Seventy-five years ago, in Boyd v. United States, 116 U. S. 616, 630 (1886), considering the Fourth [Footnote 4] and Fifth Amendments as running "almost into each other" [Footnote 5] on the facts before it, **this Court held that the doctrines of those Amendments**

"apply to all invasions on the part of the government and its employes of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers,

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that constitutes the essence of the offence; but it is the invasion of his indefeasible right of personal security, personal liberty and private property. . . . Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods, is within the condemnation . . . [of those Amendments]."

The Court noted that

"constitutional provisions for the security of person and property should be liberally construed. . . . It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon." At p. 635.

In this jealous regard for maintaining the integrity of individual rights, the Court gave life to Madison's prediction that "independent tribunals of justice . . . will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights." I Annals of Cong. 439 (1789). Concluding, the Court specifically referred to the use of the evidence there seized as "unconstitutional." At p. 638. Less than 30 years after Boyd, this Court, in Weeks v. United States, 232 U. S. 383 (1914), stated that

"the Fourth Amendment . . . put the courts of the United States and Federal officials, in the exercise of their power and authority, under limitations and restraints [and] . . . forever secure[d] the people, their persons, houses, papers and effects against all unreasonable searches and seizures under the guise of law . . . , and the duty of giving to it force and effect is obligatory upon all entrusted under our Federal system with the enforcement of the laws." At pp. 391-392.

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Specifically dealing with the use of the evidence unconstitutionally seized, the Court concluded

"If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment declaring his right to be secure against such searches and seizures is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution. The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land." At p. 393.

Finally, the Court in that case clearly stated that use of the seized evidence involved "a denial of the constitutional rights of the accused." At pp. 398. Thus, in the year 1914, in the Weeks case, this Court "for the first time" held that, "in a federal prosecution, the Fourth Amendment barred the use of evidence secured through an illegal search and seizure." Wolf v. Colorado, supra, at 28. This Court has ever since required of federal law officers a strict adherence to that command which this Court has held to be a clear, specific, and constitutionally required--even if judicially implied--deterrent safeguard without insistence upon which the Fourth Amendment would have been reduced to "a form of words." Holmes, J., Silverthorne Lumber Co. v. United States, 251 U. S. 385, 392 (1920). It meant, quite simply, that "conviction by means of unlawful seizures and enforced confessions . . . should find no sanction in the judgments of the courts . . . ," Weeks v. United States, supra, at 392, and that such evidence "shall not be used at all." Silverthorne Lumber Co. v. United States, supra, at 392.

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There are in the cases of this Court some passing references to the Weeks rule as being one of evidence. But the plain and unequivocal language of Weeks--and its later paraphrase in Wolf--to the effect that the Weeks rule is of constitutional origin, remains entirely undisturbed. In Byars v. United States, 273 U. S. 28 (1927), a unanimous Court declared that "the doctrine [cannot] . . . be tolerated under our constitutional system, that evidences of crime discovered by a federal officer in making a search without lawful warrant may be used against the victim of the unlawful search where a timely challenge has been interposed." At pp. 29-30 (emphasis added). The Court, in Olmstead v. United States, 277 U. S. 438 (1928), in unmistakable language restated the Weeks rule:

"The striking outcome of the Weeks case and those which followed it was the sweeping declaration that the Fourth Amendment, although not referring to or limiting the use of evidence in courts, really forbade its introduction if obtained by government officers through a violation of the Amendment." At p. 462.

In McNabb v. United States, 318 U. S. 332 (1943), we note this statement:

"[A] conviction in the federal courts, the foundation of which is evidence obtained in disregard of liberties deemed fundamental by the Constitution, cannot stand. Boyd v. United States . . . Weeks v. United States. . . . And this Court has, on Constitutional grounds, set aside convictions, both in the federal and state courts, which were based upon confessions 'secured by protracted and repeated questioning of ignorant and untutored persons, in whose minds the power of officers was greatly mag-

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nified' . . . or 'who have been unlawfully held incommunicado without advice of friends or counsel.' . . ." At pp. 339-340.

