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The Enigma of Fourth Amendment Protections

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constitution which, in June, 1868, was approved by Congress.[55] Article I of that constitution described Florida's boundary as running from a point in the Gulf of Mexico three leagues from the mainland and "thence northwestardly three leagues from the land to the next point."[56] The Court concluded that Congress, in accepting the constitution, had performed the very act contemplated by the Submerged Lands Act and, therefore, Florida's seaward boundary extended three marine leagues into the sea from low-water mark.

Thus was it that the boundaries of the coastal states were not determined until June 15, 1960, more than one-hundred eighty years after the founding of this country.

[55] 15 Stat. 73 (1868).

[56] FLA. CONST. art. I.

THE ENIGMA OF FOURTH AMENDMENT PROTECTIONS

Fourth amendment[1] protections against illegal search and seizure would seem to be among the most ill-defined and misconstrued of the guarantees of the Constitution interpreted by the United States Supreme Court. Up until *Elkins v. United States*[2] the "silver platter" doctrine proved to be a means by which the Court allowed the fourth amendment to be a paper protection only. By using as a basis for its decisions federal rules of evidence[3] or the particular facts of the case before it,[4] the Court created confusion and contradictory decisions which existed until the *Elkins* rul-

[1] The fourth amendment reads as follows: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmative and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.

[2] 364 U.S. 206 (1960).

[3] *E.g.*, Salsburg v. Maryland, 346 U.S. 545 (1954); McDonald v. United States, 335 U.S. 451 (1948); United States v. Murdock, 284 U.S. 141 (1931); Byars v. United States, 273 U.S. 28 (1927); Silverthorne Lumber v. United States, 251 U.S. 385 (1920), wherein the Court stated: "The essence of a provision forbidding 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 should not be used at all." *Id.* at 392.

[4] *E.g.*, Irvine v. California, 347 U.S. 128 (1954); Schwartz v. Texas, 344 U.S. 199 (1952); On Lee v. United States, 343 U.S. 747 (1952); Harris v. United States, 331 U.S. 145 (1947); Nardone v. United States, 302 U.S. 379 (1937); Go-Bart Importing v. United States, 282 U.S. 344 (1931), wherein the Court stated: "Each case is to be decided on its own facts and circumstances." *Id.* at 357. Cf. Rochin v. California, 342 U.S. 165 (1952); Agnello v. United States, 269 U.S. 20 (1920).

ing.[5] In *Elkins*, the Court also failed to attack the proper issue, *i.e.*, fourth amendment constitutional protections, and merely arrived at its decision by applying the "rules of evidence" doctrine and the concept of "ordered liberty"—a theory used in the determination of fourteenth amendment cases by which decisions are based on the facts of each particular case. Yet, as will be demonstrated, the effect of *Elkins* is the same as if the Court had squarely decided the real question before it.

The essence of the "silver platter" doctrine was first enunciated in *Weeks v. United States*.[6] The Court ruled that all illegally obtained evidence was inadmissible in a federal court when seized by federal officers. The Court further stated, however, that if evidence was illegally seized by state officers, it could not be held inadmissible since the fourth amendment is binding on the federal government only. Thus a situation existed whereby illegally obtained evidence could be introduced into a federal court—state officials were able to transfer all evidence to federal authorities whether it was legally obtained or not, since by the *Weeks* decision the fourth amendment could not be applied to state acts. The Court in a later decision provided the *Weeks*' doctrine with its shorthand appellation when it stated:

> The crux of that doctrine is that a search is a search by a federal official if he had a hand in it; it is not a search by a federal official if evidence secured by state authorities is turned over to the federal authorities *on a silver platter*.[7]

Such was the rule of law when the *Elkins* case was decided.

