

# CONSTITUTIONAL LAW—CONFESSIONS— EVIDENCE OBTAINED PURSUANT TO AN ILLEGAL ARREST IS INADMISSIBLE AT TRIAL

## *Taylor v. Alabama*<sup>1</sup>

### I. INTRODUCTION

The fourth amendment<sup>2</sup> commands that every individual is protected against unreasonable searches and seizures and that this right shall not be violated. The amendment also provides that no warrants shall issue but upon probable cause.

This note will examine the history, development, and current status of the fourth amendment exclusionary rule. Emphasis will be placed on *Taylor v. Alabama*,<sup>3</sup> which is consistent with the Supreme Court's prior decisions.<sup>4</sup>

The United States Supreme Court announced, through the opinion of Justice Marshall, that evidence obtained pursuant to an illegal arrest is inadmissible at trial. The controversy in *Taylor* was whether petitioner's confession,<sup>5</sup> which was obtained after a warrantless arrest<sup>6</sup> based on less than probable cause,<sup>7</sup> should have been excluded from evidence as "fruit of the illegal arrest."

Prior to petitioner's arrest there had been a number of robberies in the area and the police had initiated an intensive manhunt in an effort to apprehend the robbers. An individual, who was at the time incarcerated, told an officer that he had heard that petitioner was involved in the robbery. On the basis of that information petitioner was arrested without a warrant.

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1. *Taylor v. Alabama*, 102 S. Ct. 2664 (1982).

2. The fourth amendment provides:

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 warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

3. *Taylor*, 102 S. Ct. at 2664.

4. See, e.g., *Dunaway v. New York*, 442 U.S. 200 (1979) (fruits of detainment lacking probable cause excluded); *Brown v. Illinois*, 422 U.S. 590 (1975) (fruits of illegal arrest excluded); *Mapp v. Ohio*, 367 U.S. 643 (1961) (exclusionary rule applied to states); *Silverthorne Lumber Co. v. United States*, 251 U.S. 385 (1920) (exclusionary rule applied to secondary evidence); *Weeks v. United States*, 232 U.S. 383 (1914) (exclusionary rule applied to primary evidence). *But see Rawlings v. Kentucky*, 448 U.S. 98 (1980) (exclusionary rule not applied to fruits of illegal arrest).

5. A confession is "an acknowledgement, declaration or admission by a person that he has participated in, or committed a crime." J. VARON, *SEARCHES SEIZURES AND IMMUNITIES* 989-90 (2d ed. 1974).

6. Arrest is defined as the deprivation of a persons liberty by legal authority. See BLACK'S LAW DICTIONARY 100 (rev. 5th ed. 1979). A warrantless arrest occurs when a person is arrested without a warrant. *Id.* at 1422.

7. See *Brinegar v. United States*, 338 U.S. 160, 176 (1949) (probable cause required to "safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime"). Probable cause for arrest, search and seizure exists where there are reasonable grounds to believe that a person should be arrested; BLACK'S LAW DICTIONARY 1081 (rev. 5th ed. 1979).

Upon arrival at the police station he was advised of his constitutional rights as required by *Miranda v. Arizona*,<sup>8</sup> interrogated, fingerprinted, and placed in a lineup. He then confessed after being confronted with evidence that his fingerprints matched those found on some grocery items that had been held by one of the robbers.

Petitioner filed a pretrial motion to suppress the evidence as fruit of the illegal arrest.<sup>9</sup> The motion was denied. The Alabama Court of Criminal Appeals reversed the trial court's decision and held that the confession should not have been admitted into evidence.<sup>10</sup> The Alabama Supreme Court reversed the decision of the Court of Criminal Appeals.<sup>11</sup>

The United States Supreme Court granted certiorari.<sup>12</sup> On the basis of *Brown v. Illinois*<sup>13</sup> and *Dunaway v. New York*<sup>14</sup> it held that petitioner's confession was the fruit of his illegal arrest and should not have been admitted at his trial.<sup>15</sup>

## II. BACKGROUND

### A. *The Aims and Purposes of the Fourth Amendment*

The concept that searches<sup>16</sup> and seizures<sup>17</sup> should be reasonable originated from the common experiences of English<sup>18</sup> and American<sup>19</sup> people with their governments. The fight for the protection of personal liberties against abusive searches and seizures was not only of primary concern in the American revolution, but also concerned the states as indicated by their constitutions.<sup>20</sup>

8. 384 U.S. 486 (1966) (an individual in custody or deprived of his freedom by the authorities, must be warned prior to questioning that he has the right to remain silent, that anything he says can be used against him in court, that he has the right to an attorney, and that if he cannot afford an attorney one will be appointed for him prior to questioning). *See, id.*

9. *Taylor v. State*, 399 So. 2d 875, 876 (Ala. Crim. App. 1980).

10. *Id.* at 880.

11. *Taylor v. Alabama*, 399 So. 2d 881, 893 (Ala. 1981).

12. *Taylor*, 102 S. Ct. at 2664.

13. 422 U.S. 590 (1975).

14. *Dunaway*, 442 U.S. at 200.

15. *Taylor*, 102 S. Ct. at 2669.

16. Searches of persons have been defined as any physical touching of an individual's body or clothing that causes hidden objects or matter to be revealed. *See Amsterdam, Perspectives on the Fourth Amendment*, 58 MINN. L. REV. 349, 356 (1974).

17. Seizures of persons, include arrests, investigatory detentions, and any other detention of an individual against his will. *See id.* at 362.

18. Mr. Fraenkel suggests that the demand for the fourth amendment can be traced to the history of England. He points to the easy issuing of general warrants in England and their declaration as illegal by the House of Commons. Fraenkel, *Concerning Searches and Seizures*, 34 HARV. L. REV. 361, 361-67 (1921). *See also* A. SALTZBURG, AMERICAN CRIMINAL PROCEDURE CASES AND COMMENTARY 50-53 (1980).

