10-1983

Segura v. United States

Lewis F. Powell Jr.

Flat conflict among circuits. 5G remarks Crozier is better case to Grant

men 12/09/82

Holds to consider with Crozier 82-819 (cert in Jan)

Complicated factual case involving a successful police operation against a cocaine ring.

But the DC found, & CA2 affd, that entry of Petrs apt without warrant or exigent circumstances was illegal.

After entry – 19 hrs after (due to adm. fouled up) – a warrant was obtained. The cocaine & weapons were then discovered. CA2 held them inadm. admissible. Not a "fruit" because – 9 suppose – of the warrant.

PRELIMINARY MEMORANDUM

January 7, 1983 Conference
List 2, Sheet 1

No. 82-5298-CFY	Cert to CA2 (Oakes, Meskill, Kearse) (unpub order)	Hardly a "hanging" cert.
Segura, et al. (defendants)		
v.		
United States	Federal/Criminal	Timely

SUMMARY: Petrs challenge the use of evidence seized by police who unlawfully entered and occupied an apartment 19 hours before a warrant authorizing the search and seizure was obtained. They also challenge the sufficiency of probable cause for the warrant.

FACTS AND DECISIONS BELOW: In January 1981 members of

Consider w/ Crozier, No. 82-819 — grant Crozier & hold here, or grant here on Q. 1 mm

the New York Drug Enforcement Task Force, having received information relating to cocaine dealing, began constant surveillance of petrs Segura and Colon. On February 12, at about 5:00 p.m., Task Force agents observed petrs deliver a bulky item to two other persons, Rivudalla and Parra, at a Burger King. The agents followed the latter two and at 5:30 arrested them for possession of cocaine. Rivudalla stated that he was supposed to have received a kilogram of cocaine from Segura; that Segura had given him only a half kilogram because Rivudalla was unsure he could sell a whole kilogram; and that Segura was to telephone him at 10:00 p.m. to learn whether he had sold the cocaine.

At 6:30 p.m. an agent called the Assistant U.S. Attorney for EDNY and requested permission to arrest Segura and Colon and search their apartment. The Assistant told them to attempt the arrests, but stated that a search warrant was unobtainable that evening and that the agents should merely secure the apartment without searching it.

At 7:30 p.m. three agents began surveillance of the apartment from fire stairs near the apartment door. They had no reason to believe anyone was inside: no lights were visible; agent Shea pressed his ear to the door but heard no sounds; and no one entered or left. At 10:30 p.m. the agents moved their surveillance to outside the building. At 11:15 p.m. the agents arreseted Segura as he entered the building alone. Segura denied living in the building, but the agents forcibly took him to his apartment. Shea knocked on the door. Colon answered. Shea told her that Segura had been arrested and that a search warrant was

being obtained. He and the other agents then took Segura into the apartment, without asking or receiving permission to enter.

Three other persons were inside. The agents conducted a security check to ensure that no one else was present to threaten the agents or destroy evidence. During this limited inspection the agents discoverd a triple-beam scale, several jars of lactose, and numerous small cellophane bags. Colon was arrested. Colon, Segura, and the other three were taken to DEA headquarters. Colon sought to bring her shoulder bag. An agent searched it and found a loaded .38 revolver and $2,000 cash. As they left the apartment, Segura stated: "This stuff in here is mine."

Two agents remained in the apartment until the search warrant was issued. For unknown reasons -- "administrative delay" -- the application for the warrant was not presented to a magistrate until 5 p.m. the following day. The warrant was executed at about 6 p.m. -- 19 hours after the initial entry. The search turned up large quantities of cocaine, many rounds of .38 caliber ammunition, and $50.000 cash.

At trial the DC (EDNY; Bartels, J.) granted the motion to suppress all items seized from the apartment. The DC rejected the Government's argument that the entry was justified by exigent circumstances because otherwise Colon might have destroyed the evidence before a search warrant could be obtained. The court concluded that the search warrant was valid, but that <u>all</u> the evidence seized should be suppressed because the 19-hour delay made execution of the warrant unreasonable and because, but for the unlawful entry, the evidence seized pursuant to the warrant

might not have been there 19 hours later.

A panel of the CA2 (Meskill, Kearse, Coffrin [D. Vt.]) affirmed in part and reversed in part. It agreed that the entry was unlawful, for the reason that the agents had no reasonable belief that anyone was in the apartment. The fact that Segura arrived alone did not justify a conclusion that Colon was in the apartment. And the fact that Colon answered the door in response to the knock and thereby was alerted to the arrest of Segura did not justify the entry, for this was an exigency of the agents' own making: "They had no need to drag Segura to his apartment or to knock at the door." (Pet. App. B, at 5314). The court held that the evidence discovered during the pre-warrant security check should be suppressed.

The CA2 reversed, however, the DC's holding that the evidence discovered pursuant to the search warrant must be suppressed. The court followed an earlier holding in similar circumstances, see United States v. Agapito, 620 F.2d 324 (CA2), cert. denied, 449 U.S. 834 (1980). The DC's finding that Colon and the others might have destroyed the evidence but for the unlawful entry was speculative. If the unlawful entry had not occurred, the agents likely would not have taken Segura to the apartment at all, and therefore Colon would not have been alerted to the arrest. Had Colon tried to take the items from the apartment, the agents likely would have arrested her. And it is doubtful that she would have destroyed large quantities of valuable cocaine, as well as $50,000 in cash.

Petrs were convicted on various drug counts. On appeal a

different CA2 panel (Judge Oakes replacing Judge Coffrin) affirmed in an unpublished order. Petrs' contention that the DC should have suppressed items seized pursuant to the warrant was foreclosed by Segura I. Petrs raised the additional ground that there was insufficient probable cause to support the warrant. The CA2 held that petrs had waived this argument by failing to raise it during the prior appeal, even though they had an opportunity to do so when they petitioned for rehearing of the decision in Segura I. In the alternative, the court held that the objection lacked merit. There was no evidence that certain misstatements in the affidavit were deliberate or reckless falsehoods.

CONTENTIONS: Petrs -- (1) The CA2's decision to admit the evidence conflicts with United States v. Griffin, 502 F.2d 959 (CA6 1974); United States v. Allard, 634 F.2d 1182 (CA9 1980); and two state decisions. The only way to stop the police from engaging in this kind of blatant unlawful entry "is to, in effect, punish the police for their misconduct." (Pet. at 10.) There is no logical basis for distinguishing the initial illegality of the entry and impoundment of the premises from a later seizure pursuant to a warrant.

(2) The Government's affidavit in support of the warrant contained material misrepresentations without which there would have been no probable cause. The agent knowingly lied in claiming that Rivudalla had told him that Segura had "additional quantities" of cocaine at the apartment, and in claiming that Segura had stated the same thing upon leaving the apartment after the

arrest. In fact, all Rivudalla said was that he believed Segura had the other half kilogram of cocaine at the house; all Segura said was that "The stuff in here is mine."

Resp -- (1) The decision below was correct. The illegal entry did not cause the later discovery of the evidence pursuant to the warrant. Therefore, the evidence was not a fruit of the illegal entry. The fact that persons were in the apartment is irrelevant. "The Fourth Amendment does not protect an individual's right to destroy incriminating evidence during the time it takes to procure a warrant." (Response at 5.) The CA5 agrees. United States v. Fitzharris, 633 F.2d 416 (1980), cert. denied, 451 U.S. 988 (1981).

Petrs are correct that there is a conflict. (The conflict is only between the CA9 and the CA2/CA5, however, as the CA6's decision in Griffin involved only suppression of evidence discovered in plain view during the illegal entry itself.) The Court should resolve this issue.

A petition for cert is pending in United States v. Crozier, No. 82-819, in which the CA9 adhered to Allard and required suppression of evidence in similar circumstances. Since Crozier also presents a second important issue, that case is the better one to take. The Court therefore should hold this petition for a decision in Crozier. Alternatively, this petition should be granted limited to Question #1.

(2) The probable cause issue does not warrant review. The agent merely paraphrased what he had been told. And, as the CA2 found, the claim was not adequately preserved because petrs did

not raise it on pretrial appeal.

DISCUSSION: The probable cause issue is entirely fact-bound and therefore does not merit review. Also, the CA2 found that petrs had failed to raise the issue during the first appeal.

There is a direct conflict between the CA9 and the CA2. The CA5 and CA6 decisions differ in that they deal with the use of evidence discovered in plain view during the unlawful entry, and then seized pursuant to a subsequent warrant. Since the CA2 suppressed the evidence discovered prior to execution of the warrant, that issue is not raised here. The CA5's rationale, however, is identical to that of the CA2; the CA6's reasoning is the same as the CA9's. Therefore, the CAs are in substantial conflict, and the Court should resolve the issue. what is it?

The SG recommends taking Crozier, No. 82-819, because that case present another "important" issue. Actually, Crozier presents two other issues: (1) whether the CA9 erred in holding that a DC order restraining disposition of property named by a grand jury as subject to forfeiture cannot be issued unless the Government proves at a full evidentiary hearing that it is likely to convince a jury of the defendant's guilt and the property's forfeitability beyond a reasonable doubt; (2) whether the CA9 erred in holding that the warrant used to search Crozier's residence was impermissibly vague. Presumably, the first of these two is the one the SG thinks is important, as the second seems fact-bound.

If either of the remaining two issues in Crozier is certworthy, the Court might well wish to take that case. I leave

to the pool memo writer in Crozier the question whether those issues are certworthy and whether there are any reasons for not taking that case instead of this one.

The response in Crozier is not due until January. I recommend that this petition be relisted for simultaneous consideration with Crozier, No. 82-819, and that one of these two petitions be granted on the issue of the Government's use of evidence seized following an illegal entry but pursuant to a valid warrant.

There is a response.

12/09/82 Newell Opinion in petn

January 7, 1983

Court .... Voted on................., 19...

Argued ...., 19... Assigned ...., 19... No. 82-5298

Submitted ...., 19... Announced ...., 19...

SEGURA

vs.

UNITED STATES

Discuss with Crozier 82-819

We should take out of these this & grant on Q 1. BRW likes

I'll vote to grant one of these cases

Relist to discuss with

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	POST	DIS	AFF	MERITS REV	AFF	MOTION G	D	ABSENT	NOT VOTING
Burger, Ch. J.													
Brennan, J.	✓		hold										
White, J.		✓											
Marshall, J.													
Blackmun, J.													
Powell, J.													
Rehnquist, J.													
Stevens, J.		✓											
O'Connor, J.													

Hold
Grant

PRELIMINARY MEMORANDUM

February 18, 1983 Conference
List 5, Sheet 1

No. 82-5298

SEGURA v.	Cert to CA2 (Oakes, Meskill, Kearse)	
UNITED STATES	Federal/Criminal	Timely

1. SUMMARY: This case has been relisted for consideration with United States v. Crozier, No. 82-819. I recommend granting cert on Issue #1 in this case, and holding Crozier for this case. See the preliminary memorandum in Crozier and the previous preliminary memorandum in Segura (written for the Jan. 7, 1983 Conference).

February 1, 1983 Schwab op in petn

February 18, 1983

Court .....
Argued ....., 19...
Submitted ....., 19...

Voted on ....., 19...
Assigned ....., 19...
Announced ....., 19...

No. 82-5298

SEGURA

vs.

UNITED STATES

BRW - limit to Q 1

Grant on Q 1

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	JURISDICTIONAL STATEMENT POST	JURISDICTIONAL STATEMENT DIS	JURISDICTIONAL STATEMENT AFF	MERITS REV	MERITS AFF	MOTION G	MOTION D	SUMMARY	SUMMARY DISPOSITION
Burger, Ch. J.			✓										
Brennan, J.			✓										
White, J.		✓											
Marshall, J.		✓											
Blackmun, J.		✓											
Powell, J.		✓											
Rehnquist, J.		✓											
Stevens, J.		✓											
O'Connor, J.		✓											
.....													

Research - L.F.P.

rmc 11/02/83 Excellent - bench

Bench Memorandum

No. 82-5298

Segura v. United States

Robert M. Couch November 2, 1983

Argument scheduled for Wednesday, November 9, 1983.

Question Presented

Whether evidence seized after issuance of a search warrant is admissible if the initial entry on the premises was improper.

Outline of Memorandum Page

I. Background 3

A. Facts 3

B. Decisions Below 4

II. Discussion 6

A. Petitioners' Contentions 6

B. SG's Contentions 6

C. Analysis 7

I. BACKGROUND

A. Facts

In January 1981, agents of the N.Y. City Drug Enforcement Task Force recieved a tip that drug transactions were taking place at petrs' apartment. From Jan. 26 until Feb. 12, agents kept petrs under close surveillance. On Feb. 12, agents observed a meeting between petrs and two others, Rivudalla and Parra, in a restaurant. The agents believed that the petrs, Segura and Colon, had transferred a bulky package to Rivudalla and Parra. The agents followed Rivudalla and Parra and later stopped them for questioning. The agents learned that Parra was carrying a "glassine bag of white powder" and arrested the couple. Rivudalla admitted that the bag contained a half of a kilogram of cocaine and that the cocaine had come from Segura. Rivudalla told the agents that originally he was to receive one killogram from Segura but that Rivudalla had doubted his ability to sell that much.

Later that day, the agents called the Assistant United States Attorney seeking permission to arrest petrs and search their apartment. The Attorney told them to arrest petrs but not to enter the apartment because a search warrant could not be obtained until the next day.[1] Petrs waited outside the door of the

[1]The agent in charge of the operation, Palumbo, relayed the instruction not to enter the apartment to the other agents. After Seguara's arrest, he instructed the agents to enter the apartment on the belief that Colon might be in the apartment.

apartment for several hours. During that time, they had no reason to believe that anyone was inside. They then went back to the ground floor and waited for petrs outside the apartment building. At 11:15 p.m., they arrested Segura as he entered the building alone. They handcuffed him and took him up to his apartment. The agents knocked on the apartment door. Colon answered and the agents entered the apartment without asking for or receiving permission. Once inside they discovered three other persons. They conducted a cursory search of the premises, including other rooms and closets, to look for other persons. During this search for persons they found, in plain view, a triple-beam scale, several jars of lactose, and several small cellophane bags. They arrested Colon and the three others. Before leaving the apartment, Colon asked for her handbag. The agents searched the handbag and found a loaded revolver and $2,000 cash. Nineteen hours after the initial entry, a search warrant was issued. During the interim the agents waited inside the apartment. Search of the apartment pursuant to the search warrant turned up large quantities of cocaine, some ammunition for the revolver, and $50,000 cash.

B. Decisions Below

Prior to trial, petrs moved that all the evidence seized at the apartment be excluded. The TC granted the motion and rejected the government's contention that the entry into the apartment was justified by exigent circumstances. The DC noted that there

was no facts in the record, e.g., scurrying of feet or flushing of toilets, that would have justified a belief on the part of the agents that entry to the apartment was necessary to prevent the destruction of evidence. The TC reasoned that the agents had no reason to believe that there were third parties inside the apartment until they knocked on the door, and that the agents had no reason to believe that anyone who might be in the apartment knew that Segura had been arrested. The TC held that both the evidence seized during the cursory search of the apartment and the evidence seized pursuant to the search warrant had to be excluded. The TC reasoned that the 19 hour occupation of the apartment by the agents while waiting for the search warrant had deprived Colon of her right to freely occupy and control the premises. The TC also held that the inevitable discovery doctrine was not applicable because Colon might have destroyed the evidence during the interim had she not been illegally arrested.

The government took an interlocutory appeal to the CA2. The CA2 affirmed that portion of the TC's order that excluded the evidence seized prior to the issuance of the search warrant. The CA2 reversed the TC's decision to exclude the evidence seized after issuance of the warrant. The CA2 found that the TC's conclusion that Colon might have destroyed the evidence in the 19 hour interim was too speculative. The CA2 also pointed out the inconsistency between holding an entry unlawful because of the lack of a reasonable belief that evidence would be destroyed and the suppression of other evidence because it could have been destroyed. The CA2 found support for its decision in United States

v. Agapito, 620 F.2d 324 (2d Cir.), cert. denied, 449 U.S. 834 (1980). The CA2 remanded the case for trial, petrs were convicted, and the CA2 affirmed.

II. DISCUSSION

A. Petitioners' Contentions

Petrs contend that the evidence seized after the issuance of the search warrant was tainted by the initial unlawful entry by the agents. Petrs maintain that the agents' occupation of the apartment constituted a "seizure" of the contents of the apartment--a seizure that was unlawful because it was predicated on an illegal entry. Petrs argue that the subsequent issuance of a warrant cannot be used to cure the unconstitutionality of this seizure. Petrs submit that the misconduct of the agents was so egregious that exclusion of all the evidence is necessary to deter the police from similar conduct in the future.

B. SG's Contentions

The SG argues that evidence cannot be excluded as "fruit of the poisonous tree" unless it is discovered through exploitation of the initial illegality. In this case, the initial illegality had nothing to do with the eventual discovery of the evidence. According to the SG, "the agents had probable cause to believe

that there was contraband in the apartment and, therefore, they were entitled to secure the apartment until the warrant was issued. The fact that they secured it from the inside rather than the outside is inconsequential under the circumstances. Thus, the illegal entry was not the cause of the discovery of the evidence unless one assumes that Colon would have destroyed the evidence had she not been detained. The SG submits that such an assumption is inconsistent with the TC's finding that Colon would not have been aware that the agents had arrested Segura. The SG also maintains that the conduct of the agents was not flagrant and that exclusion of the evidence in this case will not deter illegal entries in other cases.