THE VITAL CONCEPT

At this time, it would be well to explain exactly the purpose for which this comment is written, and then to discuss some cases in connection with the author's theory. Up until and including *Elkins*, the Court has "begged the issue" as regards the "silver platter" doctrine. Instead of ruling as to one's constitutional privileges, the Court has decided the cases either on the basis that the facts did or did not violate the concept of ordered liberty under the fourteenth amendment, so as to deny one his due process of law, or they have looked upon the articles seized as evidence, and have ruled on their admissibility through the established rules of evidence. The Court would look at the federal rule of evidence or court-created procedure which they felt was applicable and would simply ascertain if such was binding on the individual states, thus ignoring the

[5] *E.g.*, Wolf v. Colorado, 338 U.S. 25 (1949). Compare Lustig v. United States, 338 U.S. 74 (1949).

[6] 232 U.S. 383 (1914).

[7] Lustig v. United States, 338 U.S. 74, 78–79 (1949) (Emphasis added.)

constitutional question involved.[8] In this manner, the Court "handled" the constitutional question without the need for interpretation of the fourth amendment. This could only lead to confusion and controversy, for it is submitted that failure to recognize the actual issue at its first impression level will tend to lead a court further and further astray with each subsequent case. The important and only issue involved in the "silver platter" cases is: "Does the fourth amendment extend to the state as well as to the federal government?" The Supreme Court has ruled that it was an "unquestioned premise that the Bill of Rights, when adopted, was for the protection of the individual against the federal government and its provisions were inapplicable to similar actions done by the states."[9] The fourteenth amendment, however, provided a possibility that the principle enunciated in the fourth amendment could be considered as falling within the ambit of one's due process of law.[10] At first the Court refused to consider this concept. It adopted instead the doctrine of "fundamental fairness" and "ordered liberty" as expressed in *Powell v. Alabama*.[11] This legal theory maintains that due process is an ever-moving, flexible protection, and that it is for the Court to decide what due process consists of in relationship to the facts given:

> [T]he constitutional meaning as value of the phrase "due process of law," remains to-day without that satisfactory precision of definition which judicial decisions have given to nearly all the other guarantees of personal rights. . . .[12]

Thus this theory would hold that each case should be decided separately and by "the gradual process of judicial inclusion and exclusion. . . ."[13] *Powell* allowed the Court to adopt this concept where personal freedoms were being threatened by state authority.

If the facts violate the Court's concept of "fundamental fairness" or "ordered liberty" it is to be ruled a denial of due process.[14] Therefore, the fact that a state government violates a Bill of Rights amendment is of no consequence, since the Court looks only to the facts in question and

[8] Cases cited note 3 *supra*.

[9] Adamson v. California, 332 U.S. 46, 51 (1947). *Cf.* Feldman v. United States, 322 U.S. 487 (1944); Barron v. Baltimore, 32 U.S. 243 (1833).

[10] Elkins v. United States, 364 U.S. 206 (1960); Wolf v. Colorado, 338 U.S. 25 (1949).

[11] 287 U.S. 45 (1932).

[12] Davidson v. New Orleans, 96 U.S. 97, 101–102 (1877). See Powell v. Alabama, 287 U.S. 45 (1932).

[13] Davidson v. New Orleans, *supra* note 12, at 104.

[14] *E.g.*, Winters v. New York, 333 U.S. 507 (1948); Bute v. Illinois, 333 U.S. 640 (1948); Louisiana v. Resweber, 329 U.S. 459 (1947); Betts v. Brady, 316 U.S. 455 (1942); Palko v. Connecticut, 302 U.S. 319 (1937); Brown v. Mississippi, 297 U.S. 278 (1936); Moore v. Dempsey, 261 U.S. 86 (1923).

the fourteenth amendment.[15] This concept, however, was modified even before *Powell*, and therefore without its aid, when the Court held the first amendment to be incorporated into the fourteenth.[16] As was noted above, however, another alternative to the solution of the problem of admissibility of illegally seized evidence was open to the Court. Since the "silver platter" doctrine is primarily concerned with evidence admissibility, cases in which it was involved could be resolved by interpretation of federal evidentiary rules and its effect on state courts.[17] No determination of one's constitutional rights under the fourth had to be considered, but only federal rules of evidence as they concerned state trial procedure.