19. Mr. Landynski submits that "(t)he amendment was adopted in response to deep resentment against the general warrant used by British officials to search for goods smuggled into the Colonies." J. LANDYNSKI, THE RIGHTS OF THE ACCUSED: OVERVIEW, EFFECTS, AND CAUSES 30 (S. Nagel 2d ed. 1972).

20. In 1774 the Continental Congress had listed the abuses of search powers in its petition to the King for a redress of grievances. This action indicated "that at the time of the Revolution, the primary concern of the colonists was . . . warrants which gave unbridled discretion to the enforcing officers." By 1780 "all the elements of the fourth amendment had been introduced in some form in the bill of rights of a state constitution." A. SALTZBURG, AMERICAN CRIMINAL PROCEDURE CASES AND COMMENTARY 51 (1980). For more detail *see* Fraenkel, *Concerning Searches and*

The framers of our Constitution "recognized the tendency of even well meaning officials, once caught up in the excitement of suspected criminals, to use whatever shortcuts seemed most effective and to ignore the liberties of the citizenry. The police cure, they thought, could be worse than the social ill."<sup>21</sup> As a result, the fourth amendment of the Constitution was framed to protect citizens' liberties and to place restraints on official action.<sup>22</sup>

The fourth amendment has two clauses. The first forbids unreasonable searches and seizures, while the second states the conditions for a valid warrant.<sup>23</sup> In essence, the fourth amendment has the effect of shielding citizens from unreasonable arrests and searches and seizures by requiring that they be based on probable cause.<sup>24</sup>

### B. *The Exclusionary Rule—A Remedy For Fourth Amendment Violations*

The exclusionary rule renders inadmissible to criminal proceedings illegally obtained evidence.<sup>25</sup> The purpose of the rule, as stated by the Supreme Court in *United States v. Calandra*,<sup>26</sup> is to deter law officials from violating the mandates of the fourth amendment. The maintenance and preservation of judicial integrity from the ill effects of governmental actions<sup>27</sup> as well as the development of a process of personal vindication for citizens whose constitutional rights have been infringed are also purposes behind the rule.<sup>28</sup>

At common law the manner in which evidence was acquired was immaterial, and evidence was admissible so long as it was trustworthy.<sup>29</sup> However, in 1914, the common law precedent was broken when the Supreme Court in *Weeks v. United States*,<sup>30</sup> ordered the federal courts to exclude evi-

*Seizures*, 34 HARV. L. REV. 361, 361 (1921) (constitutional provisions similar to the eighth amendment exist in all of the states except New York).

21. M. ZARR, *THE BILL OF RIGHTS AND THE POLICE* 1 (1970).

22. *Id.* at 1-3.

23. See J. LANDYNSKI, *THE RIGHTS OF THE ACCUSED: OVERVIEW, EFFECTS, AND CAUSES* 30 (S. Nagel 2d ed. 1972).

24. See W. RINGEL, *SEARCHES AND SEIZURES, ARRESTS AND CONFESSIONS* § 4.1 (1981).

25. See *United States v. Calandra*, 414 U.S. 338 (1974) (evidence obtained in violation of the fourth amendment cannot be used in a criminal proceeding against the victim of the illegal search and seizure). See generally S. SCHLESINGER, *EXCLUSIONARY INJUSTICE, THE PROBLEM OF ILLEGALLY OBTAINED EVIDENCE* 1 (1977).

26. *United States v. Calandra*, 414 U.S. 338 (1974) (holding that "(t)he exclusionary rule was adopted to effectuate the fourth amendment right of all citizens 'to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . .'). *Id.*

27. See *Olmstead v. United States*, 277 U.S. 438, 484 (1928) (Brandeis, J., dissenting) (the purpose of the exclusionary rule is to "preserve the judicial process from contamination").

28. See Allen, *Federalism and the Fourth Amendment: A Requiem For Wolf*, 1961 SUP. CT. REV. 1, 34 (the exclusionary rule serves to provide some measure of vindication for the individual whose constitutional right of privacy has been abridged). See generally Schroder, *Deterring Fourth Amendment Violations: Alternatives to the Exclusionary Rule*, 69 GEO. L.J. 1361 (1981) (discussing further the purposes of the exclusionary rule).

29. See, e.g., *People v. Defore*, 242 N.Y. 13, 150 N.E. 585, 590 (N.Y. Ct. App. 1926) (noting that, "(e)vidence is not excluded because the private litigant who offers it has gained it by lawless force. By the same token . . . the state . . . incurs no heavier liability.") *Id.* *Defore*, has been cited by one author as "the common law principle." H. UVILLER, *THE PROCESSES OF CRIMINAL JUSTICE: INVESTIGATION AND ADJUDICATION* 8-9 (1979).

