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Supreme Court Deals Another Body Blow to the Fourth Amendment

The Supreme Court has landed another solid body blow to the rights (formerly) protected by the Fourth Amendment.

In its decision in the case of *Utah v. Strieff*, the high court has at once increased the ability of police to ignore limits on their power and decreased the protection once enjoyed by the people against unreasonable searches and seizures of their persons, papers, and property.

Before analyzing the key constitutional issue, here is a short recitation of the facts of the case as published by the Federalist Society:

> After receiving an anonymous tip about drug activity, narcotics detective Douglas Fackrell conducted surveillance on a South Salt Lake City residence over the course of a week. Observing that visitors often arrived and then left within a couple of minutes, Fackrell concluded that traffic at the residence was consistent with drug sales activity. In an effort to (as Fackrell later put it) "find out what was going on [in] the house" Fackrell detained Edward Strieff at a nearby parking lot shortly after seeing Strieff exit the house, identifying himself and asking Strieff what he was doing at the house. Fackrell then requested Strieff's identification and relayed the information to a police dispatcher, who informed Fackrell that Strieff had an outstanding arrest warrant for a traffic violation. Fackrell arrested Strieff, searched him and found methamphetamine and drug paraphernalia. Strieff was subsequently charged with unlawful possession of the latter items. At trial, the prosecutor conceded that Fackrell had detained Strieff without reasonable suspicion of unlawful conduct, which the Supreme Court has held to be required by the Fourth Amendment before officers may make warrantless stops.
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> Mr. Strieff argued that the evidence against him presented at trial should be suppressed (disallowed) as it was, as we say in the law, "the fruit of a poisonous tree." In this case, the fruit was the evidence against Strieff and the poisonous tree was the unwarranted, unreasonable, unconstitutional stop of Strieff carried out by Fackrell.
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> Ultimately, the Utah Supreme Court sided with Strieff. That was not, however, the end of the story. On appeal by the state of Utah to the United States Supreme Court, the Utah high court's decision was struck down and Strieff's liberty was deprived.

The denial of fundamental liberties is instantly evident.

First, Fackrell violated the Fourth Amendment by detaining Strieff without the reasonable suspicion required by the Constitution.

Next, typically, the evidence obtained by police in their search of Strieff would have been inadmissible at trial by the application of the so-called Exclusionary Rule.

Simply stated, the Exclusionary Rule requires that evidence obtained illegally cannot be presented

against a defendant in a criminal trial. This proscription should have applied in the *Strieff* case, but it was not.

In an article for the Mises Institute, Tate Fegley explained the reason the rule was not applied in this case:

> The Court argues in *Strieff* that the exclusionary rule does not apply because Detective Fackrell's illegal search was "an isolated instance of negligence" and not "part of any systemic or recurrent police misconduct." If it were to apply, his misconduct would have to be "purposeful or flagrant" because the purpose of the exclusionary rule is to deter future police misconduct. Though this reasoning should be rejected (because misconduct is misconduct and ought to have consequences whether it was done in good faith or was flagrant), it is also completely false, as pointed out by Justice Sotomayor in her dissent. Detective Fackrell knew exactly what he was doing in checking Mr. Strieff's ID (to find an arrest warrant so that he could search his person) and this is not an infrequent tactic of the Salt Lake City police, as acknowledged by the Utah Supreme Court.

Perhaps the most important point to be taken from the case of the state of *Utah v. Edward Strieff* is that the U.S. Supreme Court openly admits that the defendant was denied his rights as protected by the Fourth Amendment.

In the court's majority opinion, as delivered by Justice Clarence Thomas, "even when there is a Fourth Amendment violation, [the] exclusionary rule does not apply when the costs of exclusion outweigh its deterrent benefits."

In plain English, Justice Thomas and his brethren on the Supreme Court have decided that rather than have the rights of the people be protected against government intrusion as intended by the Constitution, those rights can be denied when the black-robed oligarchs rule that one's rights are less valuable than the evidence obtained by their violation.

The assumption by the Supreme Court of legislative powers (and other unconstitutional usurpations) is not new. For decades, the high court has benefited from its efforts to accumulate political power into its own hands. The problem, of course, is that these judges were never elected by the people who are the ultimate sovereigns, and thus they are not accountable for their actions, even when those actions abridge the fundamental liberties of the people themselves.

In 1973, noted economist of the Austrian school Murray Rothbard commented on the consolidation of power perpetrated by the Supreme Court and permitted by its sister branches of the federal government:

> It is true that, in the United States, at least, we have a constitution that imposes strict limits on some powers of government. But, as we have discovered in the past century, no constitution can interpret or enforce itself; it must be interpreted by men. And if the ultimate power to interpret a constitution is given to the government's own Supreme Court, then the inevitable tendency is for the Court to continue to place its imprimatur on ever-broader powers for its own government.

Thomas Jefferson had something to say on this subject, too. In 1804, he wrote that giving the Supreme Court power to declare unconstitutional acts of the legislature or executive "would make the judiciary a despotic branch." He noted that "nothing in the Constitution" gives the Supreme Court that right.

Finally, in his 1887 book *The Constitutional Law of the United States of America*, renowned German-American constitutional scholar Hermann Von Holst wrote, regarding the "aristocracy of the robe,"

"That our national government, in any branch of it, is beyond the reach of the people; or has any sort of 'supremacy' except a limited measure of power granted by the supreme people is an error."

In light of the declaration by the Supreme Court that the rights of the people protected by the Fourth Amendment are enjoyed only according to its good will and pleasure, the rule of law seems, once again, to be a relic of our once republican past.