C. Analysis

This is a very troubling case. On the one hand I have the feeling that the evidence the police seized persuant to the search warrant would have been seized regarless of whether they had occupied the apartment while waiting for the warrant. On the other hand, I have the gut reaction that the warrant requirement of the 4th Amendment should entitle the police to enter a suspect's home only after the warrant has been issued. Although statement of the problem is relatively easy, resolution of the dilemma is more difficult.

Petrs view this case as involving a seizure of property that began with the agents' unauthorized entry into the apartment and continued during the 19-hour occupation of the apartment, culmi-

SG's concession

nating with the issuance of the subpoena and the search of the premises. The SG concedes that the initial entry was unlawful and that the occupation of the apartment was, in effect, a seizure. The agents had complete dominion and control over the apartment and its contents. The SG views the occupation as only a limited seizure; similar to seizing a suitcase in an airport or securing a dwelling by posting guards outside so that no one can enter. In such cases, the SG argues, the police only must have reasonable cause to believe that contraband is in the suitcase or dwelling to justify their actions in maintaining the status quo until a warrant can be obtained. The analogy, particularly the analogy to securing the exterior of a dwelling, is inviting. The SG's point is convincing to the extent that it refutes petrs' contention that the occupation was, in and of itself a seizure of the specific evidence that eventually was discovered. "Seizure" of a dwelling by securing it is permissible where maintenance of the status quo is necessary. United States v. Jeffers, 342 U.S. 48, 52 (1951).

note

Nevertheless, the difference between securing a home from the outside and securing one from the inside is significant. The Court traditionally has viewed the home as imbued with special privacy interests. Payton v. New York, 445 U.S. 573, 590-91 (1980); United States v. Martinez-Fuerte, 428 U.S. 543, 561 (1976). Thus, although the police are entitled to sit on the front lawn of a dwelling suspected of containing contraband while awaiting a search warrant, they should not be entitled to perform the same tasks from the living room. See United States v. Jef-

fers, 342 U.S., at 52. The privacy one enjoys within one's home should not be violated until a warrant is issued.[2] United States v. Johnson, 102 S.Ct. 2579, 2589 n.13 (1982).

If you disagree with my conclusion and see nothing wrong with police occupation of the apartment while awaiting the processing of the warrant, you need not consider whether the subsequently obtained evidence must be excluded. If you agree with my conclusion, you must decide whether the exclusionary rule applies to fruits of the authorized search. This question is difficult because the evidence obtained persuant to the search warrant is not ? derived from the egregious police conduct. In most cases involving the "fruit of the poisonous tree," the evidence at issue has been gained by exploiting the illegality. The Court then must determine whether the seizure of the evidence is so attenuated from the unlawful conduct that exclusion serves no purpose, Wong Sun v. United States, 371 U.S. 471, 487-88 (1963), or if an independent source would have led to discovery of the evidence anyway, Silverthorne v. United States, 251 U.S. 385, 392 (1920). In this case, the agents discovered the challenged evidence persuant to a valid search warrant. The warrant was based on

[2]This result should not change if the police's initial entry is legal. For instance, if the agents here had knocked on the door of the apartment, Colon had answered and invited them in, the police had entered, and then arrested her, I do not think there legitimate presence on the premises would entitle them to remain until a search warrant was issued. I easily can imagine exigent circumstances that would justify occupation of the premises. For instance, if others were present in the house who were not subject to arrest, I would think the police could remain on the premises to prevent the destruction of evidence.

facts that the agents learned prior to their entry into the apartment. The agent presumably did not conduct a search of the apartment (other than the initial cursory search) before the warrant was issued. The government did not try to admit any evidence discovered by the agents during their unauthorized occupation. Thus, the case does not involve "fruit of the poisonous tree."[3] See United States v. Crews, 445 U.S. 463 (1979).

Despite the absence of a nexus between the unlawful police conduct and the obtainment of the challenged evidence, the Court may wish to apply the exclusionary rule to deter the police from future misconduct. Elkins v. United States, 364 U.S. 206, 216-217 (1960). The exclusionary rule sprang in part from the Court's perception that the most effective way of deterring police misconduct was to take away the incentive behind such conduct. Id., at 217; Brown v. Illinois, 422 U.S. 590, 599-600 (1975). In cases such as this there really is no incentive for police to occupy a dwelling suspected of containing contraband because they cannot conduct a search before the issuance of a warrant and, presumably, evidence in plain view would not be admissible because they are not properly on the premises. Nevertheless, the most effective deterrent to police occupation is the exclusion of subsequently discovered evidence. The SG contends

[3]The TC felt that the evidence was "fruit of the poisonous tree" under the logic that the evidence would have been destroyed but for the occupation of the agents. The CA2 dismissed the TC's theory, reasoning that the possibility that the evidence would have been destroyed was too speculative to support such a finding. Petrs do not challenge the CA2's conclusion.

that there are other deterrents associated with an illegal entry that make exclusion of subsequently discovered evidence unnecessary. For instance, such misconduct exposes the agents to potential civil liability under Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971).[4] I do not think that the possibility of civil liability is an effective deterrent, particularly in a case such as this where proof of the requisite mental state for liability would be so hard to prove. Moreover, damages in a civil case would be nominal or nonexistent. In reality, only the possibility of incurring imposition of the exclusionary rule would deter the police from similar misconduct in the future.

The other side of this argument is fairly obvious--the exclusionary rule is a drastic measure. If the Court decides to use it as a deterrent in this case, I imagine that the criminal defense bar will argue for it in other cases in which the challenged evidence will not be technically the fruit of the poisonous tree. In short, the case boils down to whether you feel that the occupation of dwellings while waiting for search warrants is sufficiently egregious to warrant application of the exclusionary

[4]The SG also argues that the police will be deterred from improperly occupying a dwelling because they run the risk of immunizing any evidence that may be found in plain view. As an example of this possibility, the SG points to the contraband that the agents discovered during their initial cursory search of petrs' apartment. That evidence was excluded from trial and the SG does not challenge that ruling here. The SG notes, and I agree, that there is a strong argument that that evidence could have been admitted under the independent source or inevitable discovery doctrines.

rule.[5] An important consideration will be whether you anticipate that failure to apply the exclusionary rule will encourage the police to make a regular practice of securing a dwelling from the inside rather than the outside. The SG contends that this situation will arise only rarely in the future. I tend to think that, if given the option, the police would rather wait for a search warrant from inside a dwelling, if for no other reason than convenience.[6] Nevertheless, if I were in your shoes (which, happily, I am not) I would not extend the exclusionary rule any farther than it has already been extended.

III. CONCLUSION

The agents did a no-no. The exclusionary rule does not apply

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[5]Both parties devote substantial portions of their briefs to debating the degree of misconduct of the agents in this case. Petrs point out that the agents ignored the instructions of the U.S. Attorney's office by unlawfully entering the apartment, and then took an inordinate amount of time to get a warrant. The SG urges that the question of whether exigent circumstances required entry into the apartment was a close one and that the agents obtained a warrant as soon as they could. To me the tell-tale fact of this case is that, once they were inside the apartment and certain that there were no other occupants, the agents chose to secure it from the inside rather than the outside. This fact seems to indicate that the police prefer internal control over an apartment to external control.

[6]In some situations, the police might be tempted to begin their search before issuance of the warrant, particularly if the evidence they hope to find might become stale in the interim. Because the police are alone in the dwelling, a premature search would be difficult to discover.

under traditionally 4th Amendment theories because the agents did not exploit the illegality to obtain the challenged evidence. The Court may wish to apply the exclusionary rule anyway because it is probably the only effective way of deterring such conduct in the future. The exclusionary rule is too drastic a means of controlling such behavior.

Returned to Sally Smith

file

November 7, 1983

SEGURA GINA-POW

82-5298 Segura v. United States) first case

MEMO TO FILE (The facts)

This is merely to identify what are the principle points - at least for me - in this interesting Fourth Amendment case.

New York City Police had probable cause to arrest petitioners for possession and dealing in cocaine, as they had seen them deliver a package to two other persons. The agents followed the recipients of the package and arrested them, the package containing - as believed - cocaine. These arrestees told the agent that the cocaine had come from petitioners.

The agents entered petitioners apartment without a search warrant, after having arrested Segura as he entered the building alone. The other petitioner, a woman named Colon, was in the apartment with three other persons. During the course of a search for people, certain evidence of drug dealing was observed in plain view.

Although the agents requested a search warrant, it was not delivered for nineteen hours - during which time the agents remained inside the apartment. A search

pursuant to the warrant turned up large quantities of cocaine and $50,000 in cash.

THE FOURTH AMENDMENT ISSUE

The SG concedes that the warrant less entry into the apartment was unlawful, and that its occupation for nineteen hours was a seizure. They had complete dominion and control over the apartment during that time.

The SG analogies this kind of "seizure" to the staking out or securing of a residence to maintain the status quo until the warrant can be obtained. United States v. Jeffers, 342 U.S. 48, 52.

The SG also concedes that the evidence found in "plain view" was a product of the illegal entry, and was properly excluded. This case therefore involves only the admissibility of the cocaine and money discovered in the thorough search pursuant to a warrant.

I do not agree that the warrantless entry and occupation of a private residence is the equilivant of staking it out to preserve the status quo. This leaves the question whether the "fruit of the poisoneous tree" doctrine applies, or whether the warrant is an intervening an independent event.

But the facts that prompted the agents to request a warrant were learned prior to their entry into the apartment. What they did find after entering was corroborating. ~~But until~~ Then, the search pursuant to the warrant ~~there~~ was based on probable cause to believe that cocaine was present but it had not been seized or even located. Thus, strickly speaking, the case is not a "fruits" case. See United States v. Crews, 445 U.S. 463.

EXCLUSIONARY RULE

Petitioners argue strongly that policies underlying the Exlusionary Rule should prevent police officers from acting as they did in this case. One can agree that the warrantless occupation of a private home for nineteen hours is outrageous. Yet, the public pays a high price for the application of the Exlusionary Rule, and here the evidence at issue was seized pursuant to a lawful warrant - one based on probable cause in possession of the police before the entry.

L.F.P., JR.

Rob

82-5298 SEGURA v. UNITED STATES

Argued 11/9/83

Fabrecant (Petr)

Conceden in effect that case turns on fact that police secured apt inside rather than outside.
"Result would be same"
"Warrant rested on independent ground" (concession).

Frey (SG)

Agree no exigent circumstances & therefore that entry was illegal.
E/R don't operate in the abstract
Entry constituted a search - not a seizure.
No finding that ev. would have been destroyed. Also it is a crime to destroy ev. Can assume ev. would have been destroyed.

Deterrence of police misconduct occurred here (if it really does) by suppression of the ev. they seized prior to issuance of warrant

Segura 11/9

1. No issue as to probable cause to support the search warrant?

(CA 2 said Petr. failed to raise it & waived. Also mentions)

2. Probable cause existed before the illegal entry

Def. case if this were not so.

3. Asst U S Atty had instructed police to secure the apt. but not to search until warrant was obtained

4. Officers could have secured the Apt. by remaining outside & preventing any one to enter — until warrant was obtained.

5. The pre-existing probable cause was an independent source

Affirm 8-1

No. 82-5293 Segura v. United States Conf. 11/11/83

The Chief Justice Affirm

No dif. whether warrant came back in one hour or 19 hours.

Police could have secured apt from outside - but this is irrelevant

"fruits doctrine" unavailable: no taint.

No "constructive seizure".

Guts of case is whether police had "independent source". Wong Sun

Justice Brennan Rev

Mincey v Arizona: police may secure from outside. Police have did not do this. The illegal entry & constituted a "seizure" of the apt. & all of its contents. An outside "seizure" is OK when & police merely secure from outside.

All of us - whether or not in plain view - was seized.

If not seized in this way, we would have been seized.

Justice White Affirm

Agree with C.J.

Justice Marshall Aff'm

Agree with CJ !

(may be first time TM agreed with CJ on a 4th Amend. issue - cheers !)

Justice Blackmun Aff'm.

Justice Powell Aff'm

See my notes

WQB assumes ev. would have been removed if apt. had not been "razed". This is mere speculation & we should let "assume".

"Segment" - as WQB described it - did not extend to ev. at issue.

Justice Rehnquist Aff'm

Justice Stevens Aff'm

Difficult case.

Issue is whether ~~[redacted]~~ def. at whose was seized as result of illegal entry or on basis of warrant.

Would ev. have been there if police had not seized apt.? Probably not because police could have protected it by remaining outside.

Justice O'Connor Aff'm

A per se rule OK when evidence is product of warrant & not the apt. searched.

Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated: DEC 30 1983

Recirculated: ____

Received
Jan 1, '84

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5298

ANDRES SEGURA AND LUZ MARINA COLON, PETITIONERS v. UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[January —, 1984]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether the Fourth Amendment requires suppression of evidence seized in a private home pursuant to a valid search warrant because the law enforcement officers had illegally entered the home prior to issuance of the warrant when they had not seized or observed the contraband now sought to be suppressed.

I

In January 1981, the New York Drug Enforcement Task Force received information indicating that petitioners Andres Segura and Luz Marina Colon probably were trafficking in cocaine from their New York apartment. Acting on this information, Task Force agents maintained constant surveillance over petitioners until their arrest on February 12, 1981. On February 9, agents observed a meeting between Segura and Enrique Rivudalla Vidal, during which—as it later developed—the two discussed the possible sale of cocaine by Segura to Rivudalla. Three days later, Segura telephoned Rivudalla and agreed to provide him with one-half kilogram of cocaine. The two agreed that the delivery would be made at 5:00 p. m. that day at a fast-food restaurant in Queens, New York. Rivudalla and his fiancée, Esther Parra, arrived at the restaurant at 5:00 p. m., as agreed.

While Segura and Rivudalla visited inside the restaurant, agents observed Luz Marina Colon effect the delivery of a bulky package to Parra, who had remained in the car in the restaurant parking lot. A short time after the delivery of the package, Rivudalla and Parra left the restaurant and proceeded to their apartment, followed by Task Force agents in two cars. The agents stopped the couple as they were about to enter Rivudalla's apartment. One of the agents asked Parra if she had a gun in the brown paper bag she was carrying. Parra responded that she did not, and she tendered the bag in the direction of the agent. The agent saw in the bag a glassine envelope of white powder which was later determined to be cocaine. Rivudalla and Parra were immediately arrested.

Rivudalla and Parra were advised of their constitutional rights; thereafter, Rivudalla agreed to cooperate with the law enforcement agents. He admitted that he had purchased the cocaine from Segura and he confirmed that Colon had made the delivery at the fast-food restaurant earlier that day, as the agents had observed. Rivudalla informed the agents that Segura was to call him at approximately 10:00 p. m. that evening to learn if Rivudalla had sold the cocaine. If he had, Segura was to deliver additional cocaine.

Between 6:30 and 7:00 p. m., Task Force agents sought and received authorization from an Assistant United States Attorney to arrest Segura and Colon.[1] The agents were advised by the Assistant United States Attorney that a search warrant for petitioners' apartment probably could not be obtained until the following day[1] but that the agents should secure the premises to prevent the destruction of evidence.

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[1]There are nine Magistrates in the Southern District, and four Magistrates in the Eastern District. Just why no magistrate was reached between 6:30 p. m. February 12 and 9:04 p. m. February 13 is not explained. We commend this situation to the Circuit Judicial Council for its consideration.

At about 7:30 p. m., the agents arrived at petitioners' apartment. The apartment was not lighted and there were no sounds from within. The agents began their surveillance from the fire stairs near petitioners' apartment. After approximately three hours, during which no one entered or left the apartment, however, the agents reestablished the surveillance from outside the apartment building.

At 11:15 p. m., Segura, alone, entered the apartment building. He was immediately arrested in the lobby by agents and forcibly taken to his third floor apartment. He claimed he did not reside in the building. The agents knocked on the apartment door and, when a woman opened the door, they entered with Segura, without requesting or receiving permission. The woman was later identified as Luz Colon. There were three persons in the living room of the apartment in addition to Colon. Those present were informed by the agents that Segura was under arrest, and that a search warrant for the apartment was being obtained.

Following this brief exchange in the living room, the agents conducted a security check of the entire apartment to ensure that no one else was there who might pose a threat to their safety or destroy evidence. In the process, the agents observed, in a bedroom in plain view, a triple beam scale, jars of lactose, and numerous small cellophane bags. None of these items were disturbed by the agents. Following this limited security check, Luz Colon was arrested. In the search incident to her arrest, agents found in her purse a loaded revolver and more than $2000 in cash. Colon, Segura, and the other occupants of the apartment were taken to Drug Enforcement Administration headquarters.

Two Task Force agents remained in petitioners' apartment awaiting the warrant. Because of "administrative delay" the warrant application was not presented to the magistrate until 5:00 p. m. the next day. The warrant issued and was executed at approximately 6:00 p. m., some 19 hours after the initial entry into the apartment. In the search pursuant

to the warrant that followed, agents discovered almost three pounds of cocaine, 18 rounds of .38 caliber ammunition fitting the revolver found in Luz Colon's possession at the time of her arrest, more than $50,000 cash, and records of narcotics transactions. These items were seized, together with those observed during the security check the previous night.