30. 232 U.S. 383 (1914). The defendant was charged with using the mails to transport tickets to be used as chances in a lottery. He was arrested and during his detention officers searched his house for evidence. At trial, the illegally seized items were introduced into evidence, and Weeks was convicted, fined and imprisoned.

dence that was obtained in violation of the fourth amendment, and thus created the exclusionary rule. Citing *Boyd v. United States*<sup>31</sup> as historical precedent for the judicially created rule, the Court insisted that "the duty of giving [the fourth amendment] force and effect [was] obligatory upon all entrusted under our Federal system with the enforcement of laws."<sup>32</sup>

Thirty five years had passed when, in a five to four decision, the Court in *Wolf v. Colorado*<sup>33</sup> found the *Weeks* exclusionary rule to be inapplicable to the states. Twelve years later, with only one Justice dissenting, *Wolf* was partially overturned by *Mapp v. Ohio*.<sup>34</sup> In *Mapp* it was found that the "Fourth Amendment's right of privacy . . . [which was enforceable] against the states through the Due Process Clause of the Fourteenth Amendment, [was also] enforceable against them by the same sanction of exclusion as used against the Federal Government."<sup>35</sup> Thus, the requirements of the fourth amendment became applicable to the entire area of law enforcement.<sup>36</sup>

### C. *The Fruit of the Poisonous Tree Doctrine*

Derivative evidence is the indirect product of a search or seizure.<sup>37</sup> Where derivative evidence is a product of an illegal search or seizure, the court must decide whether the evidence is the "fruit of the poisonous tree."<sup>38</sup> Fingerprints,<sup>39</sup> and confessions<sup>40</sup> are a few of the fruits which have been subjected to suppression due to an illegal arrest.

The exclusionary rule was first applied to derivative evidence in *Silverthorne v. United States*.<sup>41</sup> Starting from the premise that the government should not benefit from its own wrong, the Court, in a seven to two decision, excluded the evidence.<sup>42</sup> The decision was based on the following

31. 116 U.S. 616 (1886). *Boyd* was the first case to call for the exclusion of evidence. For a discussion of *Boyd*, see S. SCHLESINGER, *supra* note 25, at 16.

32. *Weeks*, 232 U.S. at 392.

33. 338 U.S. 25 (1949). *Wolf*, a practicing physician, was convicted of conspiracy to commit abortion in a state court because his appointment books were seized from his office and admitted into evidence at trial. The Court held that the exclusionary rule was only one method of deterring illegal police activity and that it should not have been imposed on the states.

34. 367 U.S. 643 (1961). In *Mapp* the petitioner was convicted of possession of pornographic books, pictures, and photographs in violation of Ohio law. Evidence of these articles was obtained by an illegal search and seizure of her home. The Court found that the evidence should not have been admitted and therefore reversed the Ohio Supreme Court's decision.

35. *Id.* at 665.

36. E. GRISWOLD, *SEARCH AND SEIZURE A DILEMMA OF THE SUPREME COURT* 7 (1975). Mr. Griswold comments that the "result has been . . . a great torrent of litigation." *Id.* at 8. It has also required a complete change in the outlook and practices of state and local police. See also *id.* at 9.

37. See generally W. LAFAYE, *SEARCH AND SEIZURE, A TREATISE ON THE FOURTH AMENDMENT* 612 (1978).

38. See *Nardone v. United States*, 308 U.S. 338 (1939).

39. See *Davis v. Mississippi*, 394 U.S. 721 (1969) (fingerprints were found inadmissible); *Paulson v. Florida*, 360 F. Supp. 156 (S.D. Fla. 1973) (fingerprints held inadmissible).

40. Generally, if a person confesses in response to being confronted with illegally obtained evidence, the confession will be found inadmissible. See *Wong Sun v. United States*, 371 U.S. 471 (1963); cf. *Fahy v. Connecticut*, 375 U.S. 85 (1963) (the question before the Court was whether the erroneous admission, in state court, of evidence obtained by an illegal search was subject to automatic reversal).

41. 251 U.S. 385 (1919) (officers attempted to utilize illegally obtained evidence to support the issuance of a subpoena).

42. *Id.* at 391.

rationale:

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 shall not be used at all. [However, if] knowledge of them is gained from an *independent source* they may be proved like any others.<sup>43</sup>

In *Nardone v. United States*,<sup>44</sup> the Court proscribed the use of evidence illegally obtained and its fruits as well.<sup>45</sup> In *Nardone*, the concept of attenuation was formulated. "Sophisticated argument may prove a causal connection between the information [illegally obtained] and the government's proof. As a matter of good sense, however, such connection may have become so attenuated as to dissipate the taint."<sup>46</sup>

In *Wong Sun v. United States*,<sup>47</sup> the Court held that the exclusionary rule prohibited the introduction in a state criminal trial of a confession that was a result of an arrest violating the fourth amendment. It reasoned that it was unnecessary "to hold that all evidence is fruit of the poisonous tree simply because it would not have come to light but for the illegal actions of the police."<sup>48</sup> Rather the more appropriate questions to be considered were: (1) whether, granting the existence of the primary illegality, the evidence had been discovered by exploiting that illegality and (2) whether the evidence had been discovered by a means sufficiently distinguishable to be purged of the primary taint. If the answer to the second question was affirmative the evidence should have been admitted; otherwise, the exclusionary rule would apply and render the evidence inadmissible at trial.<sup>49</sup>

Taken together, *Silverthorne*, *Nardone*, and *Wong Sun*, demonstrate the reach of the exclusionary rule and strongly suggest that the government cannot profit from its own wrong.

#### D. *The Supreme Court's Recent Articulation of the Fruit of the Poisonous Tree Doctrine*

In *Brown v. Illinois*<sup>50</sup> the petitioner was arrested without probable cause or a warrant, warned of his *Miranda* rights on three occasions, subjected to almost constant police contact and presented with incriminating evidence.<sup>51</sup>

43. *Id.* at 392 (emphasis added).

44. 308 U.S. 338 (1939) (evidence was illegally intercepted telephone messages which constituted a vital part of the prosecution's proof).

45. The Court further noted that the exclusion of evidence in a criminal prosecution must be justified by an overriding policy expressed in the Constitution or law of the land. The two concerns of: (1) having stern enforcement of criminal law; and (2) protecting the realm of privacy left free by the Constitution and laws had to be harmonized and balanced. *Id.* at 340.

46. *Nardone*, 308 U.S. at 341.