Significantly, in McNabb, the Court did then pass on to formulate a rule of evidence, saying, "[i]n the view we take of the case, however, it becomes unnecessary to reach the Constitutional issue, [for] . . . [t]he principles governing the admissibility of evidence in federal criminal trials have not been restricted . . . to those derived solely from the Constitution." At pp. 340-341.

II

In 1949, 35 years after Weeks was announced, this Court, in Wolf v. Colorado, supra, again for the first time, [Footnote 6] discussed the effect of the Fourth Amendment upon the States through the operation of the Due Process Clause of the Fourteenth Amendment. It said:

"[W]e have no hesitation in saying that, were a State affirmatively to sanction such police incursion into privacy, it would run counter to the guaranty of the Fourteenth Amendment." At pp. 28.

Nevertheless, after declaring that the "security of one's privacy against arbitrary intrusion by the police" is "implicit in the concept of ordered liberty' and, as such, enforceable against the States through the Due Process Clause," cf. Palko v. Connecticut, 302 U. S. 319 (1937), and announcing that it "stoutly adhere[d]" to the Weeks decision, the Court decided that the Weeks exclusionary

rule would not then be imposed upon the States as "an essential ingredient of the right." 338 U.S. at 27-29. The Court's reasons for not considering essential to the

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right to privacy, as a curb imposed upon the States by the Due Process Clause, that which decades before had been posited as part and parcel of the Fourth Amendment's limitation upon federal encroachment of individual privacy, were bottomed on factual considerations.

While they are not basically relevant to a decision that the exclusionary rule is an essential ingredient of the Fourth Amendment as the right it embodies is vouchsafed against the States by the Due Process Clause, we will consider the current validity of the factual grounds upon which Wolf was based.

The Court in Wolf first stated that "[t]he contrariety of views of the States" on the adoption of the exclusionary rule of Weeks was "particularly impressive" (At pp. 29); and, in this connection, that it could not "brush aside the experience of States which deem the incidence of such conduct by the police too slight to call for a deterrent remedy . . . by overriding the [States'] relevant rules of evidence." At pp. 31-32. While, in 1949, prior to the Wolf case, almost two-thirds of the States were opposed to the use of the exclusionary rule, now, despite the Wolf case, more than half of those since passing upon it, by their own legislative or judicial decision, have wholly or partly adopted or adhered to the Weeks rule. See Elkins v. United States, 364 U. S. 206, Appendix, pp. 224-232 (1960). Significantly, among those now following the rule is California, which, according to its highest court, was "compelled to reach that conclusion because other remedies have completely failed to secure compliance with the constitutional provisions. . . ." People v. Cahan, 44 Cal.2d 434, 445, 282 P.2d 905, 911 (1955). In connection with this California case, we note that the second basis elaborated in Wolf in support of its failure to enforce the exclusionary doctrine against the States was that "other means of protection" have been afforded "the

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right to privacy." [Footnote 7] 338 U.S. at 30. The experience of California that such other remedies have been worthless and futile is buttressed by the experience of other States. The obvious futility of relegating the Fourth Amendment to the protection of other remedies has, moreover, been

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recognized by this Court since Wolf. See Irvine v. California, 347 U. S. 128, 137 (1954).

Likewise, time has set its face against what Wolf called the "weighty testimony" of People v. Defore, 242 N.Y. 13, 150 N.E. 585 (1926). There, Justice (then Judge) Cardozo, rejecting adoption of the Weeks exclusionary rule in New York, had said that "[t]he Federal rule as it stands is either too strict or too lax." 242 N.Y. at 22, 150 N.E. at 588. However, the force of that reasoning has been largely vitiated by later decisions of this Court. These include the recent discarding of the "silver platter" doctrine which allowed federal judicial use of evidence seized in violation of the Constitution by state agents, Elkins v. United States, supra; the relaxation of the formerly strict

requirements as to standing to challenge the use of evidence thus seized, so that now the procedure of exclusion, "ultimately referable to constitutional safeguards," is available to anyone even "legitimately on [the] premises" unlawfully searched, Jones v. United States, 362 U. S. 257, 266-267 (1960); and, finally, the formulation of a method to prevent state use of evidence unconstitutionally seized by federal agents, Rea v. United States, 350 U. S. 214 (1956). Because there can be no fixed formula, we are admittedly met with "recurring questions of the reasonableness of searches," but less is not to be expected when dealing with a Constitution, and, at any rate, "[r]easonableness is in the first instance for the [trial court] . . . to determine." United States v. Rabinowitz, 339 U. S. 56, 63 (1950).