Before trial in the United States District Court in the Eastern District of New York, petitioners moved to suppress all of the evidence seized from the apartment—the items discovered in plain view during the initial security check and those found during the subsequent warrant search.* After a full evidentiary hearing, the District Court granted petitioners' motion. *United States* v. *Segura*, No. 81–CR–80(S) (E. D. N. Y. May 15, 1981). The court ruled that there were no exigent circumstances justifying the initial entry into the apartment. Accordingly, it held that the entry, the arrest of Colon and search incident to her arrest, and the effective seizure of the drug paraphernalia in plain view were illegal. The court ordered the "fruits" of these searches suppressed.

The District Court further concluded that the warrant later issued was supported by information sufficient to establish probable cause. However, in reliance upon *United States* v. *Griffin*, 502 F. 2d 959 (CA6), *cert. denied*, 419 U. S. 1050 (1974), the court held that the evidence seized upon execution of the warrant was also to be suppressed as "fruit" of the initial illegal entry. The court emphasized that the evidence seized during the warrant search would not inevitably have been discovered since Colon might have destroyed it

*Rivadalla and Parra were indicted with petitioners and were charged with one count of possession with intent to distribute one-half kilogram of cocaine on one occasion and one kilogram on another occasion. Both pled guilty to the charges. They moved in the District Court to suppress the one-half kilogram of cocaine found on Parra's person at the time of their arrests on the ground that the Task Force agents had stopped them in violation of *Terry* v. *Ohio*, 392 U. S. 1 (1968). The court denied the motion. Rivadalla and Parra absconded prior to sentencing by the District Court.

had the agents not illegally entered the apartment and excluded her from the premises.

The government appealed from the District Court's order as permitted by 18 U. S. C. §3731 (1976). The Court of Appeals for the Second Circuit affirmed in part and reversed in part. *United States* v. *Segura*, 663 F. 2d 411 (1981). It affirmed that portion of the District Court opinion holding that the initial warrantless entry was not justified by exigent circumstances, and that the evidence discovered in plain view on the initial entry must be suppressed.[1] The court rejected the argument by the United States that the evidence in plain view should not be excluded because it was not "seized" until after the search warrant was secured. Relying upon its decision in *United States* v. *Agapito*, 620 F. 2d 324 (CA2), cert. *denied*, 449 U. S. 834 (1980), the Court of Appeals reversed that portion of the District Court holding requiring suppression of the evidence seized during the warrant search. The court described as "prudentially unsound" the District Court's decision to suppress this evidence in part because it might otherwise have been destroyed by petitioner Colon.

Petitioners subsequently were tried before a jury in the District Court and convicted of conspiracy to distribute cocaine, in violation of 21 U. S. C. §846 (1976), and of distributing and possessing with intent to distribute cocaine, in violation of 21 U. S. C. §841(a)(1) (1976). Thereafter, the Second Circuit affirmed, rejecting claims by petitioners that the

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[1] Both the District Court and the Court of Appeals held that the initial entry into the apartment was not justified by exigent circumstances, and thus that the items discovered in plain view during the limited security check had to be suppressed to effect the purposes of the Fourth Amendment. The United States, although it does not concede the correctness of this holding, does not contest it in this Court. Because the government has decided not to press its argument that exigent circumstances existed, we need not and do not address this aspect of the Court of Appeals decision. We are concerned only with whether the Court of Appeals properly determined that the Fourth Amendment did not require suppression of the evidence seized during execution of the valid warrant.

search warrant was procured through material misrepresentations and that the evidence at trial was insufficient as a matter of law to support their convictions. *United States* v. *Segura*, Nos. 82–1062, 82–1064 (June 29, 1982). We granted certiorari, —— U. S. —— (1983), and we affirm.

II

A

As we have noted, the Court of Appeals agreed with the District Court that the initial entry on the premises without a warrant was not justified by exigent circumstances. No review of that aspect of the case was sought and no issue concerning items observed or seized on the initial entry is before the Court. The only issue now before the Court is whether contraband first discovered and seized when found in a search under a valid warrant should be suppressed.

The Suppression or Exclusionary Rule is a judicially prescribed remedial measure and as "with any remedial device, the application of the rule has been restricted to those areas where its remedial objectives are thought most efficaciously served." *United States* v. *Calandra*, 414 U. S. 338, 348 (1974). Under this Court's holdings, the rule reaches not only primary evidence discovered during an illegal search itself, *Mapp* v. *Ohio*, 367 U. S. 643 (1961); *Weeks* v. *United States*, 232 U. S. 383 (1914); but also evidence later discovered and characterized as "fruit of the poisonous tree." *Nardone* v. *United States*, 308 U. S. 338, 341 (1939). It "extends as well to the indirect as the direct products" of unconstitutional conduct. *Wong Sun* v. *United States*, 371 U. S. 471, 484 (1963).

The question to be resolved when a defendant claims that evidence is "tainted" or is "fruit" of a prior illegality is whether the challenged evidence was "'come at by exploitation of [the initial] illegality or instead by means sufficiently distinguishable to be purged of the primary taint.'" *Id.*, at 488 (citation omitted). Exclusion of evidence is not appro-

priate if the nexus between the illegal conduct and the discovery and seizure of the evidence is "so attenuated as to dissipate the taint," *Nardone v. United States*, *supra*, 308 U. S., at 341, or if police had an "independent source" for the evidence. *Silverthorne Lumber Co. v. United States*, 251 U. S. 385, 392 (1920). In other words, suppression is required only if the challenged evidence can be seen as deriving from the illegality. *United States v. Crews*, 445 U. S. 463 (1980).

Petitioners' principal argument is that the contents of the apartment, and thus the evidence now in question, was constructively "seized" when the agents entered and remained on the premises after the lawful occupants were taken into custody; it is contended that because the contents were then under the control of the agents and no one would have been permitted to remove them from the premises, a seizure took place. We cannot accept this claim of "constructive seizure." Seizure, in this context, is forcibly taking possession of tangible property; here the property that was observed during the initial unlawful entry was excluded by both courts. In this Court the challenge of petitioners is directed at the evidence first discovered and seized when the warrant was executed.

occupation was to prevent destruction of evidence

Here the occupation was not for the purpose of a comprehensive inspection of the premises to discover contraband but to prevent the destruction or removal of incriminating evidence. The agents did not know that the evidence now in question was within the apartment until it was discovered and seized under the warrant. By the time the agents returned with the valid warrant, the objective of preventing destruction or removal of evidence was accomplished. Only at that point was a search conducted and an actual seizure effected.

Petitioners draw support for their contention that the initial entry and security of the apartment constituted a seizure of its contents from the Ninth Circuit Court of Appeals decisions in *United States v. Lomas*, 706 F. 2d 886 (1983) and *United States v. Allard*, 634 F. 2d 1182 (1980). In both of

those cases it was held that an illegal entry into and occupation of a hotel room to secure the premises pending issuance of a warrant was a "seizure" of all the contents of the room within the meaning of the Fourth Amendment. We reject this reading of the Fourth Amendment, and in so doing we embrace the contrary holdings of the majority of federal courts which have addressed the question that a mere securing of premises does not constitute a seizure of all items therein. See *e. g.*, *United States* v. *Beck*, 662 F. 2d 527 (CA8 1981); *United States* v. *Pitcharris*, 633 F. 2d 416 (CA5 1980), *cert. denied*, 451 U. S. 988 (1981); *United States* v. *Korman*, 614 F. 2d 541 (CA6), *cert. denied*, 446 U. S. 952 (1980); *United States* v. *Edwards*, 602 F. 2d 458 (CA1 1979).

Securing of premises not a seizure

B

Petitioners argue alternatively that even if the evidence was not suppressible as primary evidence "constructively seized" by reason of the illegal entry and occupation of the premises, it should have been excluded as "fruit" of the illegal entry. Resolution of that claim depends on whether the agents had independent information, apart from the initial illegal entry and 19 hour occupation, on which a valid warrant could have issued. In *Silverthorne*, *supra*, at 392 (emphasis added), the Court settled that issue.

> "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. Of course this does not mean that the facts thus obtained become sacred and inaccessible. *If knowledge of them is gained from an independent source they may be proved like any others*, but the knowledge gained by the Government's own wrong cannot be used by it in the way proposed."

Independent source

Here, knowledge of the presence of drugs in petitioners' apartment was gained from an independent source, *i. e.*, the statements of Rivudalla and Parra made to agents prior to

any entry of the apartment. The record reveals that agents had maintained surveillance over petitioners for a number of weeks, and had observed petitioners make what appeared to be sales of cocaine on several occasions. Aside from the extended surveillance, Rivudalla had told agents after his arrest that petitioners had supplied him with cocaine earlier that day and that he had not purchased all of the cocaine that had been offered by Segura. It was that information on which a warrant was issued, not anything discovered during the initial entry and occupation. The information leading to the evidence now challenged was not in any sense derived from or related to the illegal entry of the premises. In short what was discovered and seized under the warrant had no nexus with the initial entry or the 19 hour occupation. The illegality of the initial entry therefore is irrelevant under *Wong Sun*, *supra*, and *Silverthorne*, *supra*.

As we have noted, none of the evidence now challenged was discovered or observed by the agents during the initial entry or security check; nor did they obtain any information during that entry and search that contributed to the later discovery of the evidence now challenged. Until the warrant was executed, agents had no knowledge that the evidence in question was on the premises.

The evidence now challenged was discovered during the valid warrant search; it was produced by that search, not the prior illegal entry. Had police not entered the apartment and performed the limited security check, and instead conducted an external stakeout to prevent anyone from entering and destroying evidence, the contraband now challenged would have been discovered and seized precisely as it was here. There was no exploitation of the illegal entry by the agents; they did not make a full search of the apartment, but simply awaited issuance of the warrant. The evidence held admissible by the Court of Appeals clearly was not tainted by the initial entry and 19-hour occupation. We agree with the Court of Appeals that it was error for the District Court "to

penalize the prosecution for the unlawful entry simply on the basis that persons were in the apartment who might otherwise have destroyed the evidence, because we find such a basis prudentially unsound."

Petitioners make much of the 19 hour delay in securing the warrant and the agents' physical occupation of the apartment during that time. Of course, the 19 hour occupation violated privacy rights but the question is whether that occupation had any impact on what evidence was found later under the warrant search. The extraordinary delay on the warrant is unexplained, but it is also wholly irrelevant to the legal issues.

On this record, the Court of Appeals correctly held that there was an independent source for the discovery of the evidence now challenged. *Silverthorne*, *supra*; *Wong-sun*, *supra*.

Affirmed.

January 2, 1984

82-5298 Segura v. United States

Dear Chief:

Please join me.

Sincerely,

The Chief Justice

lfp/gs

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 3, 1984

Re: 82-5298 - Segura v. United States

Dear Chief:

Because I find the case somewhat more difficult than your opinion indicates, I will be writing separately.

Respectfully,

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 3, 1984

Re: No. 82-5298 Segura v. United States

Dear Chief:

Please join me.

Sincerely,

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 3, 1984

Re: 82-5298 -

Segura and Colon v. United States

Dear Chief,

Please join me.

Sincerely,

Byron

The Chief Justice

Copies to the Conference

cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 4, 1984

No. 82-5298
Segura and Colon v. United States

Dear Chief,

I'll wait on John's writing in the above.

Sincerely,

Bill

The Chief Justice
Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 13, 1984

Re: No. 82-5298-Segura and Colon v. U.S.

Dear John:

Please join me in your dissent.

Sincerely,

T. M.
T.M.

Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 13, 1984

No. 82-5298

Segura v. United States

Dear John,

Please join me in your dissent in the above.

Sincerely,

Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 21, 1984

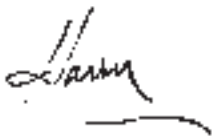
Re: No. 82-5298 - Segura v. United States

Dear Chief:

This case gives me great difficulty, for I cannot easily set aside the 19-hour occupation of the apartment. Yet, it leaves me with a feeling of discomfort, for, as is so often the case, these petitioners are obviously guilty of substantial offenses under the drug laws.

I now think, however, that John's analysis is the correct one and that we should vacate and remand the case for further proceedings in the District Court. I therefore am joining John's opinion.

Sincerely,



The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 21, 1984

Re: No. 82-5298 - Segura v. United States

Dear John:

Please join me in your dissent.

Sincerely,

Harry

Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 16, 1984

PERSONAL

MEMORANDUM TO: Justice White
Justice Powell
Justice Rehnquist
Justice O'Connor

RE: 82-5298 - Segura v. United States

I have wrestled with this case for several weeks now. I take the unusual step of attaching two drafts, one of which (A) is close to the first draft originally circulated.

Draft A would hold that we need not decide whether there was a seizure of the evidence when agents entered and later secured the apartment, since there was a wholly independent source for its discovery. In other words, "A" holds that whether there was a seizure of the evidence when the agents entered and secured the apartment is simply irrelevant because they had an independent source for the evidence based on information known before the entry.

Draft B is essentially the theory advanced by the Solicitor General and perhaps preferred by Sandra, with whom I have conferred. Draft "B" assumes that there was a seizure of the evidence when the agents entered the apartment, and goes on to hold that the seizure was not unreasonable, primarily because the occupants of the apartment were in the custody of the officers throughout the duration of the seizure. Draft "B" would also reject petitioners' alternative argument that the evidence should have been suppressed as derivative evidence, on the basis that the warrant was issued on information known to the agents before they entered and that this constitutes an independent source for the evidence now challenged.

I tend to prefer Draft "A" because first, I think that the inquiry into the independent source is all that

is necessary and second, it diffuses the dissenting discussion focussing on the "19-hour occupation." But there is also merit to Draft "B" which is limited in six or seven different ways and has the benefit of giving us maximum flexibility in this sensitive area in future cases. I am willing to abide by the wishes of "four."

Regards,

Justice White
Justice Powell
Justice Rehnquist
Justice O'Connor

lfp/rmc May 17, 1984

SEGMEM ROBERT-POW

MEMORANDUM

To: Justice Powell

From: Rob

Re: Segura v. United States

Very briefly, the Chief's three drafts can be summarized as follows:

First Draft:

-the initial entry did not costitute a seizure of the contents of the apartment

-if the eventual seizure of the evidence was in any way derived from the illegal entry, the taint is cured by the "independent source" rule.

Draft A:

-the question whether the intitial entry was a "seizure" is irrelevant because the evidence was seized again later with a valid warrant

-the evidence finally seized was not "derived" from any illegality; the initial entry and the eventual search were two separate and distinct events; probable cause for the search came from a source independent of any police behavior

Draft B: B

-assuming, arguendo, that the initial entry was a seizure, it was not unreasonable under the totality of the circumstances

-the actually seized evidence was not "fruit of the poisonous tree" because the police had an independent source for the search warrant

As you can see the reasoning in each of the drafts is different. I still prefer the the First Draft. It seems the most straightforward, and most consistent with the holdings of a majority of the courts of appeals. Unfortunately, it appears that the Chief was unable to convince Justice O'Connor.

If I had to choose between Draft A and Draft B, I think I would go with Draft B. In Draft A, the Chief applies the independant source rule without deciding whether the evidence is primary or derivative. (If the initial entry was a "constructive seizure" of the contents of the apartment, the evidence is primary.) Until now, the independent source rule has applied only to derivative evidence. (The "inevitable discovery" rule applies to primary evidence.) The implication of Draft A is that the police can seize evidence without a warrant and hold it as long as necessary to get probable cause from an independent source. The two stages are viewed independently. This seems to work a significant change in the law. Also, the egregiousness of the police conduct in seizing the evidence is irrelevant under the reasoning in this draft.

Draft B addresses the seizure question without deciding that a seizure has actually taken place. This establishes that the evidence is derivative. Also, the Chief has left the door open in future cases to find police occupations unreasonable under different circumstances. (But see, the holding sentence on page 13). This approach seems analytically preferable to the reasoning in Draft A.

Regardless of the draft you decide to go with, I suggest that you leave yourself the option of making suggestions for changes. All of the drafts seem fairly "rough" and may need some fine tuning.

May 18, 1984

82-5298 Segura v. United States

Dear Chief:

This is in reply to your memorandum of May 16, requesting our choice between Drafts A and B as circulated.

I joined your First Draft, and it remains my first choice. Draft A, is a substantial revision of your first draft. See pp. 8-12.

If our choices now are between Drafts A and B, I incline toward Draft B. As you noted in your memorandum, it is a satisfactory approach. It is important, of course, to have a Court. I have no trouble with either your First Draft or Draft B. If four other Justices prefer Draft A, I will take a second look at it in light of the changes you have made.

Sincerely,

The Chief Justice

lfp/ss

cc: Justices White, Rehnquist and O'Connor

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 18, 1984

Re: No. 82-5298 Segura v. United States

Dear Chief:

Like you, I prefer Draft "A" in preference to Draft "B." I think Draft "A" is closer to the position taken by the Conference majority, and re-states and applies the "independent source" doctrine in a useful way. Draft "B" simply holds that a particular seizure is reasonable on its facts--indeed, the "holding" is so limited by the language in the second paragraph in Draft "B" that if that were to be the prevailing opinion one would have to wonder why we granted certiorari in the case.

