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Court Says Grand Juries May Use Illegal Evidence

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WASHINGTON, Jan. 8 — The Supreme Court ruled today that grand juries may use illegally obtained evidence as a basis for questioning witnesses without violating their constitutional rights.

The 6-to-3 decision, sharply criticized by the Court's liberal minority, wrote a signifcant excepton into the "exclusionary rule," the principle that courts will not admit in criminal trial, evidence that the prosecution obtained by a warrantless search or some other illegal method.

The apparent effect of the ruling will be to permit the indictment of a suspect on the basis of evidence that would not be admissible to prove his guilt at a trial.

Writing for the majority, Associate Justice Lewis F. Powell Jr. maintained that the exclusion of illegally obtained evidence was not "a personal constitutional right" of the person against whom it is used but "a judicially created remedy" designed to discourage improper searches by law enforcement officers.

Associate Justice William J. Brennan Jr. predicted in the dissent that the ruling "may signal that a majority of my colleagues have positioned themselves to abandon altogether the exclusionary rule at trial furthers the goal cases."

"For surely," he continued, "they cannot believe that application of the exclusionary rule at trial furthers the gal of deterrence [of illegal searches] but that its application in grand jury proceedings

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will not 'significantly' do so."

Joining Justice Powell in the majority were Chief Justice Warren E. Burger and Associate Justices Potter Stewart, Byron R. White, Harry A. Blackmun and William H. Rehnquist.

The dissenters, in addition to Mr. Brennan, were Associate Justices William O. Douglas and Thurgood Marshall.

Case in Cleveland

The case involved a 1970 search of a Cleveland machine tool company owned by John P. Calandra. Federal agents had obtained a warrant in connection with an investigation of illegal gambling. They found no gambling evidence but did uncover what appeared to be a record of loan-sharking activity.

The next year a new grand jury investigating loan-sharking called Mr. Calandra to question him about the records seized in the raid. He refused and moved to suppress the records on the grounds that there had been no probable cause to issue the warrant and the resulting search had exceeded its scope.

Federal District Court granted his motion, and the United States Court of Appeals for the Sixth Circuit affirmed, holding that a witness before a grand jury can invoke the exclusionary rule when questioned about evidence obtained in an unlawful search.

In rejecting that position today, Justice Powell noted that a grand jury "generally is unrestrained by the technical procedural and evidentiary rules governing the conduct of criminal trials."

"Permitting witnesses to invoke the exclusionary rule before a grand jury would precipitate adjudication of issues hitherto reserved for the trial on the merits and would delay and disrupt grand jury proceedings," the majority declared.

Justice Powell said it was "uncertain at best" whether prohibiting grand jury use of illegally obtained evidence would have "any incremental deterrent effect" on improper searches and seizures by law enforcement officials.

"The incentive to disregard the requirement of the Fourth Amendment solely to obtain an indictment from a grand jury is substantially negated by the inadmissability of the illegally seized evidence in a subsequent criminal prosecution of the search victim," Mr. Powell wrote.

'Usual Abridgement'

The majority maintained that, once the illegal search is over, grand jury use of such evidence does not involve "independent governmental invasion of one's person, house, papers or effects, but rather the usual abridgement of personal privacy common to all grand jury questioning."

"Questions based on illegally obtained evidence are only a derivative use of the product of a past unlawful search and seizure," the majority continued. "They work no new Fourth Amendment wrong."

In the minority opinion, Justice Brennan argued that discouraging illegal searches was only a beneficial side-effect of the exclusionary rule, which was directly aimed at "enabling the judiciary to avoid the taint of partnership in official lawlessness and . . . assuring the people . . . that the Government would not profit from its lawless behavior."

"For the first time," Mr. Brennan wrote, "the Court today discounts to the point of extinction the vital function of the rule to insure that the judiciary avoids even the slightest appearance of sanctioning illegal Government conduct."

'It Shall Not Be Used'

The minority quoted Justice Oliver Wendell Holmes as declaring in a 1920 case, "The essence of a provison forbiding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it shall not be used at all."

The exclusionary rule was first adopted by the Supreme Court for the Federal court system in 1914 and was extended to cover state courts in 1961. Some critics have said that it places too much emphasis on the rights of the accused and not enough on effectivve law enforcement.

In another decision, the Court ruled 5 to 4 that a credit card theif who charged $2,000 worth of rooms and meals could not be prosecuted under the Federal mail fraud laws because mailing of the bills was not really part of his scheme to defraud the card owner.

The Court also decided, by an 8-to-1 vote, that a labor union must arbitrate disputes with management over workers' safety rather than strike unless its contract specifies that such complaints are not arbitratible.

Holyoke Backs Fluoride

HOLYOKE, Mass., Jan. 8 (AP)—The Board of Health has voted to direct the water department to continue the use of fluoride in the city water supply.