It therefore plainly appears that the factual considerations supporting the failure of the Wolf Court to include the Weeks exclusionary rule when it recognized the enforceability of the right to privacy against the States in 1949, while not basically relevant to the constitutional consideration, could not, in any analysis, now be deemed controlling.

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III

Some five years after Wolf, in answer to a plea made here Term after Term that we overturn its doctrine on applicability of the Weeks exclusionary rule, this Court indicated that such should not be done until the States had "adequate opportunity to adopt or reject the [Weeks] rule." Irvine v. California, supra, at 134. There again, it was said:

"Never until June of 1949 did this Court hold the basic search and seizure prohibition in any way applicable to the states under the Fourteenth Amendment." Ibid.

And only last Term, after again carefully reexamining the Wolf doctrine in Elkins v. United States, supra, the Court pointed out that "the controlling principles" as to search and seizure and the problem of admissibility "seemed clear" (At pp. 212) until the announcement in Wolf "that the Due Process Clause of the Fourteenth Amendment does not itself require state courts to adopt the exclusionary rule" of the Weeks case. At pp. 213. At the same time, the Court pointed out, "the underlying constitutional doctrine which Wolf established . . . that the Federal Constitution . . . prohibits unreasonable searches and seizures by state officers" had undermined the "foundation upon which the admissibility of state-seized evidence in a federal trial originally rested. . . ." Ibid. The Court concluded that it was therefore obliged to hold, although it chose the narrower ground on which to do so, that all evidence obtained by an unconstitutional search and seizure was inadmissible in a federal court regardless of its source. Today we once again examine Wolf's constitutional documentation of the right to privacy free from unreasonable state intrusion, and, after its dozen years on our books, are led by it to close the only

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courtroom door remaining open to evidence secured by official lawlessness in flagrant abuse of that basic right, reserved to all persons as a specific guarantee against that very same unlawful conduct. We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court.

Since the Fourth Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth, it is enforceable against them by the same sanction of exclusion as is used against the Federal Government. Were it otherwise, then, just as without the Weeks rule the assurance against unreasonable federal searches and seizures would be "a form of words," valueless and undeserving of mention in a perpetual charter of inestimable human liberties, so too, without that rule, the freedom from state invasions of privacy would be so ephemeral and so neatly severed from its conceptual nexus with the freedom from all brutish means of coercing evidence as not to merit this Court's high regard as a freedom "implicit in the concept of ordered liberty." At the time that the Court held in Wolf that the Amendment was applicable to the States through the Due Process Clause, the cases of this Court, as we have seen, had steadfastly held that as to federal officers the Fourth Amendment included the exclusion of the evidence seized in violation of its provisions. Even Wolf "stoutly adhered" to that proposition. The right to privacy, when conceded operatively enforceable against the States, was not susceptible of destruction by avulsion of the sanction upon which its protection and enjoyment had always been deemed dependent under the Boyd, Weeks and Silverthorne cases. Therefore, in extending the substantive protections of due process to all constitutionally unreasonable searches--state or federal--it was

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logically and constitutionally necessary that the exclusion doctrine--an essential part of the right to privacy--be also insisted upon as an essential ingredient of the right newly recognized by the Wolf case. In short, the admission of the new constitutional right by Wolf could not consistently tolerate denial of its most important constitutional privilege, namely, the exclusion of the evidence which an accused had been forced to give by reason of the unlawful seizure. To hold otherwise is to grant the right but, in reality, to withhold its privilege and enjoyment. Only last year, the Court itself recognized that the purpose of the exclusionary rule "is to deter--to compel respect for the constitutional guaranty in the only effectively available way--by removing the incentive to disregard it." Elkins v. United States, supra, at 217.