If you decide to go with version "A" I hope you will consider incorporating footnote 6 from version "B" into it, since I think that footnote makes a useful point. If version "B" is preferred by others, I hope at the very least you will drop footnote 7 from it, because that footnote introduces unnecessary speculation into the opinion and highlights the very limited reach of the Court's decision.

Sincerely,

The Chief Justice

cc: Justice White
Justice Powell
Justice O'Connor

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 16, 1984

82-5298 Segura v. United States

Dear Chief:

This is in reply to your memorandum of May 16, requesting our choice between Drafts A and B as circulated.

I joined your First Draft, and it remains my first choice. Draft A, is a substantial revision of your first draft. See pp. 8-12.

If our choices now are between Drafts A and B, I incline toward Draft B. As you noted in your memorandum, it is a satisfactory approach. It is important, of course, to have a Court. I have no trouble with either your First Draft or Draft B. If four other Justices prefer Draft A, I will take a second look at it in light of the changes you have made.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: Justices White, Rehnquist and O'Connor

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 21, 1984

Re: 82-5298 - Segura v. United States

Dear Chief,

I would prefer version "A", but could join "B" with some changes. With respect to "A", however, it seems to me that your discussion of Chambers, Chadwick, Sanders, Place, Munsey and Rawlings on pages 10 to 12 of "B", is very relevant to your rejection in "A" of the notion that the warranted seizure was a fruit of a prior illegality because the evidence might have been destroyed or removed. That discussion suggests that the destruction argument is legally, as well as prudentially, unsound. But I could join "A" in its present form.

Sincerely,

The Chief Justice

cc: Justice Powell
Justice Rehnquist
Justice O'Connor

cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 21, 1984

No. 82-5298 Segura v. United States

Dear Chief,

Like Lewis, I prefer your Draft B. It is more carefully tailored to the facts of this case and leaves more room to consider more egregious facts in the future if the need arises. I tend to agree with Bill that FN 7 is not necessary.

I also will certainly take a closer look at Draft A if you cannot get 5 votes for B.

Sincerely,

Sandra

The Chief Justice

cc: Justice White
Justice Powell
Justice Rehnquist

[RE MAY 29, 1984]

Discuss with BRW

CHANGES AS MARKED 13-15

STYLISTIC CHANGES

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated: _____

Recirculated: MAY 29 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5268

ANDRES SEGURA AND LUZ MARINA COLON, PETITIONERS v. UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[May ---, 1984]

THE CHIEF JUSTICE delivered the opinion of the Court.

We granted certiorari to decide whether, because of an earlier illegal entry, the Fourth Amendment requires suppression of evidence seized later from a private residence pursuant to a valid search warrant which was issued on information obtained by the police before the entry into the residence.

I

Resolution of this issue requires us to consider two separate questions: first, whether the entry and internal securing of the premises constituted an impermissible seizure of all the contents of the apartment, seen and unseen; second, whether the evidence first discovered during the search of the apartment pursuant to a valid warrant issued the day after the entry should have been suppressed as fruit of the illegal entry. Our disposition of both questions is carefully limited.

The Court of Appeals affirmed the District Courts' holding that there were no exigent circumstances to justify the warrantless entry into petitioners' apartment. That issue is not before us, and we have no reason to question the courts' holding that that search was illegal. The ensuing interference with petitioners' possessory interests in their apartment, however, is another matter. On this first question, we conclude that, assuming that there was a seizure of all the contents of the petitioners' apartment when agents secured the

premises from within, that seizure did not violate the Fourth Amendment. Specifically, we hold that where officers, having probable cause, enter premises, and with probable cause, arrest the occupants who have legitimate possessory interests in its contents and take them into custody and, for no more than the period here involved, secure the premises from within to preserve the *status quo* while others, in good faith, are in the process of obtaining a warrant, they do not violate the Fourth Amendment's proscription against unreasonable seizures.[1] The illegality of the initial entry, as we will show, has no bearing on the second question.

The resolution of this second question requires that we determine whether the initial entry tainted the discovery of the evidence now challenged. On this issue, we hold that the evidence discovered during the subsequent search of the apartment the following day pursuant to the valid search warrant issued wholly on information known to the officers before the entry into the apartment need not have been suppressed as "fruit" of the illegal entry because the warrant and the information on which it was based were unrelated to the entry and therefore constituted an independent source for the evidence under *Silverthorne Lumber Co. v. United States*, 251 U. S. 385 (1920).

II

In January 1981, the New York Drug Enforcement Task Force received information indicating that petitioners Andres Segura and Luz Marina Colon probably were trafficking in cocaine from their New York apartment. Acting on this information, Task Force agents maintained continuing surveillance over petitioners until their arrest on February 12, 1981. On February 9, agents observed a meeting between Segura and Enrique Rivudalla-Vidal, during which, as it later developed, the two discussed the possible sale of co-

[1] See Griswold, Criminal Procedure, 1969—Is It A Means Or An End?, 29 Md. L. Rev. 307, 317 (1969); see generally 2W. LaFave, Search and Seizure 346.5 (1978).

caine by Segura to Rivudalla. Three days later, February 12, Segura telephoned Rivudalla and agreed to provide him with cocaine. The two agreed that the delivery would be made at 5:00 p. m. that day at a designated fast-food restaurant in Queens, New York. Rivudalla and one Esther Parra, arrived at the restaurant at 5:00 p. m., as agreed. While Segura and Rivudalla visited inside the restaurant, agents observed Luz Marina Colon deliver a bulky package to Parra, who had remained in Rivudalla's car in the restaurant parking lot. A short time after the delivery of the package, Rivudalla and Parra left the restaurant and proceeded to their apartment. Task Force agents followed. The agents stopped the couple as they were about to enter Rivudalla's apartment. Parra was found to possess cocaine; both Rivudalla and Parra were immediately arrested.

After Rivudalla and Parra were advised of their constitutional rights, Rivudalla agreed to cooperate with the agents. He admitted that he had purchased the cocaine from Segura and he confirmed that Colon had made the delivery at the fast-food restaurant earlier that day, as the agents had observed. Rivudalla informed the agents that Segura was to call him at approximately 10:00 p. m. that evening to learn if Rivudalla had sold the cocaine, in which case Segura was to deliver additional cocaine.

Between 6:30 and 7:00 p. m., the same day, Task Force agents sought and received authorization from an Assistant United States Attorney to arrest Segura and Colon. The agents were advised by the Assistant United States Attorney that because of the lateness of the hour, a search warrant for petitioners' apartment probably could not be obtained until the following day, but that the agents should proceed to secure the premises to prevent the destruction of evidence.

At about 7:30 p. m., the agents arrived at petitioners' apartment and established external surveillance. At 11:15 p. m., Segura, alone, entered the lobby of the apartment building where he was immediately arrested by agents. He

first claimed he did not reside in the building. The agents took him to his third floor apartment, and when they knocked on the apartment door, a woman later identified as Luz Colon appeared; the agents then entered with Segura, without requesting or receiving permission. There were three persons in the living room of the apartment in addition to Colon. Those present were informed by the agents that Segura was under arrest and that a search warrant for the apartment was being obtained.

Following this brief exchange in the living room, the agents conducted a limited security check of the apartment to ensure that no one else was there who might pose a threat to their safety or destroy evidence. In the process, the agents observed, in a bedroom in plain view, a triple-beam scale, jars of lactose, and numerous small cellophane bags, all accouterments of drug trafficking. None of these items was disturbed by the agents. After this limited security check, Luz Colon was arrested. In the search incident to her arrest, agents found in her purse a loaded revolver and more than $2000 in cash. Colon, Segura, and the other occupants of the apartment were taken to Drug Enforcement Administration headquarters.

Two Task Force agents remained in petitioners' apartment awaiting the warrant. Because of what is characterized as "administrative delay" the warrant application was not presented to the magistrate until 5:00 p. m. the next day. The warrant was issued and the search was performed at approximately 6:00 p. m., some 19 hours after the agents' initial entry into the apartment. In the search pursuant to the warrant, agents discovered almost three pounds of cocaine, 18 rounds of .38 caliber ammunition fitting the revolver agents had found in Luz Colon's possession at the time of her arrest, more than $50,000 cash, and records of narcotics transactions. Agents seized these items, together with those observed during the security check the previous night.

Before trial in the United States District Court in the Eastern District of New York, petitioners moved to suppress all of the evidence seized from the apartment—the items discovered in plain view during the initial security check and those not in plain view first discovered during the subsequent warrant search.[1] After a full evidentiary hearing, the District Court granted petitioners' motion. The court ruled that there were no exigent circumstances justifying the initial entry into the apartment. Accordingly, it held that the entry, the arrest of Colon and search incident to her arrest, and the effective seizure of the drug paraphernalia in plain view were illegal. The District Court ordered this evidence suppressed as "fruits" of illegal searches.

The District Court held that the warrant later issued was supported by information sufficient to establish probable cause; however, it read *United States* v. *Griffin*, 502 F. 2d 959 (CA6), cert. denied, 419 U. S. 1050 (1974), as requiring suppression of the evidence seized under the valid warrant.[2] The District Court reasoned that this evidence would not necessarily have been discovered because, absent the illegal entry and "occupation" of the apartment, Colon might have arranged to have the drugs removed or destroyed, in which event they would not have been in the apartment when the warrant search was made. Under this analysis, the District

[1] Rivudalla and Parra were indicted with petitioners and were charged with one count of possession with intent to distribute one-half kilogram of cocaine on one occasion and one kilogram on another occasion. Both pled guilty to the charges. They moved in the District Court to suppress the one-half kilogram of cocaine found on Parra's person at the time of their arrests on the ground that the Task Force agents had stopped them in violation of *Terry* v. *Ohio*, 392 U. S. 1 (1968). The court denied the motion. Rivudalla and Parra absconded prior to sentencing by the District Court.

[2] In *Griffin*, absent exigent circumstances, police officers forcibly entered an apartment and discovered in plain view narcotics and related paraphernalia. The entry took place while other officers sought a search warrant. The Court of Appeals for the Sixth Circuit affirmed the District Court's grant of the defendant's suppression motion.

Court held that even the drugs seized under the valid warrant were "fruit of the poisonous tree."

On an appeal limited to the admissibility of the incriminating evidence, the Court of Appeals affirmed in part and reversed in part. 663 F. 2d 411 (1981). It affirmed the District Court holding that the initial warrantless entry was not justified by exigent circumstances and that the evidence discovered in plain view during the initial entry must be suppressed.[1] The Court of Appeals rejected the argument advanced by the United States that the evidence in plain view should not be excluded because it was not actually "seized" until after the search warrant was secured.

Relying upon its holding in *United States* v. *Agapito*, 620 F. 2d 324 (CA2), cert. denied, 449 U. S. 834 (1980),[2] the Court of Appeals reversed the District Court's holding requiring suppression of the evidence seized under the valid warrant executed on the day following the initial entry. The Court of Appeals described as "prudentially unsound" the

[1] Both the District Court and the Court of Appeals held that the initial entry into the apartment was not justified by exigent circumstances, and thus that the items discovered in plain view during the limited security check had to be suppressed in order to effect the purposes of the Fourth Amendment. The United States, although it does not concede the correctness of this holding, does not contest it in this Court. Because the government has decided not to press its argument that exigent circumstances existed, we need not and do not address this aspect of the Court of Appeals' decision. We are concerned only with whether the Court of Appeals properly determined that the Fourth Amendment did not require suppression of the evidence seized during execution of the valid warrant.

[2] In *Agapito*, DEA agents, following a two-day surveillance of the defendant's hotel room, arrested the suspected occupants of the room in the lobby of the hotel. After the arrests, the agents entered the hotel room and remained within, with the exception of periodic departures, for almost 24 hours until a search warrant issued. During their stay in the room, the agents seized but did not open a suitcase found in the room. In the search pursuant to the warrant, the agents found cocaine in the suitcase. Although the Second Circuit held that the initial entry was illegal, it held that the cocaine need not be suppressed because it was discovered in the search under the valid warrant.

District Court's decision to suppress that evidence simply because it could have been destroyed had the agents not entered.

Petitioners were subsequently convicted of conspiring to distribute cocaine, in violation of 21 U. S. C. §846, and of distributing and possessing with intent to distribute cocaine, in violation of 21 U. S. C. §841(a)(1). On the subsequent review of these convictions, the Second Circuit affirmed, rejecting claims by petitioners that the search warrant was procured through material misrepresentations and that the evidence at trial was insufficient as a matter of law to support their convictions. We granted certiorari, —— U. S. —— (1983), and we affirm.

III

At the outset, it is important to focus on the narrow and precise question now before us. As we have noted, the Court of Appeals agreed with the District Court that the initial warrantless entry, and the limited security search were not justified by exigent circumstances and were therefore illegal. No review of that aspect of the case was sought by the Government and no issue concerning items observed during the initial entry is before the Court. The only issue here is whether drugs and the other items not observed during the initial entry and first discovered by the agents the day after the entry, under an admittedly valid search warrant, should have been suppressed.

The Suppression or Exclusionary Rule is a judicially prescribed remedial measure and as "with any remedial device, the application of the rule has been restricted to those areas where its remedial objectives are thought most efficaciously served." *United States* v. *Calandra*, 414 U. S. 338, 348 (1974). Under this Court's holdings, the Exclusionary Rule reaches not only primary evidence obtained as a direct result of an illegal search or seizure, *Weeks* v. *United States*, 232 U. S. 383 (1914), but also evidence later discovered and found to be derivative of an illegality or "fruit of the poisonous

tree." *Nardone* v. *United States*, 308 U. S. 338, 341 (1939). It "extends as well to the indirect as the direct products" of unconstitutional conduct. *Wong Sun* v. *United States*, 371 U. S. 471, 484 (1963).

Evidence obtained as a direct result of an unconstitutional search or seizure is plainly subject to exclusion. The question to be resolved when it is claimed that evidence subsequently obtained is "tainted" or is "fruit" of a prior illegality is whether the challenged evidence was

> "'come at by exploitation of [the initial] illegality or instead by means *sufficiently distinguishable* to be purged of the primary taint.'" *Id.*, at 488 (citation omitted; emphasis added).

It has been well established for more than 60 years that evidence is not to be excluded if the connection between the illegal police conduct and the discovery and seizure of the evidence is "so attenuated as to dissipate the taint." *Nardone* v. *United States*, *supra*, 308 U. S., at 341. It is not to be excluded, for example, if police had an "independent source" for discovery of the evidence:

> "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. Of course this does not mean that the facts thus obtained become sacred and inaccessible. *If knowledge of them is gained from an independent source they may be proved like any others.*" *Silverthorne Lumber Co.* v. *United States*, 251 U. S. 385, 392 (1920) (emphasis added).

In short, it is clear from our prior holdings that "the exclusionary rule has no application [where] the Government learned of the evidence 'from an independent source,'" *Wong Sun*, *supra*, at 487 (quoting *Silverthorne Lumber Co.*, *supra*, at 392); see also *United States* v. *Crews*, 445 U. S. 463

(1980); *United States* v. *Wade*, 388 U. S. 218, 242 (1976); *Costello* v. *United States*, 365 U. S. 265, 278–280 (1961).

IV

A

Petitioners' principal argument is that all of the contents of the apartment, seen and not seen, including the evidence now in question, were "seized" when the agents entered and remained on the premises while the lawful occupants were away from the apartment and in police custody. The essence of this argument is that because the contents were then under the control of the agents and no one would have been permitted to remove the incriminating evidence from the premises or destroy it, a "seizure" took place. Plainly, this argument is advanced to avoid the *Silverthorne* "independent source" exception. If all the contents of the apartment were "seized" at the time of the illegal entry, presumably the evidence now challenged would be suppressible as primary evidence obtained as a direct result of that entry.

We need not decide whether, when the agents entered the apartment and secured the premises, they effected a seizure of the cocaine, the cash, the ammunition, and the narcotics records within the meaning of the Fourth Amendment. By its terms, the Fourth Amendment forbids only "unreasonable" searches and seizures. Assuming, *arguendo*, that the agents seized the entire apartment and its contents, as petitioners suggest, it was not unreasonable under the totality of the circumstances.