47. 371 U.S. 471 (1963) (the Court dealt with a simultaneous confession that was part of an unlawful entry and unlawful arrest).

48. *Id.* at 487-88.

49. *Id.* at 489.

50. 422 U.S. 590 (1975). Petitioner was convicted of murder. On appeal the Illinois Supreme Court found that petitioner was arrested without probable cause but that the giving of *Miranda* warnings, by a police officer and by the assistant states attorney, broke the causal connection of the illegal arrest so that petitioner's act in making the statements was sufficiently an act of free will to purge the primary taint of the illegal arrest.

51. During Brown's contact with the police, he: (1) was arrested at gunpoint; (2) was taken to the station; (3) was placed in an interrogation room for a few minutes; (4) was warned of his rights

He made two statements for which he was later convicted. Justice Black, who wrote for the majority, defined the issue as whether the giving of *Miranda* rights sufficiently attenuated the taint of the arrest so as to make the statements admissible. He first reasoned that "[t]he exclusionary rule . . . when utilized to effectuate the Fourth Amendment, served interests and policies distinct from those served in the Fifth."<sup>52</sup> Thus, he concluded that *Miranda* warnings were not sufficient to attenuate the taint of an illegal arrest.

Next, the Court proposed four factors for determining when sufficient attenuation had occurred. These factors were: "(1) the temporal proximity of the arrest and confession; (2) the presence of intervening circumstances; (3) the purpose and flagrancy of the police misconduct; and (4) the voluntariness of the statements."<sup>53</sup> The evidence was then excluded because the state failed to carry its burden of showing that the evidence in question was admissible.<sup>54</sup>

Justice Powell, who was joined by Justice Rehnquist, concurred only to the extent that the "but for" test was inadequate for determining the applicability of the exclusionary rule.<sup>55</sup> Justice Powell developed a two tier test for eighth amendment violations which focused on the deterrent function of the exclusionary rule and its ultimate effectiveness on the police.<sup>56</sup> The first tier was directed towards flagrantly abusive violations of a citizen's fourth amendment rights. Flagrant and abusive police conduct was described as that which was so lacking in probable cause as to be entirely unreasonable, as arrests which were effectuated for collateral objectives and as unreasonable arrests that were intrusive to personal privacy. Where the violations were flagrant or abusive *Miranda* warnings would be insufficient to purge the taint; therefore, some demonstrably effective break in the chain of events would have to occur before the taint could be removed.<sup>57</sup> A good faith exception to the exclusionary rule was advanced for the second tier of eighth amendment violations which Justice Powell characterized as "technical violations." Technical violations were those which occurred where an officer had acted in good faith reliance on a warrant or statute later declared invalid. Where the violations were merely technical, *Miranda* warnings would be sufficient to attenuate the taint of the unlawful arrest.<sup>58</sup>

In 1979, Justice Brennan wrote the opinion for the majority in *Dunaway*

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under *Miranda*; (5) was told of evidence that could incriminate him; (6) answered questions for 20 to 25 minutes; (7) made a statement; (8) assisted the police in finding a suspect named in his statement; (9) was returned to the station two hours later; (10) was reformed of his rights; (11) was interrogated by the State Prosecutor; (12) was reformed of his rights. The next morning he was taken before a magistrate. *See id.* at 593-96.

52. *Id.* at 603.

53. *Id.*

54. *Id.* at 604.

55. *Id.* at 607 (Powell, Rehnquist, JJ., concurring). Mr. Justice White also concurred insofar as despite *Miranda* warnings the fourth and fourteenth amendments required exclusion from evidence statements obtained as fruit of an arrest when the arresting officer knew, or should have known that the arrest was without probable cause. *Id.* at 606 (White, J., concurring).

56. 422 U.S. at 609.

57. *Id.* at 611 (examples of events that will dissipate the taint in such situations are consultation with counsel or presentation of the accused before a magistrate for a determination of probable cause).

58. *Id.* at 612. Justice Powell mentioned that "between these extremes lies a wide range of

*v. New York*.<sup>59</sup> The issue before the Court was whether the taint of custodial questioning could be attenuated by *Miranda* warnings where incriminating statements were obtained subsequent to an illegal arrest.<sup>60</sup>

The Court found that in *Brown* and *Dunaway* the petitioners had made incriminating statements while they were in police custody and after being given their *Miranda* rights. Furthermore, in both instances the police lacked probable cause for the arrest. Because of these similarities the Court found the cases indistinguishable and accordingly held that Dunaway's statements were inadmissible under the exclusionary rule.<sup>61</sup>

On the other hand, Justice Rehnquist and the Chief Justice dissented. They argued that under *Brown* his statements should not have been suppressed because they had been sufficiently attenuated.<sup>62</sup> Justice Rehnquist, adopting the analysis of the dissenting opinion he joined with in *Brown*, recognized that the conduct of the police was made in good faith rather than in a flagrant manner and therefore argued that the statements should be admissible.<sup>63</sup>

### III. PRINCIPAL CASE

Petitioner, Taylor, who had no prior police record<sup>64</sup> was arrested without a warrant or probable cause as he was leaving a pool house.<sup>65</sup> The police informed Taylor that he was being arrested in connection with a grocery store robbery and then searched and transported him to the police station.<sup>66</sup>

Approximately two weeks prior to the arrest, a detective interviewed a robbery suspect who was under police custody due to charges of unconnected crimes.<sup>67</sup> The suspect, who identified petitioner as a participant of the robbery, had never before given information to the detective, did not tell where he obtained the information, and did not recount the details of the

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situations that defy ready categorization . . . inquiry always should be conducted with the deterrent purpose of the Fourth Amendment exclusionary rule sharply in focus." *Id.*

59. 442 U.S. 200 (1979). Dunaway was convicted by the County Court of Homicide. The New York Supreme Court held that the confession should not have been suppressed.

