

DELEGATE BENNETT: I second.

THE CHAIRMAN: The Chair recognizes Delegate Bothe.

Will you first point out the difference between this amendment and Amendment No. 7?

DELEGATE BOTHE: The distinction between this amendment and Amendment J, which was just turned down by the Committee of the Whole, is simply this:

It eliminates the reference to "agencies of the State," and I perhaps should have said sooner, that this language is precisely that which is suggested by the Model State Constitution of the National Municipal League. It states the exclusionary rule which I attempted to explain very briefly a moment ago, and suggests that it be imbedded in the constitution. And since the language states "shall not be admissible in any court or against any person," it would include not only criminal but civil proceedings, but narrows the parameter of the notion somewhat.

I know that the body here tonight does not want to reargue what was just said, and I will not do so, but I feel that this is a subject which should be considered very closely, contrary to what Judge Henderson said in his final remarks. This is not just a rule of evidence. It is a rule or a principle which effectuates the right of privacy. In the 200 years since the Fourth Amendment has existed, there has been no other means devised by judges or people to effectuate the Fourth Amendment other than the exclusionary rule, or other than the rules that say that at least the courts will not entertain in evidence matters which are seized in violation of the Fourth Amendment.

Now, since the case of *Mapp v. Ohio*, which, as Judge Henderson said, was a five-four decision, I dare say this is going to remain the law of the land for time immemorial anyway. It has been adopted in much lesser margin cases many times since. The exclusionary rule has become a part of the constitutional rights of the people.

You and I have a constitutional right not to have evidence introduced against us, not to have the courts used to perpetuate unlawful searches and seizures. This is not a novel concept as some may have given you the impression it is, and if I am a female voice rising here, I might say that in civil proceedings it has been used most frequently, or discussed most frequently in divorce cases.

As all of us have read about it, the various practices of private detectives, which are becoming increasingly sophisticated, invade the most intimate parts of our lives.

This evidence is not admissible evidence in an adultery charge or criminal charge. You may not introduce the evidence of a detective who was lying under the bed. However, your wife or husband can use that evidence in a divorce proceeding. This is ludicrous, unfair, and wrong.

And in a modern society where the rights of innocent people, or law abiding, or non-criminal people are certainly more important than the rights of the criminal accused, the least that can be done is to state affirmatively in the constitution that where private rights are invaded, the courts cannot be used to take advantage of this unfairness.

This amendment is somewhat more restrictive than the one that you just voted on. It applies only to courts, and that is it.

THE CHAIRMAN: Are there any other questions of the sponsor?

Delegate Byrnes.

DELEGATE BYRNES: Delegate Bothe, I have the same problem with this as I did with the other, and I do not think I understood you clearly when I asked you about the application of this to the Wong Sun trial.

But let me state it quickly and precisely by saying, would I be stating your intention if I were to mentally add to line 6 the following clause: "whose rights have been violated"?

Is that the person we are talking about?

DELEGATE BOTHE: No, it is not Delegate Byrnes, and this is a point which I did not raise before. The exclusionary rule, as I have said, has been made applicable to the states through the decision of *Mapp v. Ohio*. However, there is a line of decisions which are completely incongruous, holding that only that person whose rights were violated may raise the objection. To give a concrete example, if you are visiting in a friend's house and the police illegally raid that house, and find illegal evidence in the house, which incriminates you, you cannot raise the question of illegal search and seizure because it was not your home that was violated. This provision would also abrogate that rule of evidence.

THE CHAIRMAN: Are there any other questions?