Different interests are implicated by a seizure than by a search. *United States* v. *Jacobsen*, —— U. S. ——, —— (1984); *Texas* v. *Brown*, —— U. S. ——, (1983); *id.*, at —— (STEVENS, J., concurring in the judgment); *United States* v. *Chadwick*, 433 U. S. 1, 13–14, n. 8 (1977); *Chambers* v. *Maroney*, 399 U. S. 42, 51–52 (1970). A seizure affects only the person's possessory interests; a search affects a person's privacy interests. *United States* v. *Jacobsen*, *supra*, at

——: *United States* v. *Chadwick*, *supra*, at 13–14, n. 8; see generally *Texas* v. *Brown*, *supra* (concurring opinion). Recognizing the generally less intrusive nature of a seizure, *Chadwick*, *supra*, at 13–14, n. 8; *Chambers* v. *Maroney*, *supra*, at 51, the Court has frequently approved warrantless seizures of property, on the basis of probable cause, for the time necessary to secure a warrant, where a warrantless search was either held to be or likely would have been held impermissible. *Chambers* v. *Maroney*, *supra*; *United States* v. *Chadwick*, 433 U. S. 1 (1977); *Arkansas* v. *Sanders*, 442 U. S. 753 (1979).[4]

We focused on the issue notably in *Chambers*, holding that it was reasonable to seize and impound an automobile, on the basis of probable cause, for "whatever period is necessary to obtain a warrant for the search." 399 U. S., at 51 (footnote omitted). We acknowledged in *Chambers* that following the

But an auto is mobile

[4] In two instances, the Court has allowed temporary seizures and limited detentions of property based upon less than probable cause. In *United States* v. *Van Leeuwen*, 397 U. S. 249 (1970), the Court refused to invalidate the seizure and detention—on the basis of only reasonable suspicion—of two packages delivered to a United States Post Office for mailing. One of the packages was detained on mere suspicion for only 15 hours; by the end of that period enough information had been obtained to establish probable cause that the packages contained stolen coins. But the other package was detained for 29 hours before a search warrant was finally served. Both seizures were held reasonable. In fact, the Court suggested that both seizures and detentions for these "limited times" were "prudent" under the circumstances.

Only last Term, in *United States* v. *Place*, —— U. S. —— (1983), we considered the validity of a brief seizure and detention of a traveler's luggage, on the basis of a reasonable suspicion that the luggage contained contraband; the purpose of the seizure and brief detention were to investigate further the causes for the suspicion. Although we held that the 90-minute detention of the luggage in the airport was, under the circumstances, unreasonable, we held that the rationale of *Terry* v. *Ohio*, 392 U. S. 1 (1968), applies to permit an officer, on the basis of reasonable suspicion that a traveler is carrying luggage containing contraband, to seize and detain the luggage briefly to "investigate the circumstances that aroused his suspicion." —— U. S., at ——.

car until a warrant could be obtained was an alternative, albeit an impractical one. But we allowed the seizure nonetheless because otherwise the occupants of the car could have removed the "instruments or fruits of crime" before the search. *Id.*, at n. 9. The Court allowed the warrantless seizure to protect the evidence from destruction even though there was no immediate fear that the evidence was in the process of being destroyed or otherwise lost. The *Chambers* Court declared:

> "For constitutional purposes, we see no difference between on the one hand seizing and holding the car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. *Given probable cause to search, either course is reasonable under the Fourth Amendment.*" *Id.*, at 52 (emphasis added)

In *Chadwick*, we held that the warrantless *search* of the footlocker after it had been seized and was in a secure area of the Federal Building violated the Fourth Amendment's proscription against unreasonable searches, but neither the respondents nor the Court questioned the validity of the initial warrantless *seizure* of the footlocker on the basis of probable cause. The seizure of Chadwick's footlocker clearly interfered with his use and possession of the footlocker—his possessory interest—but we held that this did not "diminish [his] legitimate expectation that the footlocker's *contents* would remain private." 433 U. S., at 13–14 n. 8 (emphasis added). And again, in *Arkansas* v. *Sanders*, *supra*, we held that absent exigent circumstances a warrant was required to search luggage seized from an automobile which was already in the possession and control of police at the time of the search. However, we expressly noted that the police acted not only "properly," but "commendably" in seizing the suitcase without a warrant on the basis of probable cause to believe that it contained drugs. 442 U. S., at 761. The taxi into which the suitcase had been placed was about to drive away. How-

ever, just as there was no immediate threat of loss or destruction of evidence in *Chambers*—since officers could have followed the car until a warrant issued—so too in *Sanders* officers could have followed the taxicab. Indeed, there arguably was even less fear of immediate loss of the evidence in *Sanders* because the suitcase at issue had been placed in the vehicle's trunk, thus rendering immediate access unlikely before police could act.

Underlying these decisions is a belief that society's interest in the discovery and protection of incriminating evidence from removal or destruction can supersede, at least for a limited period, a person's possessory interest in property, provided that there is probable cause to believe that that property is associated with criminal activity. See *United States* v. *Place*, 462 U. S. ——, (1983).

The Court has not had occasion to consider whether, when officers have probable cause to believe that evidence of criminal activity is on the premises, the temporary securing of a dwelling to prevent the removal or destruction of evidence violates the Fourth Amendment. However, in two cases we have suggested that securing of premises under these circumstances does not violate the Fourth Amendment, at least when undertaken to preserve the *status quo* while a search warrant is being sought. In *Mincey* v. *Arizona*, 437 U. S. 385 (1978), we noted with approval that, to preserve evidence, a police guard had been stationed at the entrance to an apartment in which a homicide had been committed, even though "[t]here was no indication that evidence would be lost, destroyed or removed during the time required to obtain a search warrant." *Id.*, at 394. Similarly, in *Rawlings* v. *Kentucky*, 448 U. S. 98 (1980), although officers secured, from within, the home of a person for whom they had an arrest warrant, and detained all occupants while other officers were obtaining a search warrant, the Court did not question the admissibility of evidence discovered pursuant to the warrant later issued.

A distinguished constitutional scholar raised this question whether a seizure of premises to preserve the status quo and protect valuable evidence while police officers in good faith seek a warrant might not be [redacted]:

> "Here there is a very real practical problem. Does the police officer have any power to maintain the status quo while he, or a colleague of his, is taking the time necessary to draw up a sufficient affidavit to support an application for a search warrant, and then finding a magistrate, submitting the application to him, obtaining the search warrant if it is issued, and then bringing it to the place where the arrest was made. It seems inevitable that a minimum of several hours will be required for this process, at the very best. Unless there is some kind of a power to prevent removal of material from the premises, or destruction of material during this time, the search warrant will almost inevitably be fruitless. Of course, if a search warrant is refused, the officers should leave the premises. May they guard the premises, and prevent egress and entry, and action within the premises, while the search warrant is being obtained? We do not know. There may well be room here, though, for a balance in determining the applicability of the Fourth Amendment. If a warrant is in fact obtained in such a case before a search is made, can it be said to be unreasonable under the fourth amendment if steps are taken to preserve the status quo?" Griswold, Criminal Procedure, 1969—Is It A Means Or An End?, 29 Md. L. Rev. 307, 317 (1969).

Dean Griswold did not purport to answer the questions he posed; but the significance of his analysis is that he raised them. Implicit in the questions is whether an excessive preoccupation with concern for defendants' rights, which gives rise to an ever-increasing number of criminal rules, does not tend to undermine the entire structure of criminal justice,

given the incalculable social cost of the drug traffic and other criminal activities.

Justice Black posed essentially the same question in his dissent in *Vale v. Louisiana*, 399 U. S. 30, 36 (1969), as had Dean Griswold. After pointing out that Vale's arrest just outside his residence was "plainly visible to anyone within the house, and the police had every reason to believe that someone in the house was likely to destroy the contraband if the search were postponed," he noted:

> "This case raises most graphically the question how does a policeman protect evidence necessary to the State if he must leave the premises to get a warrant, allowing the evidence he seeks to be destroyed. The Court's answer to that question makes unnecessarily difficult the conviction of those who prey upon society." *Id.*, at 41.[1]

We see no reason, as *Mincey* and *Rawlings* would suggest, why the same principle applied in *Chambers*, *Chadwick*, and *Sanders*, should not apply where a dwelling is involved. The sanctity of the home is not to be disputed. However, the home is sacred in Fourth Amendment terms not primarily because of the occupants' *possessory* interests in the premises, but because of their *privacy* interests in the activities that take place within. This is what was meant in *Katz v. United States*, 389 U. S. 347 (1967): "[T]he Fourth Amendment protects people, not places." *Id.*, at 351; see also *Payton v. New York*, 445 U. S. 573, 603, 615 (1980) (WHITE, J., dissenting).

As we have noted, however, a seizure affects only possessory interests, not privacy interests. Therefore, the heightened protection we accord privacy interests is simply not implicated where a *seizure* of premises, not a search, is at issue. We hold, therefore, that securing a dwelling, on the basis of

[1] This is a question not infrequently considered by both federal and state courts. *See* 2 W. LaFave, Search and Seizure § 6.5 (1978), and cases cited.

probable cause, to prevent the destruction or removal of evidence while a search warrant is being sought is not itself an unreasonable seizure of either the dwelling or its contents. We reaffirm at the same time, however, that, absent exigent circumstances, a warrantless search -such as that invalidated in *Vale v. Louisiana*, 399 U. S. 30, 33–34 (1970)—is illegal.

Here, the agents had abundant probable cause in advance of their entry to believe that there was contraband in petitioners' apartment; indeed petitioners do not dispute the probable cause determination. The agents had maintained surveillance over petitioners for weeks, and had observed petitioners leave the apartment to make sales of cocaine. Wholly apart from observations made during that extended surveillance, Rivudalla had told agents after his arrest that petitioners had supplied him with cocaine earlier that day, that he had not purchased all of the cocaine offered by Segura, and that Segura probably had more cocaine in the apartment. On the basis of this information, a magistrate duly issued a search warrant, the validity of which was upheld by both the District Court and the Court of Appeals, and which is not before us now.

Here, the agents entered and secured the apartment from within. Arguably, the wiser course would have been to depart immediately and secure the premises from the outside by a "stakeout" once the security check revealed that no one other than those taken into custody were in the apartment. But the method actually employed does not require a different result under the Fourth Amendment, insofar as the *seizure* is concerned. As the Court of Appeals held, absent exigent circumstances, the entry may have constituted an illegal *search*, or interference with petitioners' privacy interests, requiring suppression of all evidence observed during the entry. Securing of the premises from within, however, was no more an interference with the petitioners' possessory interests in the contents of the apartment than a perimeter

"stakeout." In other words, the search did not affect the reasonableness of the seizure. Under either method—entry and securing from within or a perimeter stakeout—agents control the apartment pending arrival of the warrant; both an internal securing and a perimeter stakeout interfere to the same extent with the possessory interests of the owners.

Petitioners argue that we heighten the possibility of illegal entries by a holding that the illegal entry and securing of the premises from the inside do not themselves render the *seizure* any more unreasonable than had the agents staked out the apartment from the outside. We disagree. In the first place, an entry in the absence of exigent circumstances is illegal. We are unwilling to believe that officers will purposely violate the law as a matter of course. Second, as a practical matter, officers who have probable cause and who are in the process of obtaining a warrant have no reason to enter the premises before the warrant issues, absent exigent circumstances which, of course, would justify the entry. *United States* v. *Santana*, 427 U. S. 38 (1976); *Johnson* v. *United States*, 333 U. S. 10 (1948). Third, officers who enter illegally will recognize that whatever evidence they discover as a direct result of the entry may be suppressed, as it was by the Court of Appeals in this case. Finally, if officers enter without exigent circumstances to justify the entry, they expose themselves to potential civil liability under 42 U. S. C. § 1983. *Bivens* v. *Six Unknown Federal Narcotics Agents*, 403 U. S. 388 (1971).

Of course, a seizure reasonable at its inception because based upon probable cause may become unreasonable as a result of its duration or for other reasons. Cf. *United States* v. *Place*, *supra*. Here, because of the delay in securing the warrant, the occupation of the apartment continued throughout the night and into the next day. Such delay in securing a warrant in a large metropolitan center unfortunately is not uncommon; this is not, in itself, evidence of bad faith. And there is no suggestion that the officers, in bad faith, pur-

posely delayed obtaining the warrant. The asserted explanation is that the officers focused first on the task of processing those whom they had arrested before turning to the task of securing the warrant. It is not unreasonable for officers to believe that the former should take priority, given, as was the case here, that the occupants of the apartment were in the custody of the officers throughout the period in question.

Moreover, there is no evidence that the agents in any way exploited their presence in the apartment: they simply awaited issuance of the warrant. More than half of the 19-hour delay was between 10:00 p. m. and 10:00 a. m. the following day, when it is reasonable to assume that judicial officers are not as readily available for consideration of warrant requests. Finally, and most important, we observed in *United States* v. *Place*, *supra*, at ——, that

> "[t]he intrusion on possessory interests occasioned by a seizure of one's personal effects can vary both in its nature and extent. The seizure may be made after the owner has relinquished control of the property to a third party or . . . from the immediate custody and control of the owner."

Here, of course, Segura and Colon, whose possessory interests were interfered with by the occupation, were under arrest and in the custody of the police throughout the entire period the agents occupied the apartment. The actual interference with their possessory interests in the apartment and its contents was, thus, virtually nonexistent. Cf. *Leaman*, *supra*. We are not prepared to say under these limited circumstances that the seizure was unreasonable under the Fourth Amendment.[7]

[7] Our decision in *United States* v. *Place*, *supra*, is not inconsistent with this conclusion. There, we found unreasonable a 90-minute detention of a traveler's luggage. But the detention was based only on a suspicion that the luggage contained contraband, not on probable cause. After probable cause was established, authorities held the unopened luggage for almost

B

Petitioners also argue that even if the evidence was not subject to suppression as primary evidence "seized" by virtue of the initial illegal entry and occupation of the premises, it should have been excluded as "fruit" derived from that illegal entry. Exclusion of derivative evidence or "fruit of the poisonous tree" is not warranted here because the Government had a wholly independent source for its discovery, *i. e.*, a valid warrant issued on information known to the government well in advance of the entry into the apartment.

None of the information on which the warrant was secured was derived from or related in any way to the illegal entry into petitioners' apartment; the information came from sources wholly unconnected with the entry and was known to the agents well before the initial entry. No information obtained during the initial entry or occupation of the apartment was needed or used by the agents to secure the warrant.

It is therefore beyond dispute that the information possessed by the agents before they entered the apartment constituted an independent source for the discovery and seizure of the evidence now challenged. This evidence was discovered the day following the entry, during the search conducted under a valid warrant; it was the product of that search, wholly unrelated to the prior entry. The valid warrant search was a "means sufficiently distinguishable" to purge the evidence of any "taint" arising from the entry. *Wong Sun*, *supra*, at 488.[7] Had police never entered the

three days before a warrant was obtained. It was not suggested that this delay presented an independent basis for suppression of the evidence eventually discovered.

[7] Our holding in this respect is consistent with the vast majority of federal courts of appeals which have held that evidence obtained pursuant to a valid warrant search need not be excluded because of a prior illegal entry. *See, e. g., United States* v. *Perez*, 700 F. 2d 1222 (CA8 1983); *United States* v. *Rooney*, 698 F. 2d 941 (CA10), cert. denied, 462 U. S. 1015 (1983); *United States* v. *Fasharne*, 638 F. 2d 416 (CA5 1980), cert. denied, 454 U. S. 968 (1981); *United States* v. *Agapito*, *supra*; *United States* v. *Bosby*, 675 F. 2d

apartment, but instead conducted a perimeter stakeout to prevent anyone from entering the apartment and destroying evidence, the contraband now challenged would have been discovered and seized precisely as it was here. The legality of the initial entry is wholly irrelevant under *Wong Sun*, *supra*, and *Silverthorne*, *supra*.

Our conclusion that the challenged evidence was admissible is fully supported by our prior cases going back more than a half century. The Court has never held that evidence is "fruit of the poisonous tree" simply because "it would not have come to light but for the illegal actions of the police." See *Wong Sun*, *supra*, at 487–488; *Rawlings* v. *Kentucky*, *supra*; *Brown* v. *Illinois*, 422 U. S. 590, 599 (1975). That would squarely conflict with *Silverthorne* and our other cases allowing admission of evidence, notwithstanding a prior illegality, when the link between the illegality and that evidence was sufficiently attenuated to dissipate the taint. By the same token, our cases make clear that evidence will not be excluded as "fruit" unless the illegality is at least the "but for" cause of the discovery of the evidence. Suppression is not justified unless "the challenged evidence is in some sense the product of illegal governmental activity." *United States* v. *Crews*, *supra*, at 471. The illegal entry into petitioners' apartment did not contribute in any way to discovery of the evidence later seized under the warrant; it is clear, therefore, that not even the threshold "but for" requirement was met in this case.

The dissent contends that the initial entry and securing of the premises are the "but for" causes of the discovery of the evidence in that, had the agents not entered the apartment, but instead secured the premises from the outside, Colon or her friends if alerted, could have removed or destroyed the evidence before the warrant issued. While the dissent em-

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1134 (CA1 1982) (dictum). The only federal court of appeals to hold otherwise is the Ninth Circuit. See *United States* v. *Lemon*, 706 F. 2d 886 (1983); *United States* v. *Alford*, 634 F. 2d 1182 (1980).

braces this "reasoning," petitioners do not press this argument.

The Court of Appeals rejected this argument as "prudentially unsound" and because it rested on "wholly speculative assumptions." Among other things, the Court of Appeals suggested that, had the agents waited to enter the apartment until the warrant issued, they might not have decided to take Segura to the apartment and thereby alert Colon. Or, once alerted by Segura's failure to appear, Colon might have attempted to remove the evidence, rather than destroy it, in which event the agents could have intercepted her and the evidence.

We agree fully with the Court of Appeals that the District Court's suggestion that Colon and her cohorts would have removed or destroyed the evidence was pure speculation. Even more important, however, we decline to extend the Exclusionary Rule, which already exacts an enormous price from society and our system of justice, to further "protect" criminal activity, as the dissent would have us do.