Indeed, we are aware of no restraint, similar to that rejected today, conditioning the enforcement of any other basic constitutional right. The right to privacy, no less important than any other right carefully and particularly reserved to the people, would stand in marked contrast to all other rights declared as "basic to a free society." Wolf v. Colorado, supra, at 27. This Court has not hesitated to enforce as strictly against the States as it does against the Federal Government the rights of free speech and of a free press, the rights to notice and to a fair, public trial, including, as it does, the right not to be convicted by use of a coerced confession, however logically relevant it be, and without regard to its reliability. Rogers v. Richmond, 365 U. S. 534 (1961). And nothing could be more certain than that, when a coerced confession is involved, "the relevant rules of evidence" are overridden without regard to "the incidence of such conduct by the police," slight or frequent. Why should not the same rule apply to what is tantamount to coerced testimony by way of unconstitutional seizure of goods, papers, effects, documents, etc.? We find that,

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as to the Federal Government, the Fourth and Fifth Amendments and, as to the States, the freedom from unconscionable invasions of privacy and the freedom from convictions based upon coerced confessions do enjoy an "intimate relation" [Footnote 8] in their perpetuation of "principles of humanity and civil liberty [secured] . . . only after years of struggle," Bram v. United States, 168 U. S. 532, 543-544 (1897). They express "supplementing phases of the same constitutional purpose to maintain inviolate large areas of personal privacy." Feldman v. United States, 322 U. S. 487, 489-490 (1944). The philosophy of each Amendment and of each freedom is complementary to, although not dependent upon, that of the other in its sphere of influence--the very least that together they assure in either sphere is that no man is to be convicted on unconstitutional evidence. Cf. Rochin v. California, 342 U. S. 165, 173 (1952).

V

Moreover, our holding that the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments is not only the logical dictate of prior cases, but it also makes very good sense. ***There is no war between the Constitution and common sense***. Presently, a federal prosecutor may make no use of evidence illegally seized, but a State's attorney across the street may, although he supposedly is operating under the enforceable prohibitions of the same Amendment. Thus, the State, by admitting evidence unlawfully seized, serves to encourage disobedience to the Federal Constitution which it is bound to uphold. Moreover, as was said in Elkins, "[t]he very essence of a healthy federalism depends upon the avoidance of needless conflict between

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state and federal courts." 364 U.S. at 221. Such a conflict, hereafter needless, arose this very Term in Wilson v. Schnettler, 365 U. S. 381 (1961), in which, and in spite of the promise made by Rea, we gave full recognition to our practice in this regard by refusing to restrain a federal officer from testifying in a state court as to evidence unconstitutionally seized by him in the performance of his duties. Yet the double standard recognized until today hardly put such a thesis into practice. In nonexclusionary States, federal officers, being human, were by it invited to, and did, as our cases indicate, step across the street to the State's attorney with their unconstitutionally seized evidence. Prosecution on the basis of that evidence was then had in a state court in utter disregard of the enforceable Fourth Amendment. If the fruits of an unconstitutional search had been inadmissible in both state and federal courts, this inducement to evasion would have been sooner eliminated. There would be no need to reconcile such cases as Rea and Schnettler, each pointing up the hazardous uncertainties of our heretofore ambivalent approach.

Federal-state cooperation in the solution of crime under constitutional standards will be promoted, if only by recognition of their now mutual obligation to respect the same fundamental criteria in their approaches. "However much in a particular case insistence upon such rules may appear as a technicality that inures to the benefit of a guilty person, the history of the criminal law proves that tolerance of shortcut methods in law enforcement impairs its enduring effectiveness." Miller v. United States, 357 U. S. 301, 313 (1958). Denying shortcuts to only one of two cooperating law enforcement agencies tends naturally to breed legitimate suspicion of "working arrangements"

whose results are equally tainted. Byars v. United States, 273 U. S. 28 (1927); Lustig v. United States, 338 U. S. 74 (1949).

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There are those who say, as did Justice (then Judge) Cardozo, that, under our constitutional exclusionary doctrine, "[t]he criminal is to go free because the constable has blundered." People v. Defore, 242 N.Y. at 21, 150 N.E. at 587. In some cases, this will undoubtedly be the result. [Footnote 9] But, as was said in Elkins, "there is another consideration--the imperative of judicial integrity." 364 U.S. at 222. The criminal goes free, if he must, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence. As Mr. Justice Brandeis, dissenting, said in Olmstead v. United States, 277 U. S. 438, 485 (1928): "Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. . . . If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." Nor can it lightly be assumed that, as a practical matter, adoption of the exclusionary rule fetters law enforcement. Only last year, this Court expressly considered that contention and found that "pragmatic evidence of a sort" to the contrary was not wanting. Elkins v. United States, supra, at 218. The Court noted that

