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High Court's Ruling on Seized Data

Washington

The Supreme Court ruled yesterday that authorities may constitutionally search a person's office, seize his business records and use them as evidence against him.

The 7 to 2 decision held that this does not require the person to give testimony against himself, because he is "not required to aid" in obtaining the evidence.

The dissenters said the decision made a "hollow guarantee" of the constitutional promise that "no person . . . shall be compelled in any criminal case to be a witness against himself."

The Fifth Amendment guarantee against self-incrimination was invoked by Peter Andresen, an attorney, who was convicted on fraud in connection with the sale of home sites in a Maryland suburb.

Andresen was sentenced to eight years in prison. In his appeal, he said his rights had been violated because the prosecution introduced as evidence documents and handrwitten notes that investigators obtained from his legal office under a search warrant.

In rejecting this argument, the court observed that Andresen "was not asked to say or do anything."

The justices said he had voluntarily committed the seized papers to writing and was not reguired to help the investigators find them. At his trial, they noted, the documents were authenticated by a handwriting expert, not by the defendant.

"Although the Fifth Amendment may protect an individual from complying with a subpoena for the production of his personal records in his possession ... a seizure of the same materials by law enforcement officers differs in a crucial respect," they said.

William J. Brennan Jr., dissented, saying he could see no meaningful distinction between commanding Andresen to produce the records by issuing him a subpoena and seizing the records from his office against his will.

Brennan also said the warrant under which the papers were seized was not specific enough. Thurgood Marshall also dissented.

The decision continued a trend of the court in recent years to retreat from a rule it established 90 years ago that "the seizure of a man's private books and papers to be used in evidence against him" is not "substantially different from compelling him to be a witness against himself."

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