It may be that, if the agents had not entered the apartment, petitioners might have arranged for the removal or destruction of the evidence, and that in this narrow sense the agents' actions could be considered the "but for" cause for discovery of the evidence. But at this juncture, we are reminded of Justice Jackson's warning that "[s]ophisticated argument may prove a causal connection between information obtained through [illegal conduct] and the Government's proof," and his admonition that the courts should consider whether "[a]s a matter of good common sense . . . such connection may have become so attenuated as to dissipate the taint." *Nardone*, *supra*, at 341. The essence of the dissent is that there is some "constitutional right" to destroy evidence. This concept defies both logic and common sense.

V

We agree with the Court of Appeals that the cocaine, cash

records and ammunition were properly admitted into evidence. Accordingly, the judgment is affirmed.

It is so ordered.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 29, 1984

Re: 83-5298 - Segura v. United States

MEMORANDUM TO THE CONFERENCE

I may add a footnote at an appropriate place something along the following lines:

_/ A study of the warrant process by the Los Angeles Police Department reported that an average of six hours was consumed in preparing applications and securing search warrants. Obviously a situation arising late in the day could well mean that 12 to 15 hours might be involved in the process. In Dorman v. United States, 435 F.2d 385, 393-5 (1970), the Court noted that

> "We have no basis for saying a system of consideration of applications for warrants is 'unreasonable' unless it provides a scheduled term of court at night. What is involved is a question of allocation of resources, and possible diversion of resources from needs that stand higher in the interest of justice."

When I check the authenticity of the Los Angeles and other possible studies, I will resolve whether to use it.

Regards,

WEB

Supreme Court of the United States
Washington, D. C. 20543

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THE CHIEF JUSTICE

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When I check the authenticity of the Los Angeles and other possible studies, I will resolve whether to use it.

Regards,

WEB

Rob
what do
you think?

Children + Lee

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 29, 1984

Re: 83-529A - Segura v. United States

MEMORANDUM TO: Justice White
Justice Powell
Justice Rehnquist
Justice O'Connor

All five members of the present majority agreed that they could go along with Draft B. I have deleted Footnote 7 to accommodate Bill and Sandra. Byron indicated that he might have some minor suggestions. In John's interest, as author of the dissent, I will circulate to the full Court later today, unless some of you have some major problem. We will have to make adjustments, since the dissent is bound to raise some new points, especially on Griswold and Vale.

Regards,

WEB

The only changes from what you have already seen are on pages 13 to 15 as marked.

WEB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 30, 1984

Re: 82-5298 - Segura v. United States

Dear Chief:

Your new draft contains a real surprise. You propose a holding that an unexplained and unjustified 19-hour warrantless occupation of a home, which the Solicitor General did not attempt to defend, is a "reasonable" seizure. I fully agree that the authorities should be able to impound a house for a reasonable period of time pending the issuance of a warrant, but to stay inside of a home for a period of time that is not even remotely related to the time necessary to obtain a warrant is quite another thing altogether. It also seems to me quite at odds with our recent holding in Welsh v. Wisconsin.

Since I do not believe anyone took this position at Conference, I will not redraft my dissent until I find out if others will accept your rather dramatic departure from anything the Court has every done before.

Respectfully,

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 30, 1984

No. 82-5298 Segura v. United States

Dear Chief,

Please join me.

Sincerely,

Sandra

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 30, 1984

Re: 82-5298 - Segura v. U.S.

MEMORANDUM TO THE CONFERENCE

Dear John:

I will not now undertake to deal with the accuracy of your comments in today's memo on this case. Plainly, if there are not four or more to join my view, that will be the end of the matter. And if there are, that will also be the end of the matter!

Regards,

WEB

You are still welcome to join!

Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 5, 1984

Re: 82-5298 - Segura v. United States

Dear Chief,

Upon further reflection, I am quite reluctant to join your present circulation in its entirety. It seems to me that the independent source rationale, as spelled out in version A that you circulated to our side on May 16, makes Part IV A of your present circulation unnecessary. If you nevertheless desire to retain that Part, perhaps you could incorporate in Part IV B enough of version A to permit me, without writing separately, to dispose of the case by joining all but Part IV A.

Sincerely,

Byron

The Chief Justice

cc: Justice Powell
Justice Rehnquist
Justice O'Connor

Re C J in
circulating
another draft
6/7

Recirculated to
White
Powell
Rehnquist
O'Connor
June 11, 1984

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated: ____

Recirculated: ____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5296

ANDRES SEGURA AND LUZ MARINA COLON, PETITIONERS v. UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[May — , 1984]

THE CHIEF JUSTICE delivered the opinion of the Court.

We granted certiorari to decide whether, because of an earlier illegal entry, the Fourth Amendment requires suppression of evidence seized later from a private residence pursuant to a valid search warrant which was issued on information obtained by the police before the entry into the residence.

I

Resolution of this issue requires us to consider two separate questions: first, whether the entry and internal securing of the premises constituted an impermissible seizure of all the contents of the apartment, seen and unseen; second, whether the evidence first discovered during the search of the apartment pursuant to a valid warrant issued the day after the entry should have been suppressed as fruit of the illegal entry. Our disposition of both questions is carefully limited.

The Court of Appeals affirmed the District Courts' holding that there were no exigent circumstances to justify the warrantless entry into petitioners' apartment. That issue is not before us, and we have no reason to question the courts' holding that that *search* was illegal. The ensuing interference with petitioners' possessory interests in their apartment, however, is another matter. On this first question, we conclude that, assuming that there was a *seizure* of all the contents of the petitioners' apartment when agents secured the

premises from within, that seizure did not violate the Fourth Amendment. Specifically, we hold that where officers, having probable cause, enter premises, and with probable cause, arrest the occupants who have legitimate possessory interests in its contents and take them into custody and, for no more than the period here involved, secure the premises from within to preserve the *status quo* while others, in good faith, are in the process of obtaining a warrant, they do not violate the Fourth Amendment's proscription against unreasonable seizures.[5] The illegality of the initial entry, as we will show, has no bearing on the second question.

The resolution of this second question requires that we determine whether the initial entry tainted the discovery of the evidence now challenged. On this issue, we hold that the evidence discovered during the subsequent search of the apartment the following day pursuant to the valid search warrant issued wholly on information known to the officers before the entry into the apartment need not have been suppressed as "fruit" of the illegal entry because the warrant and the information on which it was based were unrelated to the entry and therefore constituted an independent source for the evidence under *Silverthorne Lumber Co. v. United States*, 251 U. S. 385 (1920).

II

In January 1981, the New York Drug Enforcement Task Force received information indicating that petitioners Andres Segura and Luz Marina Colon probably were trafficking in cocaine from their New York apartment. Acting on this information, Task Force agents maintained continuing surveillance over petitioners until their arrest on February 12, 1981. On February 9, agents observed a meeting between Segura and Enrique Rivudulla-Vidal, during which, as it later developed, the two discussed the possible sale of co-

[5] See Griswold, Criminal Procedure, 1969—Is It A Means Or An End?, 29 Md. L. Rev. 307, 317 (1969); see generally 2W. LaFave, Search and Seizure § 6.5 (1978).

caine by Segura to Rivudalla. Three days later, February 12, Segura telephoned Rivudalla and agreed to provide him with cocaine. The two agreed that the delivery would be made at 5:00 p. m. that day at a designated fast-food restaurant in Queens, New York. Rivudalla and one Esther Parra, arrived at the restaurant at 5:00 p. m., as agreed. While Segura and Rivudalla visited inside the restaurant, agents observed Luz Marina Colon deliver a bulky package to Parra, who had remained in Rivudalla's car in the restaurant parking lot. A short time after the delivery of the package, Rivudalla and Parra left the restaurant and proceeded to their apartment. Task Force agents followed. The agents stopped the couple as they were about to enter Rivudalla's apartment. Parra was found to possess cocaine; both Rivudalla and Parra were immediately arrested.

After Rivudalla and Parra were advised of their constitutional rights, Rivudalla agreed to cooperate with the agents. He admitted that he had purchased the cocaine from Segura and he confirmed that Colon had made the delivery at the fast-food restaurant earlier that day, as the agents had observed. Rivudalla informed the agents that Segura was to call him at approximately 10:00 p. m. that evening to learn if Rivudalla had sold the cocaine, in which case Segura was to deliver additional cocaine.

Between 6:30 and 7:00 p. m., the same day, Task Force agents sought and received authorization from an Assistant United States Attorney to arrest Segura and Colon. The agents were advised by the Assistant United States Attorney that because of the lateness of the hour, a search warrant for petitioners' apartment probably could not be obtained until the following day, but that the agents should proceed to secure the premises to prevent the destruction of evidence.

At about 7:30 p. m., the agents arrived at petitioners' apartment and established external surveillance. At 11:15 p. m., Segura, alone, entered the lobby of the apartment building where he was immediately arrested by agents. He

first claimed he did not reside in the building. The agents took him to his third floor apartment, and when they knocked on the apartment door, a woman later identified as Luz Colon appeared; the agents then entered with Segura, without requesting or receiving permission. There were three persons in the living room of the apartment in addition to Colon. Those present were informed by the agents that Segura was under arrest and that a search warrant for the apartment was being obtained.

Following this brief exchange in the living room, the agents conducted a limited security check of the apartment to ensure that no one else was there who might pose a threat to their safety or destroy evidence. In the process, the agents observed, in a bedroom in plain view, a triple-beam scale, jars of lactose, and numerous small cellophane bags, all accouterments of drug trafficking. None of these items was disturbed by the agents. After this limited security check, Luz Colon was arrested. In the search incident to her arrest, agents found in her purse a loaded revolver and more than $2000 in cash. Colon, Segura, and the other occupants of the apartment were taken to Drug Enforcement Administration headquarters.

Two Task Force agents remained in petitioners' apartment awaiting the warrant. Because of what is characterized as "administrative delay" the warrant application was not presented to the magistrate until 5:00 p. m. the next day. The warrant was issued and the search was performed at approximately 6:00 p. m., some 19 hours after the agents' initial entry into the apartment. In the search pursuant to the warrant, agents discovered almost three pounds of cocaine, 18 rounds of .38 caliber ammunition fitting the revolver agents had found in Luz Colon's possession at the time of her arrest, more than $50,000 cash, and records of narcotics transactions. Agents seized these items, together with those observed during the security check the previous night.

Before trial in the United States District Court in the Eastern District of New York, petitioners moved to suppress all of the evidence seized from the apartment—the items discovered in plain view during the initial security check and those not in plain view first discovered during the subsequent warrant search.[1] After a full evidentiary hearing, the District Court granted petitioners' motion. The court ruled that there were no exigent circumstances justifying the initial entry into the apartment. Accordingly, it held that the entry, the arrest of Colon and search incident to her arrest, and the effective seizure of the drug paraphernalia in plain view were illegal. The District Court ordered this evidence suppressed as "fruits" of illegal searches.

The District Court held that the warrant later issued was supported by information sufficient to establish probable cause; however, it read *United States* v. *Griffin*, 502 F. 2d 959 (CA6), cert. denied, 419 U. S. 1050 (1974), as requiring suppression of the evidence seized under the valid warrant.[2] The District Court reasoned that this evidence would not necessarily have been discovered because, absent the illegal entry and "occupation" of the apartment, Colon might have arranged to have the drugs removed or destroyed, in which event they would not have been in the apartment when the warrant search was made. Under this analysis, the District

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[1] Rivudalla and Parra were indicted with petitioners and were charged with one count of possession with intent to distribute one-half kilogram of cocaine on one occasion and one kilogram on another occasion. Both pled guilty to the charges. They moved in the District Court to suppress the one-half kilogram of cocaine found on Parra's person at the time of their arrests on the ground that the Task Force agents had stopped them in violation of *Terry* v. *Ohio*, 392 U. S. 1 (1968). The court denied the motion. Rivudalla and Parra absconded prior to sentencing by the District Court.

[2] In *Griffin*, absent exigent circumstances, police officers forcibly entered an apartment and discovered in plain view narcotics and related paraphernalia. The entry took place while other officers sought a search warrant. The Court of Appeals for the Sixth Circuit affirmed the District Court's grant of the defendant's suppression motion.

Court held that even the drugs seized under the valid warrant were "fruit of the poisonous tree."

On an appeal limited to the admissibility of the incriminating evidence, the Court of Appeals affirmed in part and reversed in part. 664 F. 2d 411 (1981). It affirmed the District Court holding that the initial warrantless entry was not justified by exigent circumstances and that the evidence discovered in plain view during the initial entry must be suppressed.[4] The Court of Appeals rejected the argument advanced by the United States that the evidence in plain view should not be excluded because it was not actually "seized" until after the search warrant was secured.

Relying upon its holding in *United States* v. *Agapito*, 620 F. 2d 324 (CA2), cert. denied, 449 U. S. 834 (1980),[5] the Court of Appeals reversed the District Court's holding requiring suppression of the evidence seized under the valid warrant executed on the day following the initial entry. The Court of Appeals described as "prudentially unsound" the

[4] Both the District Court and the Court of Appeals held that the initial entry into the apartment was not justified by exigent circumstances, and thus that the items discovered in plain view during the limited security check had to be suppressed to effect the purposes of the Fourth Amendment. The United States, although it does not concede the correctness of this holding, does not contest it in this Court. Because the government has decided not to press its argument that exigent circumstances existed, we need not and do not address this aspect of the Court of Appeals decision. We are concerned only with whether the Court of Appeals properly determined that the Fourth Amendment did not require suppression of the evidence seized during execution of the valid warrant.

[5] In *Agapito*, DEA agents, following a two-day surveillance of the defendant's hotel room, arrested the suspected occupants of the room in the lobby of the hotel. After the arrests, the agents entered the hotel room and remained within, with the exception of periodic departures, for almost 24 hours until a search warrant issued. During their stay in the room, the agents seized but did not open a suitcase found in the room. In the search pursuant to the warrant, the agents found cocaine in the suitcase. Although the Second Circuit held that the initial entry was illegal, it held that the cocaine need not be suppressed because it was discovered in the search under the valid warrant.

District Court's decision to suppress that evidence simply because it could have been destroyed had the agents not entered.

Petitioners were subsequently convicted of conspiring to distribute cocaine, in violation of 21 U. S. C. §846, and of distributing and possessing with intent to distribute cocaine, in violation of 21 U. S. C. §841(a)(1). On the subsequent review of these convictions, the Second Circuit affirmed, rejecting claims by petitioners that the search warrant was procured through material misrepresentations and that the evidence at trial was insufficient as a matter of law to support their convictions. We granted certiorari, —— U. S. —— (1983), and we affirm.

III

At the outset, it is important to focus on the narrow and precise question now before us. As we have noted, the Court of Appeals agreed with the District Court that the initial warrantless entry, and the limited security search were not justified by exigent circumstances and were therefore illegal. No review of that aspect of the case was sought by the Government, and no issue concerning items observed during the initial entry is before the Court. The only issue here is whether drugs and the other items not observed during the initial entry and first discovered by the agents the day after the entry, under an admittedly valid search warrant, should have been suppressed.

The Suppression or Exclusionary Rule is a judicially prescribed remedial measure and as "with any remedial device, the application of the rule has been restricted to those areas where its remedial objectives are thought most efficaciously served." *United States* v. *Calandra*, 414 U. S. 338, 348 (1974). Under this Court's holdings, the Exclusionary Rule reaches not only primary evidence obtained as a direct result of an illegal search or seizure, *Weeks* v. *United States*, 232 U. S. 383 (1914), but also evidence later discovered and found to be derivative of an illegality or "fruit of the poisonous

tree." *Nardone* v. *United States*, 308 U. S. 338, 341 (1939). It "extends as well to the indirect as the direct products" of unconstitutional conduct. *Wong Sun* v. *United States*, 371 U. S. 471, 484 (1963).

Evidence obtained as a direct result of an unconstitutional search or seizure is plainly subject to exclusion. The question to be resolved when it is claimed that evidence subsequently obtained is "tainted" or is "fruit" of a prior illegality is whether the challenged evidence was

> "'come at by exploitation of [the initial] illegality or instead by means *sufficiently distinguishable* to be purged of the primary taint.'" *Id.*, at 488 (citation omitted; emphasis added).

It has been well established for more than 60 years that evidence is not to be excluded if the connection between the illegal police conduct and the discovery and seizure of the evidence is "so attenuated as to dissipate the taint," *Nardone* v. *United States*, *supra*, 308 U. S., at 341. It is not to be excluded, for example, if police had an "independent source" for discovery of the evidence:

> "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. Of course this does not mean that the facts thus obtained become sacred and inaccessible. *If knowledge of them is gained from an independent source they may be proved like any others.*" *Silverthorne Lumber Co.* v. *United States*, 251 U. S. 385, 392 (1920) (emphasis added).

In short, it is clear from our prior holdings that "the exclusionary rule has no application [where] the Government learned of the evidence 'from an independent source.'" *Wong Sun*, *supra*, at 487 (quoting *Silverthorne Lumber Co.*, *supra*, at 392); see also *United States* v. *Crews*, 445 U. S. 463

(1980); *United States* v. *Wade*, 388 U. S. 218, 242 (1976); *Costello* v. *United States*, 365 U. S. 265, 278–280 (1961).

