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High Court Lim its Suppression of Tainted Evidence

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The Supreme Court yesterday took a legal step that, according to two dissenters, "forecasts the complete demise" of the rule against the use of illegally seized evidence in criminal trials.

A five-member majority announced that evidence obtained from a search by police or federal agents should be suppressed only if the officer knew or should have known that the search violated the Fourth Amendment provisions against unreasonable search and seizure.

The previous rule, worked out over several decades in the high court, was that judges would exclude the evidence if the search was not basedo n probable cause or on the authority of a warrant—a standard that did not involve whether the officer knew the lawfulness of his actions.

Justice William H. Rehnquist, writing for the court, stated the new rule in the course of declaring that one of the court's own decisions would not be applied retroactively. The court said in June, 1973, that certain warrantless searches by the U.S. Border Patrol were unconstitutional and evidence seized could not be used against a defendant at his trial.

Four justices—William O. Douglas, Potter Stewart, William J. Brennan Jr. and Thurgood Marshall—argued yesterday that evidence seized in illegal pre-1973 searches also should be excluded. Brennan and Marshall went on to criticize Rehnquist's restatement of the exclusionary rule.

Brennan said, "I have no confidence that the new formulation is to be confined to putative retroactivity cases. Rather I suspect that when a suitable opportunity arises, today's revision of the exclusionary rule will be pronounced applicable to all search and seizure cases. I therefore register my strong dissent now."

Chief Justice Warren E. Burger, part of yesterday's majority, has long been a critic of excluding all unlawfully obtained evidence. Others in the majority, Justices Byron R. White, Harry A. Blackmun and Lewis F. Powell Jr., also have criticized the suppression rule in recent cases.

"If a majority of my colleagues are determined to discard the exclusionary rule," Brennan said, "they should forthrightly do so and be done with it. This business of slow strangulation of the rule . . . would be indefensible in any circumstances. But to attempt covertly the erosion of an important principle, over 61 years in the making as applied in federal courts, clearly demeans the adjudicatory function and the institutional integrity of this court."

The high court also:

• Ruled, 5 to 4, that unions and union officials are not guaranteed a jury trial whtnever they are tried for contempt of a jucicial no-picketing order even when the union is fined as much as $10,000.

• Dismissed the case of a New York state prisoner who was transferred to a remote maximum security prison without explanation, saying the treatment was wrong but the case had become moot when officials returned him to a minimum security institution.