60. *Id.* at 200. The following events occurred during Dunaway's contact with the police: (1) an officer learned from a jail inmate that Dunaway could have been the murderer; (2) Dunaway was picked up and taken to the police station although he was not told he was under arrest; (3) at the station he was placed in an interrogation room, and questioned by officers after he was given his *Miranda* rights; (4) Dunaway waived counsel and eventually made statements and drew sketches that incriminated him in the crime. *Id.* at 203.

61. *Id.* at 200.

62. *Id.* at 225 (Rehnquist, Burger, JJ., dissenting).

63. *Id.* at 227.

64. Petitioner's Brief at 8, *Taylor v. Alabama*, 102 S. Ct. 2664 (1982). Petitioner also pointed to the fact that there was no evidence of previous prints in existence and submitted that "but for the discovery of his prints by way of arrest, the government had no prior knowledge or means of knowing (his) culpability." *Id.* at 8-9.

65. *Taylor*, 399 So. 2d at 877.

66. *Taylor*, 102 S. Ct. at 2664.

67. *Taylor*, 399 So. 2d at 876-77. The counsel for the American Civil Liberties Union, took its facts from the opinions of the Alabama Supreme Court, the Alabama Court of Appeals, the trial transcript, and the transcript of the hearing on the motion to suppress. It contended that there was "nothing in the record to indicate that the police did anything during the two weeks before petitioner's arrest to substantiate (the informant's) story or to obtain a warrant for petitioner's arrest." Brief Amicus Curiae Of The American Civil Liberties Union In Support Of Petitioner Omar Taylor at 3, *Taylor v. Alabama*, 102 S. Ct. 2664 (1982).

crime.<sup>68</sup>

Upon arrival at the police station, petitioner was informed of his *Miranda* rights on three separate occasions; fingerprinted, photographed, placed in a lineup, and interrogated.<sup>69</sup> During an interrogation session, petitioner was told that his fingerprints had been connected with packages touched by the robbers while the robbery was in progress. He was then permitted to visit with his girlfriend and a male companion. Approximately ten minutes later petitioner signed a waiver of rights form and confession.<sup>70</sup>

Petitioner sought to have the confession and fingerprint evidence suppressed and the arrest declared illegal. This request was denied and he was sentenced to thirty years in the penitentiary.<sup>71</sup> The Alabama Court of Criminal Appeals found that the facts of this case and *Dunaway* were virtually indistinguishable and therefore reversed the trial court's decision.<sup>72</sup>

The Alabama Supreme Court reversed the Court of Criminal Appeals' decision and distinguished the facts of this case from *Dunaway* because of the intervening events that occurred subsequent to petitioner's arrest and prior to his confession.<sup>73</sup> On appeal to the United States Supreme Court the petitioner contended that his arrest was insufficient to render probable cause because it was based on an uncorroborated informant's tip.<sup>74</sup> This action, maintained petitioner, was indicative of flagrant and abusive police conduct and was therefore violative of *Dunaway*. Petitioner also asserted that he was involuntarily and illegally transported to the police station and as a result, the confession and fingerprints should have been excluded from evidence as fruits of the illegal arrest.<sup>75</sup>

On the other hand, the State asserted that the taint had been attenuated in light of *Dunaway*.<sup>76</sup> To support its contention the State outlined the following intervening events: (1) the amount of time petitioner had spent in the station; (2) his participation in a lineup; (3) the giving of *Miranda* rights

68. The petitioner commented on the reliability and credibility of the informant in his brief and relied on *Berry v. State*, 27 Ala. App. 501, 175 So. 407 (Ala. Ct. App. 1937). *Berry* held that: "(a)n arrest based on mere suspicion will not afford justification for an arrest, unless the informant derived from a credible source or person presumed to know the facts, which, if submitted to the proper authority, would require issuance of a warrant for arrest." See Petitioner's Brief at 3, *Taylor v. Alabama*, 102 S. Ct. 2664 (1980). *But see* Brief for Respondent at 7-9, *Taylor v. Alabama*, 102 S. Ct. 2664 (1980).

69. The victims of the robbery were unable to identify petitioner in the lineup. See *Taylor*, 102 S. Ct. at 2670.

70. The American Civil Liberties Union recounted the facts in the following manner: (1) Petitioner was arrested; (2) interrogated for 20 minutes; (3) placed in a lineup for approximately one hour; (4) placed in a cell for 10 minutes; (5) interrogated and told of the fingerprint match and that he resembled one of the robbers in a photograph; (6) returned to his cell after requesting to see an attorney; (7) taken from his cell to be interrogated; (8) told that his fingerprints would stand up in any court; (9) told in front of his girlfriend, who started crying, that he was facing a sentence of ten years to life but that he could help himself if he signed a statement; (10) left with his girlfriend in the room for 10 minutes after which the detectives returned and petitioner confessed. Brief Amicus Curiae Of The American Civil Liberties Union In Support Of Petitioner Omar Taylor at 6-7, *Taylor v. Alabama*, 102 S. Ct. 2664 (1982). *But see* Brief for Respondent at 12, *Taylor v. Alabama*, 102 S. Ct. 2664 (1982).

71. *Taylor*, 399 So. 2d at 876.

72. *Id.* at 878-82.

73. *Id.* at 881.

74. Petitioner's Brief at 3-7, *Taylor v. Alabama*, 102 S. Ct. 2664 (1982).

75. *Id.* at 9.