In 1949, the Court in *Wolf v. Colorado*[18] incorporated the fourth amendment into the fourteenth, but in this instance did so by means of the aforementioned *Powell* concept.

> The security of one's privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free society. It is therefore *implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause.*[19]

It would appear that finally the Court was going to determine the fundamental issue involved, but instead it issued a disappointing decision. Even though the states were subject to the fourth amendment, they were not subject to the exclusionary rule which excluded the admission of illegally seized evidence. The rationale behind this ruling was that such a rule was for federal courts to follow, and the states could adopt whatever rules they wished as long as such rules did not violate the Court's concept of "ordered liberty."

> . . . [T]his Court has decided that the Fourteenth Amendment does not, through its due process clause or otherwise, have the effect of requiring the several states to conform the procedures of their state criminal trials to the precise procedure of the federal courts, even to the extent that the procedure of the federal courts is prescribed by the Federal Constitution or Bill of Rights.[20]

[15] *Ibid.*

[16] Gitlow v. New York, 268 U.S. 652 (1925). See also CIO v. Douds, 339 U.S. 382 (1950); Craig v. Harney, 331 U.S. 367 (1947); Thornhill v. Alabama, 310 U.S. 88 (1940); De Jonge v. Oregon, 299 U.S. 353 (1937); Near v. Minnesota, 283 U.S. 697 (1931); Whitney v. California, 274 U.S. 357 (1927).

[17] Cases cited note 4 *supra.*

[18] 338 U.S. 25 (1949).

[19] *Id.* at 27–28 (Emphasis added.)

[20] Bute v. Illinois, 333 U.S. 640, 656 (1948). See Mr. Justice Black's concurring opinion in *Wolf*, 338 U.S. 25 (1949), wherein he stated that "the federal exclusionary rule is not a command of the Fourth Amendment but is a judiciably created rule of evidence which Congress might negate" and therefore, the basis for *Wolf* should be on the protections included in the amendment. *Id.* at 39–40.

Thus, such reasoning would seem to allow the fourth amendment to be violated at will by a state so long as there is no disturbance of the Court's idea of "ordered liberty." Thus, even though it was in violation of the fourth amendment, illegal evidence could be introduced, since it appeared that the Court gave precedence to evidentiary rules rather than to the Constitution itself—the federalism created by the Constitution was to be more important than the Constitution itself.

It is this writer's contention that the *Elkins* Court erred in not holding that the fourth amendment is applicable to the states—regardless of *Wolf* or *Weeks*—and that any evidence so seized could not be admitted to trial; and the latter contention is part of the broader belief that all of the Bill of Rights amendments should be applicable to the states. The Court, and history also, remind one of the basis for which these amendments were ratified.[21] These amendments were created to protect the states from the fear of a strong central government similar to that which existed when they were English colonies. The prevailing atmosphere was to keep the states as strong, and the central government as weak, as possible. The Civil War reversed this concept however. The war between the states, besides settling other important matters, assured the dominance of the central government over the states.[22] The fourteenth amendment was ratified to place on the states the same burdens as were already incumbent on the central government. It would seem ludicrous to suppose that the stronger of the two governments was to have more curbs and restrictions than its weaker subsidiary. The intention of the fourteenth, therefore, through the due process clause was to subject the states to at least the same restrictions.[23] The Court and others have failed to see this.[24] In two instances the Court has made exceptions to the non-incorporation of the first ten amendments into the fourteenth—*i.e.*, in the case of the first and fourth amendments; but it did so in the latter amendment for the reason that "ordered liberty"[25] would be upset and not on the basis that such is a fundamental right guaranteed to all, as it did in the incorporation of the first amendment.[26] In their incorporation of the fourth, the Court also retained

[21] Cases cited note 9 *supra.*

[22] McLaughlin, Constitutional History of the United States (1935); Ten Broëk, Anti-Slavery Origins of the Fourteenth Amendment (1951).

