AMERICAN CONSTITUTIONALISM
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Supplementary Material

Chapter 7: The Republican Era—Criminal Justice/Search and Seizure

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Gouled v. U.S., 255 U.S. 298 (1921)

Felix Gouled was suspected of defrauding the United States military. Military intelligence planted a spy in Gouled's office and that spy took certain incriminating papers. The government then obtained a search warrant. During the resulting search, federal agents found papers indicating that Gouled with conspiring with a Lavinski and Steinthal to bribe government officials. Gouled was subsequently arrested and charged with conspiracy to commit fraud against the federal government. Gouled at his trial unsuccessfully objected to the introduction of both the papers seized by the office spy and the papers later obtained by the government search. He was convicted in federal district court and he appealed to the Supreme Court of the United States.

The Supreme Court unanimously ruled that Gouled had been unconstitutionally convicted. Justice Clarke's opinion for the Court ruled that government could not normally search a person's house merely to find evidence for a criminal trial. The public had to have a greater interest in the goods. Why did Justice Clarke reach this conclusion? What interests would make a search legitimate?

JUSTICE CLARKE delivered the opinion of the Court.

The contract of the defendant with Steinthal, which was seized under the warrant, was not offered in evidence but a duplicate original, obtained from Steinthal, was admitted over the objection that the possession of the seized original must have suggested the existence and the obtaining of the counterpart, and that therefore the use of it in evidence would violate the rights of the defendant under the Fourth or Fifth Amendment.

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It would not be possible to add to the emphasis with which the framers of our Constitution and this court . . . . have declared the importance to political liberty and to the welfare of our country of the due observance of the rights guaranteed under the Constitution by the [Fourth and Fifth] amendments. . . Such rights are declared to be indispensable to the "full enjoyment of personal security, personal liberty and private property"; that they are to be regarded as of the very essence of constitutional liberty; and that the guaranty of them is as important and as imperative as are the guaranties of the other fundamental rights of the individual citizen—the right to trial by jury, to the writ of habeas corpus, and to due process of law. It has been repeatedly decided that these amendments should receive a liberal construction, so as to prevent stealthy encroachment upon or "gradual depreciation" of the rights secured by them, by imperceptible practice of courts or by well-intentioned, but mistakenly overzealous, executive officers.

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The prohibition of the Fourth Amendment is against all unreasonable searches and seizures and if for a government officer to obtain entrance to a man's house or office by force or by an illegal threat or show of force, amounting to coercion, and then to search for and seize his private papers would be an unreasonable and therefore a prohibited search and seizure, as it certainly would be, it is impossible to successfully contend that a like search and seizure would be a reasonable one if only admission were obtained by stealth instead of by force or coercion. The security and privacy of the home or office and of

the papers of the owner would be as much invaded and the search and seizure would be as much against his will in the one case as in the other, and it must therefore be regarded as equally in violation of his constitutional rights.

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"Is the admission of such paper in evidence against the same person when indicted for crime a violation of the Fifth Amendment?"

Upon authority of the *Boyd* Case, this . . . question must also be answered in the affirmative. In practice the result is the same to one accused of crime, whether he be obliged to supply evidence against himself or whether such evidence be obtained by an illegal search of his premises and seizure of his private papers. In either case he is the unwilling source of the evidence, and the Fifth Amendment forbids that he shall be compelled to be a witness against himself in a criminal case.

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The wording of the Fourth Amendment implies that search warrants were in familiar use when the Constitution was adopted and, plainly, that when issued "upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized," searches, and seizures made under them, are to be regarded as not unreasonable, and therefore not prohibited by the amendment. Searches and seizures are as constitutional under the amendment when made under valid search warrants as they are unconstitutional, because unreasonable, when made without them—the permission of the amendment has the same constitutional warrant as the prohibition has, and the definition of the former restrains the scope of the latter. All of this is abundantly recognized in the opinions of the *Boyd* and *Weeks* Cases, supra, in which it is pointed out that at the time the Constitution was adopted stolen or forfeited property, or property liable to duties and concealed to avoid payment of them, excisable articles and books required by law to be kept with respect to them, counterfeit coin, burglars' tools and weapons, implements of gambling "and many other things of like character" might be searched for in home or office and if found might be seized, under search warrants, lawfully applied for, issued and executed.

Although search warrants have thus been used in many cases ever since the adoption of the Constitution, and although their use has been extended from time to time to meet new cases within the old rules, nevertheless it is clear that, at common law and as the result of the *Boyd* and *Weeks* Cases, they may not be used as a means of gaining access to a man's house or office and papers solely for the purpose of making search to secure evidence to be used against him in a criminal or penal proceeding, but that they may be resorted to only when a primary right to such search and seizure may be found in the interest which the public or the complainant may have in the property to be seized, or in the right to the possession of it, or when a valid exercise of the police power renders possession of the property by the accused unlawful and provides that it may be taken.

There is no special sanctity in papers, as distinguished from other forms of property, to render them immune from search and seizure, if only they fall within the scope of the principles of the cases in which other property may be seized, and if they be adequately described in the affidavit and warrant. Stolen or forged papers have been so seized . . . and we cannot doubt that contracts may be so used as instruments or agencies for perpetrating frauds upon the government as to give the public an interest in them which would justify the search for and seizure of them, under a properly issued search warrant, for the purpose of preventing further frauds.

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That the papers involved are of no pecuniary value is of no significance. Many papers, having no pecuniary value to others, are of the greatest possible value to the owners and are property of a most important character and since those here involved possessed "evidential value" against the defendant, we must assume that they were relevant to the issue.

Restraining the questions to the papers described, and first as to the unexecuted form of contract with Lavinsky, a stranger to the indictment. While the contents of this paper are not given, it is impossible to see how the government could have such an interest in such a paper that under the principles of law stated it would have the right to take it into its possession to prevent injury to the public

from its use. The government could desire its possession only to use it as evidence against the defendant and to search for and seize it for such purpose was unlawful.

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As to the contract with Steinthal, also a stranger to the indictment: It is not difficult, as we have said, to imagine how an executed written contract might be an important agency or instrumentality in the bribing of a public servant and in perpetrating frauds upon the government, so that it would have a legitimate and important interest in seizing such a paper in order to prevent further frauds, but the facts necessary to give this contract such a character do not appear in the certificate. On the contrary, this third question recites that the papers are all of no pecuniary, but are of evidential, value, and in the sixth question it is recited that they are "of evidential value only," so that it is impossible to say, on the record before us, that the government had any interest in it other than as evidence against the accused, and therefore as to all three papers the answer to the question must be in the affirmative.

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It has never been required that a criminal prosecution should be pending against a person in order to justify search for and seizure of his property under a proper warrant, if a case of crime having been committed and of probable cause is made out sufficient to satisfy the law and the officer having authority to issue it, and we see no reason why property seized under a valid search warrant, when thus lawfully obtained by the government, may not be used in the prosecution of a suspected person for a crime other than that which may have been described in the affidavit as having been committed by him. . . .

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. . . It is plain that the trial court acted upon the rule, widely adopted, that courts in criminal trials will not pause to determine how the possession of evidence tendered has been obtained. While this is a rule of great practical importance, yet, after all, it is only a rule of procedure and therefore it is not to be applied as a hard and fast formula to every case, regardless of its special circumstances. We think rather that it is a rule to be used to secure the ends of justice under the circumstances presented by each case, and where, in the progress of a trial, it becomes probable that there has been an unconstitutional seizure of papers, it is the duty of the trial court to entertain an objection to their admission or a motion for their exclusion and to consider and decide the question as then presented, even where a motion to return the papers may have been denied before trial. . . .