76. Brief for Respondent at 5, *Taylor v. Alabama*, 102 S. Ct. 2664 (1982).

on three separate occasions; (4) his visitation with his girlfriend and male companion; (5) his knowledge of the fingerprint evidence; and (6) the filing of an arrest warrant subsequent to his arrest.<sup>77</sup> The State also argued for the adoption of a good faith exception to the exclusionary rule.<sup>78</sup>

The United States Supreme Court granted certiorari<sup>79</sup> to decide the narrow issue of whether petitioner's confession should have been suppressed as fruit of the illegal arrest.<sup>80</sup>

The majority opinion, written by Justice Marshall, rejected the State's argument in light of *Dunaway* and *Brown*. The Court, commented on the factual similarities of *Brown* and *Dunaway*.<sup>81</sup> It then found that the intervening acts were insufficient to purge the primary taint of the illegal arrest. Accordingly, the Court decided that the State's reliance on the giving of *Miranda* rights was misplaced.

The Court was equally unwilling to accept the State's contention that six hours at the station and a visitation with petitioner's girlfriend and male companion were sufficient to demonstrate that the petitioner exercised free will when he confessed. The Court reasoned that petitioner was: (1) in police custody; (2) unrepresented by counsel; (3) questioned on several occasions; and (4) subjected to a lineup. Further, the Court maintained, "[i]f any inference could be drawn, [about petitioner's visit with his girlfriend], it would be that the visit had just the opposite effect."<sup>82</sup> As to the State's reliance on the arrest warrant filed subsequent to petitioner's arrest, the Court reasoned that as petitioner was not brought before the magistrate to be advised of his rights and as the evidence utilized as a basis for the arrest warrant was itself the fruit of the illegal arrest, this too was insufficient to serve as an intervening event.<sup>83</sup> Lastly, the Court rejected the State's assertion that it should adopt a good faith exception to the exclusionary rule as it had not been recognized by the Court in the past and held that petitioner's confession should have been suppressed as fruit of the illegal arrest.<sup>84</sup>

Justice O'Connor wrote the dissenting opinion and was joined by the Chief Justice, Justice Powell and Justice Rehnquist. The dissenters concurred to the majority's exposition of the law, but felt that the Court had misinterpreted the facts by accepting the testimony most favorable to the holding it wanted to reach.<sup>85</sup> Relying on *Dunaway* and *Brown* and keeping in mind the "longstanding practice of federal appellate courts to uphold the denial of the motion to suppress if . . . there [was] any reasonable view of

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77. *Id.* at 4.

78. The state contended that honest mistakes were treated in the same manner as flagrant violations. Here, the state argued, the police though mistaken, had an objective good faith belief that their actions were proper. Petitioners attacked this contention because it had never been advanced in the prior proceedings. *Id.* at 4. See Petitioners Reply Brief at 10, *Taylor v. Alabama*, 102 S. Ct. 2664 (1982).

79. *Taylor*, 102 S. Ct. at 2664.

80. *Id.* at 2666.

81. The Court noted that in *Brown* and *Dunaway* the suspect had also been: (1) arrested without probable cause; (2) transported to the police station; (3) advised of his rights under *Miranda* and (4) confessed to the crimes after two hours. See *id.* at 2667-68.

82. *Id.* at 2668.

83. *Id.* at 2668-69.

84. *Id.* at 2669.

85. *Id.* at 2664.

the evidence to support it" the dissenters found that "petitioner's confession was not proximately caused by his illegal arrest but was the product of a decision based both on knowledge of his constitutional rights and on the discussion with his friends."<sup>86</sup>

#### IV. ANALYSIS

The fourth amendment arose out of the Founding Fathers determination to avoid the arbitrary search and seizure practices which they had come to know from their experiences with English and Colonial law officials.<sup>87</sup> They recognized that the fourth amendment, although not expressly calling for the exclusion of evidence, created in every citizen a right to be free from unreasonable searches and seizures.<sup>88</sup> As early as 1866, the *Boyd* Court observed the historical basis of the fourth amendment,<sup>89</sup> and several years later, the *Weeks* Court utilized this historical basis when it developed the exclusionary rule.

*Taylor*, some 68 years later, has extended the basic principles of the exclusionary rule as advanced by *Weeks* and its progeny, reaffirmed the applicability of the rule to derivative evidence in state as well as federal courts, and further defined the teachings of the Court's prior decisions.<sup>90</sup> The majority's decision that a confession obtained pursuant to an illegal arrest must be excluded from evidence in a state or federal court as fruit of the illegal arrest is the most logical decision when compared with the established principles advanced by the Court in the past.

For example, *Weeks* advanced the principle that the courts, like guardians of the Constitution, were vested with the duty of protecting individuals' rights of privacy under the fourth amendment and that on the basis of judicial integrity the courts could not allow the government to benefit from its own wrong by permitting illegally obtained primary evidence to be utilized in federal courts.<sup>91</sup>

Justice Frankfurter, who wrote for the majority in the split decision of *Wolf*,<sup>92</sup> refused to extend the *Weeks* exclusionary rule to the states. Recognizing the purpose behind the rule, he argued that it was simply one method that could be utilized to deter police activity and thus should not be imposed on the states. Justice Frankfurter's opinion reflected the Court's reluctance

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86. *Id.* at 2664 (O'Connor, Burger, Powell and Rehnquist, JJ., dissenting).

87. M. KATZ & K. GAUHRAN, *THE CONSTITUTIONAL AMENDMENTS* 21 (1974) (discussing the legislative history and the political and social climate during the adoption of the fourth amendment).

88. *The Exclusionary Rule Bills: Hearings on S. 101, S. 751, and S. 1995 Before the Subcomm. on Criminal Law of the Senate Comm. on the Judiciary*, 97th Cong., 1st and 2nd Sess. 481 (1982) (prepared statement of Prof. Yale Kamisar) (hereinafter cited as *Hearings*).