IV

A

Petitioners' ~~principal~~ argument is that all of the contents of the apartment, seen and not seen, including the evidence now in question, were "seized" when the agents entered and remained on the premises while the lawful occupants were away from the apartment and in police custody. The essence of this argument is that because the contents were then under the control of the agents and no one would have been permitted to remove the incriminating evidence from the premises or destroy it, a "seizure" took place. Plainly, this argument is advanced to avoid the *Silverthorne* "independent source" exception. If all the contents of the apartment were "seized" at the time of the illegal entry, presumably the evidence now challenged would be suppressible as primary evidence obtained as a direct result of that entry.

We need not decide whether, when the agents entered the apartment and secured the premises, they effected a seizure of the cocaine, the cash, the ammunition, and the narcotics records within the meaning of the Fourth Amendment. By its terms, the Fourth Amendment forbids only "unreasonable" searches and seizures. Assuming, *arguendo*, that the agents seized the entire apartment and its contents, as petitioners suggest, it was not unreasonable under the totality of the circumstances.

Different interests are implicated by a seizure than by a search. *United States* v. *Jacobsen*, —— U. S. ——, —— (1984); *Texas* v. *Brown*, —— U. S. ——, (1983); *id.*, at —— (STEVENS, J., concurring in the judgment); *United States* v. *Chadwick*, 433 U. S. 1, 13–14, n. 8 (1977); *Chambers* v. *Maroney*, 399 U. S. 42, 51–52 (1970). A seizure affects only the person's possessory interests; a search affects a person's privacy interests. *United States* v. *Jacobsen*, *supra*, at

——; *United States* v. *Chadwick*, *supra*, at 13–14, n. 8; see generally *Texas* v. *Brown*, *supra* (concurring opinion). Recognizing the generally less intrusive nature of a seizure, *Chadwick*, *supra*, at 13–14, n. 8; *Chambers* v. *Maroney*, *supra*, at 51, the Court has frequently approved warrantless seizures of property, on the basis of probable cause, for the time necessary to secure a warrant, where a warrantless search was either held to be or likely would have been held impermissible. *Chambers* v. *Maroney*, *supra*; *United States* v. *Chadwick*, 433 U. S. 1 (1977); *Arkansas* v. *Sanders*, 442 U. S. 753 (1979).*

We focused on the issue notably in *Chambers*, holding that it was reasonable to seize and impound an automobile, on the basis of probable cause, for "whatever period is necessary to obtain a warrant for the search." 399 U. S., at 51 (footnote omitted). We acknowledged in *Chambers* that following the

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*In two instances, the Court has allowed temporary seizures and limited detentions of property based upon less than probable cause. In *United States* v. *Van Leeuwen*, 397 U. S. 249 (1970), the Court refused to invalidate the seizure and detention—on the basis of only reasonable suspicion—of two packages delivered to a United States Post Office for mailing. One of the packages was detained on mere suspicion for only 15 hours; by the end of that period enough information had been obtained to establish probable cause that the packages contained stolen coins. But the other package was detained for 29 hours before a search warrant was finally served. Both seizures were held reasonable. In fact, the Court suggested that both seizures and detentions for these "limited times" were "prudent" under the circumstances.

Only last Term, in *United States* v. *Place*, —— U. S. —— (1983), we considered the validity of a brief seizure and detention of a traveler's luggage, on the basis of a reasonable suspicion that the luggage contained contraband; the purpose of the seizure and brief detention were to investigate further the causes for the suspicion. Although we held that the 90-minute detention of the luggage in the airport was, under the circumstances, unreasonable, we held that the rationale of *Terry* v. *Ohio*, 392 U. S. 1 (1968), applies to permit an officer, on the basis of reasonable suspicion that a traveler is carrying luggage containing contraband, to seize and detain the luggage briefly to "investigate the circumstances that aroused his suspicion." —— U. S., at ——.

car until a warrant could be obtained was an alternative, albeit an impractical one. But we allowed the seizure nonetheless because otherwise the occupants of the car could have removed the "instruments or fruits of crime" before the search. *Id.*, at n. 9. The Court allowed the warrantless seizure to protect the evidence from destruction even though there was no immediate fear that the evidence was in the process of being destroyed or otherwise lost. The *Chambers* Court declared:

> "For constitutional purposes, we see no difference between on the one hand seizing and holding the car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. *Given probable cause to search, either course is reasonable under the Fourth Amendment.*" *Id.*, at 52 (emphasis added)

In *Chadwick*, we held that the warrantless *search* of the footlocker after it had been seized and was in a secure area of the Federal Building violated the Fourth Amendment's proscription against unreasonable searches, but neither the respondents nor the Court questioned the validity of the initial warrantless *seizure* of the footlocker on the basis of probable cause. The seizure of Chadwick's footlocker clearly interfered with his use and possession of the footlocker—his possessory interest—but we held that this did not "diminish [his] legitimate expectation that the footlocker's *contents* would remain private." 433 U. S., at 13–14 n. 8 (emphasis added). And again, in *Arkansas* v. *Sanders*, *supra*, we held that absent exigent circumstances a warrant was required to search luggage seized from an automobile which was already in the possession and control of police at the time of the search. However, we expressly noted that the police acted not only "properly," but "commendably" in seizing the suitcase without a warrant on the basis of probable cause to believe that it contained drugs. 442 U. S., at 761. The taxi into which the suitcase had been placed was about to drive away. How-

ever, just as there was no immediate threat of loss or destruction of evidence in *Chambers*—since officers could have followed the car until a warrant issued—so too in *Sanders* officers could have followed the taxicab. Indeed, there arguably was even less fear of immediate loss of the evidence in *Sanders* because the suitcase at issue had been placed in the vehicle's trunk, thus rendering immediate access unlikely before police could act.

Underlying these decisions is a belief that society's interest in the discovery and protection of incriminating evidence from removal or destruction can supersede, at least for a limited period, a person's possessory interest in property, provided that there is probable cause to believe that that property is associated with criminal activity. See *United States* v. *Place*, 462 U. S. ——, (1983).

The Court has not had occasion to consider whether, when officers have probable cause to believe that evidence of criminal activity is on the premises, the temporary securing of a dwelling to prevent the removal or destruction of evidence violates the Fourth Amendment. However, in two cases we have suggested that securing of premises under these circumstances does not violate the Fourth Amendment, at least when undertaken to preserve the *status quo* while a search warrant is being sought. In *Mincey* v. *Arizona*, 437 U. S. 385 (1978), we noted with approval that, to preserve evidence, a police guard had been stationed at the entrance to an apartment in which a homicide had been committed, even though "[t]here was no indication that evidence would be lost, destroyed or removed during the time required to obtain a search warrant." *Id.*, at 394. Similarly, in *Rawlings* v. *Kentucky*, 448 U. S. 98 (1980), although officers secured, from within, the home of a person for whom they had an arrest warrant, and detained all occupants while other officers were obtaining a search warrant, the Court did not question the admissibility of evidence discovered pursuant to the warrant later issued.

A distinguished constitutional scholar raised the question whether a seizure of premises to preserve the status quo and protect valuable evidence while police officers in good faith seek a warrant might not be [redacted] appropriate.

> "Here there is a very real practical problem. Does the police officer have any power to maintain the status quo while he, or a colleague of his, is taking the time necessary to draw up a sufficient affidavit to support an application for a search warrant, and then finding a magistrate, submitting the application to him, obtaining the search warrant if it is issued, and then bringing it to the place where the arrest was made. It seems inevitable that a minimum of several hours will be required for this process, at the very best. Unless there is some kind of a power to prevent removal of material from the premises, or destruction of material during this time, the search warrant will almost inevitably be fruitless. Of course, if a search warrant is refused, the officers should leave the premises. May they guard the premises, and prevent egress and entry, and action within the premises, while the search warrant is being obtained? We do not know. There may well be room here, though, for a balance in determining the applicability of the Fourth Amendment. If a warrant is in fact obtained in such a case before a search is made, can it be said to be unreasonable under the fourth amendment if steps are taken to preserve the status quo?" Griswold, Criminal Procedure, 1969—Is It A Means Or An End?, 29 Md. L. Rev. 307, 317 (1969).

Dean Griswold did not purport to answer the questions he posed; [redacted] the significance of his analysis is that he raised them. Implicit in the questions is whether an excessive preoccupation with concern for defendants' rights, which gives rise to an ever-increasing number of criminal rules, does not tend to undermine the entire structure of criminal justice.

given the incalculable social cost of the drug traffic and other criminal activities.

Justice Black posed essentially the same question in his dissent in *Vale v. Louisiana*, 399 U. S. 30, 36 (1969), as had Dean Griswold. After pointing out that Vale's arrest just outside his residence was "plainly visible to anyone within the house, and the police had every reason to believe that someone in the house was likely to destroy the contraband if the search were postponed," he noted:

> "This case raises most graphically the question how does a policeman protect evidence necessary to the State if he must leave the premises to get a warrant, allowing the evidence he seeks to be destroyed. The Court's answer to that question makes unnecessarily difficult the conviction of those who prey upon society." *Id.*, at 41.[1]

We see no reason, as *Mincey* and *Rawlings* would suggest, why the same principle applied in *Chambers*, *Chadwick*, and *Sanders*, should not apply where a dwelling is involved. The sanctity of the home is not to be disputed. ~~However~~, the home is sacred in Fourth Amendment terms not primarily because of the occupants' *possessory* interests in the premises, but because of their *privacy* interests in the activities that take place within. This is what was meant in *Katz v. United States*, 389 U. S. 347 (1967): "[T]he Fourth Amendment protects people, not places." *Id.*, at 351; see also *Payton v. New York*, 445 U. S. 573, 603, 615 (1980) (WHITE, J., dissenting).

As we have noted, however, a seizure affects only possessory interests, not privacy interests. Therefore, the heightened protection we accord privacy interests is simply not implicated where a *seizure* of premises, not a search, is at issue. We hold, therefore, that securing a dwelling, on the basis of

[1] This is a question not infrequently considered by both federal and state courts. See 2 W. LaFave, Search and Seizure § 6.5 (1978), and cases cited.

probable cause, to prevent the destruction or removal of evidence while a search warrant is being sought is not itself an unreasonable seizure of either the dwelling or its contents. We reaffirm at the same time, however, that, absent exigent circumstances, a warrantless search—such as that invalidated in *Vale* v. *Louisiana*, 399 U. S. 30, 33–34 (1970)—is illegal.

Here, the agents had abundant probable cause in advance of their entry to believe that there was ~~contraband~~ in petitioners' apartment; indeed petitioners do not dispute the probable cause determination. The agents had maintained surveillance over petitioners for weeks, and had observed petitioners leave the apartment to make sales of cocaine. Wholly apart from observations made during that extended surveillance, Rivudalla had told agents after his arrest that petitioners had supplied him with cocaine earlier that day, that he had not purchased all of the cocaine offered by Segura, and that Segura probably had more cocaine in the apartment. On the basis of this information, a magistrate duly issued a search warrant, the validity of which was upheld by both the District Court and the Court of Appeals, and which is not before us now.

Here, the agents entered and secured the apartment from within. Arguably, the wiser course would have been to depart immediately and secure the premises from the outside by a "stakeout" once the security check revealed that no one other than those taken into custody were in the apartment. But the method actually employed does not require a different result under the Fourth Amendment, insofar as the *seizure* is concerned. As the Court of Appeals held, absent exigent circumstances, the entry may have constituted an illegal *search*, or interference with petitioners' privacy interests, requiring suppression of all evidence observed during the entry. Securing of the premises from within, however, was no more an interference with the petitioners' possessory interests in the contents of the apartment than a perimeter

"stakeout." In other words, the search did not affect the reasonableness of the seizure. Under either method—entry and securing from within or a perimeter stakeout—agents control the apartment pending arrival of the warrant; both an internal securing and a perimeter stakeout interfere to the same extent with the possessory interests of the owners.

Petitioners argue that we heighten the possibility of illegal entries by a holding that the illegal entry and securing of the premises from the inside do not themselves render the *seizure* any more unreasonable than had the agents staked out the apartment from the outside. We disagree. In the first place, an entry in the absence of exigent circumstances is illegal. We are unwilling to believe that officers will purposely violate the law as a matter of course. Second, as a practical matter, officers who have probable cause and who are in the process of obtaining a warrant have no reason to enter the premises before the warrant issues, absent exigent circumstances which, of course, would justify the entry. *United States* v. *Santana*, 427 U. S. 38 (1976); *Johnson* v. *United States*, 333 U. S. 10 (1948). Third, officers who enter illegally will recognize that whatever evidence they discover as a direct result of the entry may be suppressed, as it was by the Court of Appeals in this case. Finally, if officers enter without exigent circumstances to justify the entry, they expose themselves to potential civil liability under 42 U. S. C. § 1983. *Bivens* v. *Six Unknown Federal Narcotics Agents*, 403 U. S. 388 (1971).

B

Of course, a seizure reasonable at its inception because based upon probable cause may become unreasonable as a result of its duration or for other reasons. Cf. *United States* v. *Place*, *supra*. Here, because of the delay in securing the warrant, the occupation of the apartment continued throughout the night and into the next day. Such delay in securing a warrant in a large metropolitan center unfortunately is not uncommon; this is not, in itself, evidence of bad faith. And there is no suggestion that the officers, in bad faith, pur-

posely delayed obtaining the warrant. The asserted explanation is that the officers focused first on the task of processing those whom they had arrested before turning to the task of securing the warrant. It is not unreasonable for officers to believe that the former should take priority, given, as was the case here, that the ~~occupants~~ proprietors of the apartment were in the custody of the officers throughout the period in question and remained in custody.

Moreover, there is no evidence that the agents in any way exploited their presence in the apartment; they simply awaited issuance of the warrant. More than half of the 19-hour delay was between 10:00 p. m. and 10:00 a. m. the following day, when it is reasonable to assume that judicial officers are not as readily available for consideration of warrant requests. Finally, and most important, we observed in *United States* v. *Place*, *supra*, at ——, that

> "[t]he intrusion on possessory interests occasioned by a seizure of one's personal effects can vary both in its nature and extent. The seizure may be made after the owner has relinquished control of the property to a third party or . . . from the immediate custody and control of the owner."

Here, of course, Segura and Colon, whose possessory interests were interfered with by the occupation, were under arrest and in the custody of the police throughout the entire period the agents occupied the apartment. The actual interference with their possessory interests in the apartment and its contents was, thus, virtually nonexistent. Cf. *Leeuwen*, *supra*. We are not prepared to say under these limited circumstances that the seizure was unreasonable under the Fourth Amendment.[1]

[1] Our decision in *United States* v. *Place*, *supra*, is not inconsistent with this conclusion. There, we found unreasonable a 90-minute detention of a traveler's luggage. But the detention was based only on a suspicion that the luggage contained contraband, not on probable cause. After probable cause was established, authorities held the unopened luggage for almost

Petitioners also argue that even if the evidence was not subject to suppression as primary evidence "seized" by virtue of the initial illegal entry and occupation of the premises, it should have been excluded as "fruit" derived from that illegal entry. Exclusion of derivative evidence or "fruit of the poisonous tree" is not warranted here because the evidence had a wholly independent source for its discovery, i. e., a valid warrant issued on information known to the government well in advance of the entry into the apartment.

None of the information on which the warrant was secured was derived from or related in any way to the entry into petitioners' apartment; the information came from sources wholly unconnected with the entry and was known to the agents well before the initial entry. No information obtained during the initial entry or occupation of the apartment was needed or used by the agents to secure the warrant.

It is therefore beyond dispute that the information possessed by the agents before they entered the apartment constituted an independent source for the discovery and seizure of the evidence now challenged. This evidence was discovered the day following the entry, during the search conducted under a valid warrant; it was the product of that search, wholly unrelated to the prior entry. The valid warrant search was a "means sufficiently distinguishable" to purge the evidence of any "taint" arising from the entry. *Wong Sun*, *supra*, at 488.[7] Had police never entered the

three days before a warrant was obtained. It was not suggested that this delay presented an independent basis for suppression of the evidence eventually discovered.

[7]Our holding in this respect is consistent with the vast majority of federal courts of appeals which have held that evidence obtained pursuant to a valid warrant search need not be excluded because of a prior illegal entry. See, e. g., *United States v. Perez*, 700 F. 2d 1232 (CA9 1983); *United States v. Heaney*, 535 F. 2d 941 (CA6), cert. denied, 452 U. S. 918 (1981); *United States v. Fitzharris*, 633 F. 2d 416 (CA5 1980), cert. denied, 451 U. S. 966 (1981). *United States v. Agapito*, *supra*; *United States* v. *Bosby*, 675 F. 2d

apartment, but instead conducted a perimeter stakeout to prevent anyone from entering the apartment and destroying evidence, the contraband now challenged would have been discovered and seized precisely as it was here. The legality of the initial entry is wholly irrelevant under *Wong Sun*, *supra*, and *Silverthorne*, *supra*.