[23] This contention is borne out somewhat by the dissent of Mr. Justice Black in Adamson v. California, 332 U.S. 46 (1947), wherein he partially holds the view expounded by this writer: Justice Black states that the intent of the authors of the fourteenth amendment was to include within it the first ten amendments; on the other hand, he makes no mention of why that intention existed.

[24] Cases cited notes 3 & 4 *supra.*

[25] Wolf v. Colorado, 338 U.S. 25 (1949).

[26] Cases cited note 16 *supra.*

the right to consider the concept of evidence admissibility, which was considered the dominant issue, and not the fourth amendment's constitutional protections.

THE CASES AND THE INCONSISTENCIES

By the *Wolf* decision the rationale for the "silver platter" concept was overruled. The entire rationale behind *Weeks* was that the fourth amendment was restricted to the federal government. Therefore, any evidence, be it from individuals[27] or state officials,[28] could be admitted into federal courts whether it was legally or illegally seized. *Wolf* bound the states to observe fourth amendment protections, so that "in ruling that the Fourth Amendment Prohibition operates through the fourteenth to make unreasonable state searches unconstitutional, the Court overruled the very constitutional pronouncement and holding upon which the *Weeks* decision . . . had predicated the admissibility of state-seized evidence in a federal trial."[29] Still, at the same session, the Court continued to support the "silver platter" doctrine.[30]

Later cases continued to be just as confusing. In *Benanti v. United States*,[31] petitioner was convicted of possession of spirits without federal stamps. Evidence used to convict Benanti was obtained by state officials through the use of wire taps and then transferred to federal officers for trial. Petitioner claimed that such evidence was illegal and inadmissible under a Congressional act.[32] Again the Court was given the opportunity to overrule the "silver platter" doctrine, but in a unanimous opinion, the Court failed to so overrule or even examine the issue:

> It has remained an open question in this Court whether evidence obtained solely by state agents in an illegal search may be admissible in federal courts despite the Fourth Amendment. . . . The instant decision is not concerned with the scope of the Fourth Amendment.[33]

The evidence was allowed, for the Court held that Congress only intended that such a rule of evidence be extended to federal courts, and that it in no way was restrictive upon the states.

Two cases in direct relationship to federal rules of procedure and their

[27] Burdeau v. McDowell, 256 U.S. 465 (1921).

[28] Weeks v. United States, 232 U.S. 383 (1914).

[29] Hanna v. United States, 260 F.2d 723, 726 (D.C. Cir. 1958). *Accord,* Elkins v. United States, 364 U.S. 206 (1960); Wolf v. Colorado, 338 U.S. 25 (1949) (dissenting opinion).

[30] Lustig v. United States, 338 U.S. 74 (1949).

[31] 355 U.S. 96 (1957).

[32] 26 U.S.C.A. § 5008 (Supp. 1959).

[33] Benanti v. United States, 355 U.S. 96, 102 n. 10 (1957).

application to the states are *Stefanelli v. Minard*[34] and *Rea v. United States*.[35] In both cases, injunctions were sought to keep illegally obtained evidence from being admitted at trial. *Stefanelli*, however, involved state evidence which was to be given to federal authorities, whereas *Rea* involved the transferring of illegally obtained evidence from the federal to the state level. It is not difficult to surmise, on the basis of the preceding discussion, that in *Rea* the injunction was granted, whereas in *Stefanelli*, it was not. The *Rea* Court stated:

> The command of the Federal Rules is in no way affected by anything that happens in a state court. They are designed as standards for federal agents. The fact that their violation may be condoned by state practice has no relevancy to our problem. *Federal courts sit to enforce federal law;* and federal law extends to the process issuing from those courts. *The obligation of the federal agent is to obey the Rules.* They are drawn for innocent and guilty alike. They prescribe standards for law enforcement. They are designed to protect the privacy of the citizen, unless the strict standards set for searchs and seizures are satisfied. That policy is defeated if the federal agent can float them and sue the fruits of his unlawful act either in federal or state proceedings.[36]