89. *Boyd*, 116 U.S. 616.

90. For a general discussion of the Court's prior decisions see Kamisar, *The Exclusionary Rule in Historical Perspective: The Struggle to Make the Fourth Amendment More Than An "Empty Blessing"*, 62 *JUDICATURE* 336 (1979).

91. *But see* Oaks, *Studying the Exclusionary Rule in Search and Seizure*, 37 *U. CHI. L. REV.* 665, 672 (1970) ("In adopting the exclusionary rule for federal courts the *Weeks* Court indulged two assumptions: (1) that exclusion of evidence would discourage illegal behavior, and (2) that there was no feasible alternative for controlling such behavior"). *Id.*

92. *Wolf*, 338 U.S. at 25.

to intervene in the state's administration of its search and seizure laws.<sup>93</sup>

Thirty seven years after *Weeks*, the Warren Court, in what has been characterized as a constitutional revolution in the area of defendants' rights, extended the *Weeks* rule to the states in an almost unanimous decision.<sup>94</sup> Thus, the duty to protect the fourth amendment from becoming "a mere form of words" was imputed to the states, and the privacy which *Wolf* had assured against federal action by the fourth amendment was extended to protect privacy against state action by the fourteenth amendment.<sup>95</sup>

*Silverthorne*, which was the genesis of the taint doctrine, extended *Weeks* and *Mapp* to include derivative evidence.<sup>96</sup> Justice Holmes adopted the principal established in *Weeks* and found that the poisonous tree doctrine was a logical extension of the fundamental notion that the government should not profit from its own wrong. Justice Holmes seemed to indicate that if the government was able to enjoy the fruits of the illegal activity, the deterrent effect of the rule would be undermined.<sup>97</sup>

Similar to *Silverthorne* was *Nardone* which limited and clarified the *Silverthorne* fruit of the poisonous tree concept by adopting the common sense rationale that the connection between derivative evidence and illegal police activity could become so diminished that the primary injury of the illegal arrest could disappear.<sup>98</sup> *Silverthorne* and *Nardone* were finally harmonized in *Wong Sun*. In *Wong Sun*, the *Nardone* concept that the fruit of an illegal arrest could be attenuated was extended along with the *Silverthorne* exclusionary concept to include "verbal" fruits or confessions.<sup>99</sup>

In analyzing the precedents aforementioned, it is clear that the *Taylor* decision has not deviated. "Today searches and seizures are presumed to be *per se* constitutionally unreasonable unless carved out pursuant to a warrant."<sup>100</sup> *Brown*, *Dunaway* and *Taylor* are indicative of this trend. Taken together, they reaffirm the Court's commitment as guardians of the Constitution vested with the duty of not only protecting the rights guaranteed by the fourth amendment, but also of preserving the integrity of the courts and of deterring abusive and flagrant police conduct.<sup>101</sup>

The *Taylor* dissenters conceded that the majority correctly stated the

93. See S. SCHLESINGER, *supra* note 25, at 20. ("Justice Frankfurter argued that the Court should not condemn alternatives to the rule which may be just as effective as the rule in dealing with police misbehavior"). *Id.*

94. See *Mapp v. Ohio*, 367 U.S. 643 (1961). See also J. LANDYNSKI, *THE RIGHTS OF THE ACCUSED: IN LAW AND ACTION* 48 (S. Nagel 2d ed. 1972) (the Warren Courts "constitutional revolution" in the area of defendant's rights unleashed a storm of criticism).

95. *Id.* at 678-79.

96. The exclusionary rule of *Weeks*, was expanded to not only bar the use of illegally seized evidence in court but to prohibit its use for any purpose. See *Hearings*, *supra* note 88, at 388 (Approved ABA House of Delegates mid-year meeting recommendations).

97. See S. SCHLESINGER, *supra* note 25, at 31 (Justice Holmes supports "the general normative idea that wrong doers should not benefit from their wrongdoing"). *Id.*

98. See also Henderson, *Justice in the Eighties: The Exclusionary Rule and the Principle of Judicial Integrity*, 65 JUDICATURE 354, 356 (1982) (stating that "*Nardone* advanced a common-sense 'Attenuation Doctrine' as a protection against ravages of overly rigorous logic"). *Id.*

99. See generally, H. UVILLER, *THE PROCESSES OF CRIMINAL JUSTICE: INVESTIGATION AND ADJUDICATION* 6-25 (1979) (discussing the implications of *Wong Sun*, *Nardone* and *Silverthorne*).

100. A. SALTZBURG, *AMERICAN CRIMINAL PROCEDURE CASES AND COMMENTARY* 35 (1980).

101. For an excellent discussion of *Dunaway* and *Brown* see Rideout, *Fitzgerald v. State, Dunaway v. New York and the Law of Arrest in Wyoming*, 15 LAND & WATER L. REV. 593, 598 (1980).

controlling substantive law.<sup>102</sup> However, they based their opinions on the facts that were most favorable to the state.<sup>103</sup> Their reaction was probably a precipitation of the conservative trend towards the exclusionary rule which was started by Chief Justice Burger.<sup>104</sup> The dissenting opinions of *Brown* and *Dunaway*, in which a good faith exception to technical violations of the police was urged, is indicative of this attitude. One critic insists that:

With Justice O'Connor's vote added to that of Chief Burger and Justice Rehnquist (who oppose the exclusionary rule), and Justices Powell and White (who are advocates of the 'good faith' exception to the rule) . . . the Court may finally move to cripple or even kill the rule which was adopted in 1914 in *Weeks*.<sup>105</sup>

### *The Current Status of the Exclusionary Rule*

It is recognized that "the principle job of the police force whether it is local, state, or federal, is to deal with actual and potential violations of the law."<sup>106</sup> This goal has created tension in our society due to our need for more effective police work to combat the rising tide of crime and our constitutional aversion against police states.<sup>107</sup> The fourth amendment, which exemplifies this aversion, requires that the traditional police actions of gathering information, evidence, and suspects, comport with its standards or be subjected to the exclusionary rule.<sup>108</sup> Because of these competing interests, the *Taylor* decision might not be in harmony with societal attitudes towards justice.