"The federal courts themselves have operated under the exclusionary rule of Weeks for almost half a cen-

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tury; yet it has not been suggested either that the Federal Bureau of Investigation [Footnote 10] has thereby been rendered ineffective, or that the administration of criminal justice in the federal courts has thereby been disrupted. Moreover, the experience of the states is impressive. . . . The movement towards the rule of exclusion has been halting, but seemingly inexorable." Id. at 218-219.

The ignoble shortcut to conviction left open to the State tends to destroy the entire system of constitutional restraints on which the liberties of the people rest. [Footnote 11] Having once recognized that the right to privacy embodied in the Fourth Amendment is enforceable against the States, and that the right to be secure against rude invasions of privacy by state officers is, therefore, constitutional in origin, we can no longer permit that right to remain an empty promise. Because it is enforceable in the same manner and to like effect as other basic rights secured by the Due Process Clause, we can no longer permit it to be revocable at the whim of any police officer who, in the name of law enforcement itself, chooses to suspend its enjoyment. Our decision, founded on reason and truth, gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice.

The judgment of the Supreme Court of Ohio is reversed, and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed and remanded.

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MR. JUSTICE BLACK, concurring.

For nearly fifty years, since the decision of this Court in Weeks v. United States, [Footnote 1] federal courts have refused to permit the introduction into evidence against an accused of his papers and effects obtained by "unreasonable searches and seizures" in violation of the Fourth Amendment. In Wolf v. Colorado, decided in 1948, however, this Court held that, "in a prosecution in a State court for a State crime, the Fourteenth Amendment does not forbid the admission of evidence obtained by an unreasonable search and seizure." [Footnote 2] I concurred in that holding on these grounds:

"For reasons stated in my dissenting opinion in Adamson v. California, 332 U. S. 46, 68, I agree with the conclusion of the Court that the Fourth Amendment's prohibition of 'unreasonable searches and seizures' is enforceable against the states. Consequently, I should be for reversal of this case if I thought the Fourth Amendment not only prohibited 'unreasonable searches and seizures,' but also, of itself, barred the use of evidence so unlawfully obtained. But I agree with what appears to be a plain implication of the Court's opinion that the federal exclusionary rule is not a command of the Fourth Amendment, but is a judicially created rule of evidence which Congress might negate." [Footnote 3]

I am still not persuaded that the Fourth Amendment, standing alone, would be enough to bar the introduction into evidence against an accused of papers and effects seized from him in violation of its commands. For the Fourth Amendment does not itself contain any provision expressly precluding the use of such evidence, and I am

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extremely doubtful that such a provision could properly be inferred from nothing more than the basic command against unreasonable searches and seizures. Reflection on the problem, however, in the light of cases coming before the Court since Wolf, has led me to conclude that, when the Fourth Amendment's ban against unreasonable searches and seizures is considered together with the Fifth Amendment's ban against compelled self-incrimination, a constitutional basis emerges which not only justifies, but actually requires, the exclusionary rule.

The close interrelationship between the Fourth and Fifth Amendments, as they apply to this problem, [Footnote 4] has long been recognized and, indeed, was expressly made the ground for this Court's holding in Boyd v. United States. [Footnote 5] There, the Court fully discussed this relationship and declared itself "unable to perceive that the seizure of a man's private books and papers to be used in evidence against him is substantially different from compelling him to be a witness against himself." [Footnote 6] It was upon this ground that Mr. Justice Rutledge largely relied in his dissenting opinion in the Wolf case. [Footnote 7] And, although I rejected the argument at that time, its force has, for me at least, become compelling with the more thorough understanding of the problem brought on by recent cases. In the final analysis, it seems to me that the Boyd doctrine, though perhaps not required by the express language of the Constitution, strictly construed, is amply justified from an historical standpoint, soundly based in reason,

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and entirely consistent with what I regard to be the proper approach to interpretation of our Bill of Rights--an approach well set out by Mr. Justice Bradley in the Boyd case:

"[C]onstitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon." [Footnote 8]