The *Stefanelli* Court, on the other hand, did not have control of the state law enforcers, as it had of the federal agents, and thus could not grant the injunction:

> Here the considerations governing that discretion touch perhaps the most sensitive source of friction between States and Nations, namely, the active intrusion of the federal courts in the administration of the criminal law for the prosecution of crimes solely within the power of the States.
>
> We hold that the federal courts should refuse to intervene in State criminal proceedings to suppress the use of evidence even when claimed to have been secured by search and seizure.[37]

The *Wolf* doctrine created a situation of inconsistencies. The philosophy extended from *Weeks* to *Wolf* was simply a matter of not ruling the fourth amendment to be incorporated into an individual's right to be free from state encroachment. The decisions which followed *Weeks*, but preceded *Wolf* had at least some justification for their decision in either rules of evidence or in particular factual situations. It is submitted that after *Wolf* it would seem that the Court could not employ these latter means to avoid the constitutional question, since the fourth amendment was held binding on the states through the fourteenth. Instead, however, the Court's attitude after the *Wolf* decision appeared to be that of the cook who, learning that the meat in the soup was tainted, took out the meat, but left the soup to be drunk.

[34] 342 U.S. 117 (1951). [35] 350 U.S. 214 (1956).

[36] *Id.* at 217–218. (Emphasis added.)

[37] Stefanelli v. United States, 342 U.S. 117, 120 (1951).

In *Hanna v. United States*,[38] the Court of Appeals of the District of Columbia overruled the "silver platter" doctrine in its application in the District. In this case, Maryland officials illegally seized evidence and turned it over to authorities in the District of Columbia. The Court reasoned that since *Wolf* overruled the very basis of the "silver platter" doctrine, it should no longer be followed, and therefore "*all evidence obtained* by violation of the Constitution should be excluded."[39] The Court also pointed out the illogicality in holding that it is unconstitutional to admit evidence illegally obtained by federal officers, but constitutional to admit evidence which has been so obtained by state officers:

> It cannot rationally be argued that the constitutional protection is so gravely impaired by using such evidence in federal courts when a federal officer has violated the Fourth Amendment, but there is no significant impairment when it is a state officer who has been guilty of an equivalent violation of the Fourteenth Amendment. Perhaps the sanction of excluding such evidence from federal trials has a greater deterrent effect upon federal officers than upon state officers. But there is no calculus to measure such a difference, *nor is it the kind of difference which warrants opposite conclusions as to the admissibility of the evidence.*[40]

This decision was rendered two years prior to *Elkins*, and was the foundation for that case.

Elkins v. United States[41] was decided by a five to four majority. Petitioner Elkins was convicted of wire tapping, a federal offense. The evidence used to gain this conviction was obtained by Oregon officials through an unlawful search and consequent seizure. In the state proceedings, the evidence was disallowed, but at the federal level, all motions to disallow admission of the evidence were quashed. On appeal, the Supreme Court ruled that such evidence was inadmissible and, as before stated, in effect overthrew the "silver platter" doctrine. Mr. Justice Stewart, who delivered the majority opinion, followed the lead of *Hanna* and reasoned that the basis upon which the "silver platter" doctrine existed had been overruled by *Wolf*. He stated: "The foundation upon which the admissibility of state-seized evidence in a federal trial originally rested—that unreasonable state searches did not violate the Federal Constitution—thus disappeared in [*Wolf*]."[42] Justice Stewart made the further point that the Court's adoption of the exclusionary rule was to protect individuals from

[38] 260 F.2d 723 (D.C. Cir. 1958).

[39] *Id.* at 728. (Emphasis added.)

[40] *Id.* at 728-29. (Emphasis added.) See Olmstead v. United States, 277 U.S. 438 (1928), wherein the Court stated: "I think it a less evil that some criminals should escape than that the Government should play an ignoble part." *Id.* at 470.