One author has recognized that:

The rule is not only a legal issue—it is an emotional one as well. There are those to whom the exclusionary rule stands as a symbol of our commitment to protect the citizens against overreach and abuse by law enforcement officers. On the other hand, there are many people to whom the exclusionary rule symbolizes the manner in which attorneys and the courts have allowed technicalities to triumph over the search for truth.<sup>109</sup>

There are groups such as the American Bar Association and the American Civil Liberties Union who urge that the exclusionary rule should remain untampered.<sup>110</sup> On the other hand, there are groups such as the California's Citizens Committee to Stop Crime which lobby for the demise of the exclu-

102. *Taylor*, 102 S. Ct. at 2671.

103. *Id.* at 2672.

104. See *Bivens v. Six Unknown Named Agents*, 403 U.S. 338, 411-22 (1971) (Burger, C.J., dissenting) ("(T)he time has come to reexamine the scope of the Exclusionary Rule and consider at least some narrowing to its thrust.") *id.* See also Oaks, *Studying the Exclusionary Rule in Search and Seizure*, 37 U. CHI. L. REV. 665, 676 (1970) (several justices have taken a negative view of the deterrent capacity of the exclusionary rule).

105. Sylvester, *Does Decision Signal End to Exclusionary Rule?*, 4 NATL. L.J., June 28, 1982, at 20, col. 3.

106. A. SALTZBURG, *AMERICAN CRIMINAL PROCEDURE, CASES AND COMMENTARY* 34 (1980).

107. See M. ZARR, *THE BILL OF RIGHTS AND THE POLICE* 91 (1970).

108. A. SALTZBURG, *AMERICAN CRIMINAL PROCEDURE, CASES AND COMMENTARY* 33 (1980).

109. VandeKamp, *The Exclusionary Rule Promises Not Kept—Proposed Alternatives*, PROSECUTOR'S BRIEF, Mar.-Apr. 1980, at 8.

110. See *Hearings*, *supra* note 88 at 163 (statement by the American Civil Liberties Union). A Lawpoll's sample favored retention of the exclusionary rule by a 68 to 28 percent margin, compared with 70-22 in 1979. The sample also showed that 54 percent opposed the Reagan administration's position on the exclusionary rule, (good faith exception) 42 percent favored it, and 4 percent were not sure. See Lawpoll, *Exclusionary Rule*, 68 A.B.A. J. 545 (1982).

sionary rule altogether.<sup>111</sup> Somewhere between these two extremes are practitioners who are concerned with the Supreme Court's changing attitude and who fear that in the eighties the moving conservatism of the Court will further eviscerate the exclusionary rule.<sup>112</sup>

In the political arena the future of the *Taylor* decision also seems slim. Both the United States Senate and the House of Representatives have advanced bills which, if adopted, will amend the present federal criminal code to include a modification or total abolishment of the exclusionary rule in its present form.<sup>113</sup> This movement has also been precipitated by at least one court,<sup>114</sup> by the President of the United States and by the Attorney General.<sup>115</sup>

It appears that the current momentum for the demise of the exclusionary rule is considerable, both socially and politically. This movement could adversely affect the principles advanced by the Court in *Taylor*.

## V. CONCLUSION

In *Taylor v. Alabama* the controversy presented was whether a confession obtained pursuant to an illegal arrest should have been suppressed as fruit of the illegal arrest. The *Taylor* Court found that the intervening acts were insufficient to purge the taint of the illegal arrest and therefore held that the confession was inadmissible.

This case is consistent with the Court's prior decisions. However, because of the trend towards conservatism in the judiciary and because of the present momentum against the exclusionary rule in the social and political sectors, the *Taylor* decision might be short lived.

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111. California's Citizen's Committee to Stop Crime has been seeking legislation that will allow evidence to be admitted no matter how it was gathered. See Ellison, *The Victim's Bill of Rights: Drastic and Controversial*, 4 NAT'L. L.J., Apr. 5, 1982 at 33, col. 2.

112. See J. HALL, SEARCH & SEIZURE § 23.6 at 655 (1982) ("There is some justification to the fear that individual liberty may give way to police expediency in the Supreme Court during the 1980's.").

113. The bill pending in the House provides for a good faith exception to the exclusionary rule, authorizes tort actions against the United States and sanctions against investigative and law enforcement officers for certain violations of the fourth amendment. See H.R. 5971, 97th Cong., 2d Sess., 124 CONG. REC. H1145 (daily ed. Mar. 25, 1982). One of the bills pending in the Senate also provides for a good faith exception to the exclusionary rule. See S. 2304, 97th Cong., 2d Sess. § 3505, 128 CONG. REC. S3040-41 (daily ed. Mar. 30, 1982).

114. See *United States v. Williams*, 622 F.2d 830 (5th Cir. 1980), cert. denied, 449 U.S. 1127 (1981) (permits use of evidence seized illegally but in good faith by police).

115. The Attorney General's task Force on Violent Crime called for good faith exception to the exclusionary rule in court proceedings. "A few weeks later President Reagan backed the task force's recommendation and said the rule was based on an 'absurd proposition'." Geller, *Is the Evidence in on the Exclusionary Rule?*, 67 A.B.A. J. 1642, 1642 (1981).