

Justice Carter Dissents, Blasts Illegal Evidence

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By Jack Morrison

A good many California prosecutors and police chiefs evidently feel their subordinates are entitled to praise when they violate the U. S. Constitution, a State Supreme Court judge said last week.

Justice Jesse W. Carter included the comment in a slashing counterattack on opponents of the court's rule against illegally-obtained evidence.

Among those who have shown they take constitutional guarantees lightly are Los Angeles Police Chief William Parker, Assistant Attorney General Clarence Linn and District Attorneys Frank Coakley of Alameda County and William Weissich of Marin County, Carter told reporters.

He supplied the names in response to queries about a dissenting opinion he handed down Friday in a case involving search of a narcotics offender by Oakland police.

A majority of the court upheld the validity of the search. The defendant had argued the officers violated his constitutional rights and that the evidence they seized should not be used against him.

The Supreme Court in a ruling last April on an appeal by Charles H. Cahan, an asserted Los Angeles bookmaker, set up an exclusionary rule against evidence secured by "unreasonable" search and seizure.

The Cahan ruling has since

been under heavy attack by law-enforcement officials, who contend it is an unwarranted restriction of police efforts to stamp out crime.

Justice Carter's dissent said that, from the "intemperate and misleading" statements attributed in the press to police chiefs and prosecutors, "We are forced to assume that they feel great credit and high praise should go to those law enforcing officers who ruthlessly violate the above mentioned constitutional guarantees, and that hatred contempt, ridicule and obloquy should be heaped upon those who insist upon their observance and preservation."

Then the jurist delivered a lengthy animadversion on past police practices, saying in part:

"It is a matter of common knowledge that it has been the practice of law enforcement officers of this state to make searches of the persons and property of individuals whenever they saw fit . . .

Justice Carter said that "ours is a system of ordered liberty which is made more secure by placing a magistrate between the citizens and the over-zealous law enforcement officer."

He declared that although this system works to protect the guilty as well as the innocent against unreasonable searches, "its effect on criminal prosecutions in this field is no different than any of the other safeguards embraced in the Bill of Rights . . ."