[41] 364 U.S. 206 (1960).

[42] *Id.* at 213.

unlawful invasion of federal officials: "The rule is calculated to prevent, not to repair. Its purpose is to deter—to compel respect for the constitutional guaranty in the only effectively available way—*by removing the incentive to disregard it.*"[43]

He then went on to inquire how such incentive could become nonexistent when there was an available means by which federal officials could skirt the rule—namely, state-seized evidence. And by rejecting the contention of the Government that the foundation of our federal system was being imperiled by federal encroachment in activities reserved for the states, Justice Stewart indirectly emphasized the holding in *Hanna:*

> The very essence of a healthy federalism depends upon the avoidance of needless conflict between state and federal courts. Yet when a federal court sitting in an exclusionary state admits evidence lawlessly seized by state agents, it not only frustrates state policy, but frustrates that policy in a particularly inappropriate and ironic way. For by admitting the unlawfully seized evidence the federal court serves to defeat the state's effort to assure obedience to the Federal Constitution.[44]

Lastly, Mr. Justice Stewart showed that since *Wolf*, state courts have tended to adopt rules similar to the exclusionary rule practiced in federal courts.[45] He maintained that the trend towards state adoption of this rule is continuing, and that the protection of federalism could best be served by overruling the "silver platter" doctrine.

The opinion in *Elkins* contains two areas which would seem to deserve criticism. First of all, there was a failure again to rule on the basic issue of fourth amendment guarantees. The Court effected a ruling that is the same if they had looked to fourth amendment guarantees only, but yet based their decision on "formulated rules of evidence to be applied in federal criminal prosecutions."[46] Evidence admissibility was left as the im-

[43] *Id.* at 217. (Emphasis added.)

[44] *Id.* at 221.

[45] In this instance it is difficult to perceive how the Court arrived at such a conclusion. Prior to *Wolf*, twenty-one state supreme courts had adopted a facsimile of the federal court's exclusionary rule including Alaska and Hawaii. Twenty-nine courts ruled that illegally obtained evidence could be admitted into a state case. After the *Wolf* ruling only five state courts adopted the exclusionary rule, but two states, Michigan and South Dakota, compiled with *Wolf* entirely and instead of upholding the exclusionary rule, which they had done in the past, the courts adopted a partially excludable rule in conformance to the Wolf doctrine. Thus, although twenty-six state courts have now some applicable form of the exclusionary rule in their procedure, it hardly seems that such can be used as a basis for demonstrating a strong trend of state adoption of the exclusionary rule. In the past eleven years only five states have adopted it and two have greatly modified their procedure to conform to *Wolf*. For discussion in accord with this writer's view see Mr. Justice Frankfurter's dissent in Elkins v. United States, 364 U.S. 206 (1960).

[46] Elkins v. United States, 364 U.S. 206, 216 (1960). *Cf.* McNabb v. United States 318 U.S. 332 (1943).

portant criterion in regard to search and seizure violations, and not the fourth amendment itself. An obvious inconsistency also exists in the *Elkins* opinion. The Court stated: "The question with which we deal today affects not at all the freedom of the states to develop and apply their own sanctions in their own way."[47] This statement, when taken in conjunction with the ruling that federal evidentiary rules were to apply, would seem to dictate that discretion still remains in the hands of the states as to admissibility of unlawfully seized evidence in an exclusive state matter as long as there is no infringement of "fundamental fairness" or "ordered liberty." But suppose that a state proceeding is brought to the federal courts on appeal under the assertion of a denial of due process. This is where the inconsistency lies, for the Court also stated:

> In determining whether there has been an unreasonable search and seizure by state officers, a federal court must make an independent inquiry, whether or not there has been such an inquiry by a state court, and irrespective of how any such inquiry may have turned out. *The test is one of federal law,* neither enlarged by what one state court may have countenanced, nor diminished by what another may have colorably suppressed.[48]

The result of maintaining such a position when a decision of a state is appealed to a federal court, is that the seized evidence must be excluded if in violation of the fourth amendment. In effect, the Court is forcing the states to observe the fourth amendment protections just as they did with the first amendment guarantees. But on the other hand, the Court, while recognizing the incorporation of the fourth amendment into the fourteenth, still refuses to give it the status of a fundamental guarantee which it accords to the first amendment. One would seem forced to conclude that to the Court the fourth amendment is not such a fundamental guarantee as is the first.