Our conclusion that the challenged evidence was admissible is fully supported by our prior cases going back more than a half century. The Court has never held that evidence is "fruit of the poisonous tree" simply because "it would not have come to light but for the illegal actions of the police." See *Wong Sun*, *supra*, at 487–488; *Rawlings* v. *Kentucky*, *supra*; *Brown* v. *Illinois*, 422 U. S. 590, 599 (1975). That would squarely conflict with *Silverthorne* and our other cases allowing admission of evidence, notwithstanding a prior illegality, when the link between the illegality and that evidence was sufficiently attenuated to dissipate the taint. By the same token, our cases make clear that evidence will not be excluded as "fruit" unless the illegality is at least the "but for" cause of the discovery of the evidence. Suppression is not justified unless "the challenged evidence is in some sense the product of illegal governmental activity." *United States* v. *Crews*, *supra*, at 471. The illegal entry into petitioners' apartment did not contribute in any way to discovery of the evidence later seized under the warrant; it is clear, therefore, that not even the threshold "but for" requirement was met in this case.

The dissent contends that the initial entry and securing of the premises are the "but for" causes of the discovery of the evidence in that, had the agents not entered the apartment, but instead secured the premises from the outside, Colon or her friends if alerted, could have removed or destroyed the evidence before the warrant issued. While the dissent em-

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1174 (CA11 1982) (dictum). The only federal court of appeals to hold otherwise is the Ninth Circuit. See *United States* v. *Lomas*, 706 F. 2d 866 (1983); *United States* v. *Alford*, 634 F. 2d 1382 (1980).

braces this "reasoning," petitioners do not press this argument.

The Court of Appeals rejected this argument as "prudentially unsound" and because it rested on "wholly speculative assumptions." Among other things, the Court of Appeals suggested that, had the agents waited to enter the apartment until the warrant issued, they might not have decided to take Segura to the apartment and thereby alert Colon. Or, once alerted by Segura's failure to appear, Colon might have attempted to remove the evidence, rather than destroy it, in which event the agents could have intercepted her and the evidence.

We agree fully with the Court of Appeals that the District Court's suggestion that Colon and her cohorts would have removed or destroyed the evidence was pure speculation. Even more important, however, we decline to extend the Exclusionary Rule, which already exacts an enormous price from society and our system of justice, to further "protect" criminal activity, as the dissent would have us do.

It may be that, if the agents had not entered the apartment, petitioners might have arranged for the removal or destruction of the evidence, and that in this narrow sense the agents' actions could be considered the "but for" cause for discovery of the evidence. But at this juncture, we are reminded of Justice Jackson's warning that "[s]ophisticated argument may prove a causal connection between information obtained through [illegal conduct] and the Government's proof," and his admonition that the courts should consider whether "[a]s a matter of good common sense . . . such connection may have become so attenuated as to dissipate the taint." *Nardone*, *supra*, at 341. The essence of the dissent is that there is some "constitutional right" to destroy evidence. This concept defies both logic and common sense.

V

We agree with the Court of Appeals that the cocaine, cash

records and ammunition were properly admitted into evidence. Accordingly, the judgment is affirmed.

It is so ordered.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 11, 1984

Re: 82-5298 - Segura v. United States

Dear Chief,

I shall file the following concurring opinion in this case:

> Whether or not the apartment was seized and whether not the seizure was or became unreasonable, the evidence at issue in this case came from an independent source and was admissible for the reasons stated in Part V of the Court's opinion. I would dispose of the case on that basis. Accordingly, I join Parts I, II, III and V of the Court's opinion as well as its judgment.

No. IV

Sincerely yours,

Byron

The Chief Justice

cc: Justice Powell
Justice Rehnquist
Justice O'Connor

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 11, 1984

RE: 82-5298 - Segura v. United States

MEMORANDUM TO: Justice White
Justice Powell
Justice Rehnquist
Justice O'Connor

I enclose what, so far as I am concerned, is my final effort - for this Term - to get a resolution of this case that will not produce more confusion than clarity to those who must live with it.

If it does not achieve a Court on the independent source issue - which is what we took the case for - I will move to set the case for reargument.

Regards,

WEB

Justice White
Justice Powell
Justice Rehnquist
Justice O'Connor

lfp/ss 06/12/84 98 SALLY-PDW

82-5298 Segura v. United States

JUSTICE POWELL, concurring.

I join Parts I, II, III and V of the Court's opinion and the judgment.

In my view, Part IV addresses a question of some importance that we need not reach. After the occupants of the apartment had been removed to headquarters, the agents remained for some 19 hours after their initial unlawful entry. Ante, at 4. In Part IV, the Court reasons that this "securing the apartment from within" was "no more [of] an interference with petitioner's possessory interest in the contents . . . than a perimeter 'stakeout'". Ante, at 15. The Court therefore concludes that the occupancy

was reasonable.[1] Although some of our cases point in this direction, it is not clear to me as a general proposition that police occupancy of a personal residence is fairly comparable to the staking out of such a residence to protect its contents until a warrant can be obtained.

In this case, however, the warrant obtained - authorizing the search and seizure of the evidence at issue - was based exclusively on an independent source that existed, and was known to the agents, prior to the initial entry of the apartment.[2] This is the critical

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[1]To be sure there is no evidence in this case that the occupying agents extended their initial search for weapons or that they otherwise exploited their presence. But the owners or lessees of such a residence hardly were in a position to present such evidence.

[2]The agents therefore had no ulterior motive in remaining in the apartment pending the actual obtaining of the warrant. It is to be noted, also, that there is no

Footnote continued on next page.

point for me. We therefore need not consider whether a 19-hour occupancy in different circumstances may be reasonable.

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evidence of intentional delay in obtaining the warrant; at most it was a bureaucratic "foul-up".

With Bob's additions

lfp/ss 06/12/84 98 SALLY-POW

82-5298 Segura v. United States

JUSTICE POWELL, concurring.

I join Parts I, II, III and V of the Court's opinion and the judgment.

In my view, Part IV addresses a question of some importance that we need not reach. After the occupants of the apartment had been removed to headquarters, the agents remained for some 19 hours after their initial unlawful entry. Ante, at 4. In Part IV, the Court reasons that this "securing the apartment from within" was "no more [of] an interference with petitioner's possessory interest in the contents . . . than a perimeter 'stakeout'". Ante, at 15. The Court therefore concludes that the occupancy

was reasonable.[1] Although some of our cases point in this direction, it is not clear to me as a general proposition that police occupancy of a personal residence is fairly comparable to the staking out of such a residence to protect its contents until a warrant can be obtained. I do not believe, however, that the mere occupancy of an apartment is a "seizure" as that term is used in the Fourth Amendment. No In this case, however, the warrant obtained Thus, authorizing the search and seizure of the evidence at issue in this case was based exclusively on an independent source that existed, and was known to the agents, prior to the initial entry into the apartment.[2] This is the critical

---

[1]To be sure there is no evidence in this case that the occupying agents extended their initial search for weapons or that they otherwise exploited their presence. But the owners or lessees of such a residence hardly were in a position to present such evidence.

[2]The agents therefore had no ulterior motive in remaining in the apartment pending the actual obtaining of the warrant. It is to be noted, also, that there is no

Footnote continued on next page.

point for me. We therefore need not consider whether a 19-hour occupancy in different circumstances may be reasonable.

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evidence of intentional delay in obtaining the warrant; at most it was a bureaucratic "foul-up".

lfp/ss 06/12/84 CJS SALLY-POW

82-5298 Segura v. United States

Dear Chief:

Like Bill Rehnquist, as indeed is true of all of us, I have had difficulty deciding between the various alternatives so conscientiously submitted to us.

At the outset, I viewed the case as presenting a question of no difficulty. The warrant was obtained from an independent source prior to the agent's entry into the apartment. One can argue reasonably that because of the independent source, the duration of the occupancy is immaterial.

But the more I have thought about the case, I have become concerned that this could encourage deliberate or negligent occupany of private residences for

unreasonable periods of time. At least in an indirect way, occupancy of one's residence by police is in substance of a violation of privacy.

To avoid the difficult problems addressed in Part IV, I would prefer simply to say that petitioners produced no evidence that the police had not acted with diligence in obtaining the warrant or any evidence of unlawful conduct during the occupany. In these circumstances, the evidence seized pursuant to the warrant properly was excluded.

Accordingly, I will join all of your opinion except Part IV, and simply leave open questions you consider in it.

Sincerely,

The Chief Justice

lfp/ss

cc: Justices White, Rehnquist and O'Connor

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 12, 1984

Re: No. 82-5298 Segura v. United States

Dear Chief,

I am still with you on the June 11 circulation.

Sincerely,

Sandra

The Chief Justice

cc: Justice White
Justice Powell
Justice Rehnquist

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 12, 1984

Re: No. 82-5298 Segura v. United States

Dear Chief,

After ruminating about this case for some time, I come down where Byron is, and by this note ask him to join me in his concurring opinion, which in turn joins parts I, II, III, and V of your opinion, and your judgment as well.

Sincerely,

WER

The Chief Justice

cc: Justice White
Justice Powell
Justice O'Connor

Rob -
Your advice

June 13, 1984

PERSONAL

82-5298 Segura v. United States
83-173 Wasman v. United States

Dear Chief:

This refers to our several conversations about these two cases.

As we usually agree on the criminal law, I regret that we have some differences here - not as to the ultimate outcome but only as to how broadly the opinions should be written.

Since our discussion yesterday afternoon, I have taken another look at both cases. In Wasman, I enclose a Chambers draft of a concurring opinion. I have not circulated it because I was hopeful that you might make accommodating changes in your opinion. See my private letter of June 8. While there is some ambiguity in Pearce, it seems clear - at least to me - that in both of the quotations we have discussed (see my draft opinion) the Court was talking only about "subsequent" events. I therefore doubt the justification in this case of attempting to broaden the Pearce holding.

* * *

In Segura, I also enclose a typewritten copy of a brief concurring opinion that I dictated yesterday in order to record my thoughts in view of your concern about my position. My views in this case have evolved in light of the several circulations, but I have now come to agree with Bill Rehnquist and Byron that I cannot join Part IV.

* * *

As we have discussed before, I have some institutional concern as a result of the unprecedented number of criminal cases decided this Term in favor of the federal or state governments. Many of these cases - particularly the exclusionary rule ones - do significantly limit prior precedents. I am hesitant to depart from precedent unless the

public interest clearly requires it. In my view, this is true in neither Wasman nor Segura.

In any event, you will have a solid Court opinion in Segura, and a plurality opinion plus a judgment in Wasman. This is certainly not an unfavorable result from your viewpoint in cases of this difficulty.

Sincerely,

The Chief Justice

lfp/ss

The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

Circulated: _____

Recirculated: _____

1st CHAMBERS DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1098

ANDRES SEGURA AND LUZ MARINA COLON, PETITIONERS v. UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[June - -, 1984]

JUSTICE POWELL, concurring.

I join Parts I, II, III, V, and VI of the Court's opinion and the judgment.

In my view, Part IV addresses a question of some importance that we need not reach. After the occupants of the apartment had been removed to headquarters, the agents remained for some 19 hours after their initial unlawful entry. *Ante*, at 4. In Part IV, the Court reasons that this "[s]ecuring of the premises from within" was "no more [of] an interference with petitioner's possessory interest in the contents . . . than a perimeter 'stakeout.'" *Ante*, at 15–16. The Court therefore concludes that the occupancy was reasonable.[1] Although some of our cases point in this direction, it is not clear to me as a general proposition that police occupancy of a personal residence is fairly comparable to the staking out of such a residence to protect its contents until a warrant can be obtained.

The warrant authorizing the search and seizure of the evidence at issue in this case, however, was based exclusively on an independent source that existed, and was known to the

[1] To be sure, there is no evidence in this case that the occupying agents extended their initial search for weapons or that they otherwise exploited their presence. But the owners or lessees of such a residence hardly were in a position to present such evidence.

agents, *prior* to the initial entry into the apartment.[1] This is the critical point for me. We therefore need not consider whether a 19-hour occupancy in different circumstances may be reasonable.

---

[1] The agents therefore had no ulterior motive in remaining in the apartment pending the actual obtaining of the warrant. It is to be noted, also, that there is no evidence of intentional delay in obtaining the warrant, at most it was a bureaucratic "foul-up."

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 14, 1984

Re: 82-5298 -

Segura and Colon v. United States

Dear Chief,

Please join me in Parts I, II, III, V and VI of your third draft.

Sincerely yours,

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

Sally Wrote this
& sent to Rob.

June 14, 1984

Re: No. 82-5298 Segura v. United States

Dear Chief,

Like Byron, I join Parts I, II, III, V and VI of your third draft.

Sincerely,

WR

The Chief Justice

cc: The Conference

If I have decided to withdraw my concurring opinion and follow Byron & Bill Rehnquist in simply joining.

June 15, 1984

82-5298 Segura v. United States

Dear Chief:

As have Byron and Bill Rehnquist, I also will join Parts I, II, III, V and VI of your third draft.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

I will not circulate my concurring opinion that I sent you privately.

L.F.P., Jr.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 15, 1984

PERSONAL

Re: 82-5298 Segura v. United States

Dear Lewis:

Byron and Bill would hold in this case that evidence obtained as a direct result of unconstitutional conduct need not be suppressed (See Byron's memorandum 6/11/84). I do not agree with this for it provides no discernible check on police misconduct. But, irrespective of the merits of such a holding, we need not go so far in this case.

There is also a logical flaw in Bill's and Byron's position. If petitioners are correct that the evidence was "seized" when the agents first entered and secured the premises, there could be no "independent source" for that seizure. The only true "independent source" is the valid warrant. Because the agents did not obtain the warrant until the next day, however, it could not serve as an "independent source" for the earlier seizure. In short, their concurrence either accepts that there can be multiple unconstitutional seizures--and presumably searches--so long as the last in the series is pursuant to a warrant, or it simply misunderstands the difference between the doctrines of independent source and inevitable discovery.

For essentially the same reasons, it is illogical to maintain that the Court need not reach the question whether there was an unconstitutional seizure of the premises.

It is too bad I have been "coerced" into dealing with the initial entry, but one colleague can do that!

Regards,

It was unnecessary! WEB

Justice Powell

Probably not a sequel Rem. But desirable to leave this out

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 19, 1984

MEMORANDUM TO THE CONFERENCE:

RE: No. 82-5298 Segura v. United States

I will add the following footnote at the end of the paragraph which concludes with the citation to Silverthorne on page 19.

> It is important to note that the dissent stresses the legal status of the agents' initial entry and occupation of the apartment; however, this case involves only evidence seized in the search made subsequently under a valid warrant. Implicit in the dissent is that the agents' presence in the apartment denied petitioners some legal "right" to arrange to have the incriminating evidence concealed or destroyed.

With this addition, I am prepared to release the opinion.

Regards,

WEB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

Rob -

June 20, 1984

Re: 82-5298 - Segura v. United States

Dear Chief:

For two reasons I do not believe Segura is ready to come down.

First, in my dissent I cross-cite to Leon. I do not want to omit that citation because it squarely responds to your reliance on the officers' good faith. At pages 16-17 of your opinion.

Second, since Byron, Lewis, and Bill Rehnquist have all declined to join Part IV of your opinion (pp. 9-20), it would seem to me that there must be a question as to whether they have joined the portion of Part I in which you state:

I see no problem

> "Specifically, we hold that where officers, having probable cause, enter premises, and with probable cause, arrest the occupants who have legitimate possessory interests in its contents and take them into custody and, for no more than the period here involved, secure the premises from within to preserve the status quo while others, in good faith, are in the process of obtaining a warrant, they do not violate the Fourth Amendment's proscription against unreasonable seizures." (p. 2).

Perhaps I do not have standing to raise this question, but I want to be sure that in my dissent I refer to "the Court" as opposed to "THE CHIEF JUSTICE" at the appropriate places and at this point I am not quite sure how the Reporter will be treating Part I of your opinion.

Respectfully,

JPS

The Chief Justice
Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 21, 1984

Re: 82-5298 - Segura v. United States

Dear John:

I have your note of the 20th. This case has gone through so many "permutations" that I think it is desirable to raise these issues.

You are correct that Byron, Lewis and Bill Rehnquist do not join Part IV. However, they do join Part I, and it is up to them to be sure whether they want the record to show them as joining Part I.

I should add that the headnote will, as usual, refer only to the basic holding of the case on the "independent source." There is no occasion for the headnote to discuss the preservation of the "status quo issue," there being no Court on that point.

Regards,

WEB

Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

July 2, 1984

Re: 82-5298 - Segura v. United States

MEMORANDUM TO THE CONFERENCE:

A final review of the opinion leads me to shorten it by moving all of page 13 and the 15 lines of page 14 to a footnote, deleting. in this process, the latter half of the Griswold quote and the final text paragraph on page 13, ending with two lines on page 14.

Absent dissent, this will come down as scheduled on Thursday.

Regards,

WEB

&82-5298 Segura v. United States (Rob)

CJ for the Court 11/14/83
1st draft 12/30/83
3rd draft 6/13/84
4th draft 7/3/84
Joined by LFP 1/2/84;
Joined by WHR 1/3/84;
Joined by BRW 1/3/84;
SOC 5/30/84

JPS dissent
1st draft 2/10/84
2nd draft 2/15/84
3rd draft 2/22/84
4th draft 6/5/84
5th draft 6/18/84
Joined by WJB 2/13/84
Joined by TM 2/13/84
Joined by HAB 2/21/84

WJB wait on JPS writing 1/4/83
(sent drafts A and B to LFP, WHR and BRW 5/16/84)
BRW joins Parts I, II, III, V and VI of 3rd draft 6/14/84
WHR " " 6/14/84
LFP " " 6/15/84