Department, the Federal Power Commission gave permission to a private combine, the Pacific Northwest Power Co., to build a giant High Mountain Sheep Dam on the Snake River between Oregon and Idaho.

Interior, supported by Solicitor General Thurgood Marshall, says the national interest requires public development and that the Commission acted as a mere passive umpire for arguments by litigants.

Marshall says the Commission has a positive responsibility to reach out and protect the public. The Commission vigorously denies that it lacked evidence for the decision or ignored the public interest.

Court to Review Rule For Seizing Evidence