CONCLUSION

It is believed that the Court will continue to arrive at such incongruous and conflicting decisions[49] until they expressly adhere to the trend which

[47] Elkins v. United States, *supra* note 46 at 221.

[48] *Id.* at 223–24. (Emphasis added.)

[49] In the same session as *Elkins*, the Court has so adopted such an opinion. In Ohio *ex rel.* Eaton v. Price, 364 U.S. 263 (1960), Mr. Justice Stewart disqualified himself since his father was a member of the bench which decided the case on the state level. The Court, therefore, was divided four to four as to the constitutionality of a state law allowing inspections without issuance of a search warrant. Since the Court was evenly divided, the lower court decision which upheld the constitutionality of the law was sustained. As Mr. Justice Stewart stated, such test as to the validity of such searches was to be on a federal basis regardless of prior state court determination. Such a search by federal authorities would be deemed as unlawful. Therefore, because of the self-imposed disqualification of Mr. Justice Stewart, a law which is unconstitutional remains constitutional.

the fourth amendment is taking, namely, that it is part of the fourteenth amendment and completely binding upon the states regardless of the facts involved or the evidence rules being employed in the case[50]—and it would seem that only then will the Court secure the vitality of the fourth amendment for the individual against oppressive and authoritarian behavior.

[50] It should be noted that there are four basic circumstances in which this issue can be brought before the Court. First, there is federal evidence admitted into a federal court; second, there is state evidence admitted into a state court; third, state evidence admitted into a federal court; and fourth, federal evidence admitted into a state court proceeding. As noted above, all evidence illegally seized in the first two instances would be excluded and in the third instance, would have to be excluded if brought on appeal to the federal level. As yet, no determination as to the admittance of evidence obtained illegally by federal officials into a state trial has been rendered by the Court. In People v. Fiorito, 19 Ill. 2d 246, 166 N.E. 2d 606 (1960), such a determination can be reached. A petition for writ of certiorari has been filed. 29 U.S. L. WEEK 3077 (U.S. Sept. 20, 1960) (No. 320). By the Court's own words, such evidence would be excluded if the writ is granted, for the "test is one of federal law." Since, however, this is an Illinois case and Illinois has adopted the exclusionary rule, the Court, if they are to grant the writ, will have to re-examine the facts of the case in order to determine if such evidence was illegally obtained or not. It is questionable that they will grant the writ, however, since the Illinois Supreme Court has already applied the exclusionary rule and has determined that the evidence in question was not illegally seized.

A WIFE'S ACTION FOR LOSS OF CONSORTIUM DUE TO NEGLIGENCE

Whether a married woman may sue for loss of the consortium of her husband, due to his injury by the negligent act of a third party, presents a challenging question to the legal profession. Directly involved is the basic feature of the Anglo-American legal system, the doctrine of stare decisis. Also involved is the sociological concept of the law, *i.e.*, the concept that the law is, and reflects, the prevalent common concepts of civilized society. It is the clash of these two doctrines which presents the challenge. The aforegoing is not meant to give the impression, however, that the law as to the wife's right to sue is unclear in any particular jurisdiction. Such is not usually the case. Rather the opposite is true, and the jurisdictions which have decided the point are quite definite as to what they hold. The challenge is in reality national in scope. The movement of American courts to a new view demanded by the times we live in, as opposed to clinging to well established concepts of the law—this is the challenge. Which side of the issue a lawyer might take at a particular time would depend on whether he represented the wife or the defendant, for neither side lacks arguments. This paper's purpose is to trace the develop-