The case of Rochin v. California, [Footnote 9] which we decided three years after the Wolf case, authenticated, I think, the soundness of Mr. Justice Bradley's and Mr. Justice Rutledge's reliance upon the interrelationship between the Fourth and Fifth Amendments as requiring the exclusion of unconstitutionally seized evidence. In the Rochin case, three police officers, acting with neither a judicial warrant nor probable cause, entered Rochin's home for the purpose of conducting a search, and broke down the door to a bedroom occupied by Rochin and his wife. Upon their entry into the room, the officers saw Rochin pick up and swallow two small capsules. They immediately seized him and took him in handcuffs to a hospital, where the capsules

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were recovered by use of a stomach pump. Investigation showed that the capsules contained morphine, and evidence of that fact was made the basis of his conviction of a crime in a state court.

When the question of the validity of that conviction was brought here, we were presented with an almost perfect example of the interrelationship between the Fourth and Fifth Amendments. Indeed, every member of this Court who participated in the decision of that case recognized this interrelationship and relied on it, to some extent at least, as justifying reversal of Rochin's conviction. The majority, though careful not to mention the Fifth Amendment's provision that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself," showed at least that it was not unaware that such a provision exists, stating: "Coerced confessions offend the community's sense of fair play and decency. . . . It would be a stultification of the responsibility which the course of constitutional history has cast upon this Court to hold that, in order to convict a man, the police cannot extract by force what is in his mind, but can extract what is in his stomach." [Footnote 10] The methods used by the police thus were, according to the majority, "too close to the rack and the screw to permit of constitutional differentiation," [Footnote 11] and the case was reversed on the ground that these methods had violated the Due Process Clause of the Fourteenth Amendment in that the treatment accorded Rochin was of a kind that "shocks the conscience," "offend[s] a sense of justice'" and fails to "respect certain decencies of civilized conduct." [Footnote 12]

I concurred in the reversal of the Rochin case, but on the ground that the Fourteenth Amendment made the Fifth Amendment's provision against self-incrimination

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applicable to the States and that, given a broad, rather than a narrow, construction, that provision barred the introduction of this "capsule" evidence just as much as it would have forbidden the use of words Rochin might have been coerced to speak. [Footnote 13] In reaching this conclusion, I cited and relied on the Boyd case, the constitutional doctrine of which was, of course, necessary to my disposition of the case. At that time, however, these views were very definitely in the minority, for only MR. JUSTICE DOUGLAS and I rejected the flexible and uncertain standards of the "shock the conscience test" used in the majority opinion. [Footnote 14]

Two years after Rochin, in Irvine v. California, [Footnote 15] we were again called upon to consider the validity of a conviction based on evidence which had been obtained in a manner clearly unconstitutional and arguably shocking to the conscience. The five opinions written by this Court in that case demonstrate the utter confusion and uncertainty that had been brought about by the Wolf and Rochin decisions. In concurring, MR. JUSTICE CLARK emphasized the unsatisfactory nature of the Court's "shock the conscience test," saying that this "test" "makes for such uncertainty and unpredictability that it would be impossible to foretell--other than by guesswork--just how brazen the invasion of the intimate privacies of one's home must be in order to shock itself into the protective arms of the Constitution. In truth, the practical result of this ad hoc approach is simply that, when five Justices are sufficiently revolted by local police action, a conviction is overturned and a guilty man may go free. [Footnote 16] "

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Only one thing emerged with complete clarity from the Irvine case--that is that seven Justices rejected the "shock the conscience" constitutional standard enunciated in the Wolf and Rochin cases. But even this did not lessen the confusion in this area of the law, because the continued existence of mutually inconsistent precedents, together with the Court's inability to settle upon a majority opinion in the Irvine case, left the situation at least as uncertain as it had been before. [Footnote 17] Finally, today, we clear up that uncertainty. As I understand the Court's opinion in this case, we again reject the confusing "shock the conscience" standard of the Wolf and Rochin cases and, instead, set aside this state conviction in reliance upon the precise, intelligible and more predictable constitutional doctrine enunciated in the Boyd case. I fully agree with Mr. Justice Bradley's opinion that the two Amendments upon which the Boyd doctrine rests are of vital importance in our constitutional scheme of liberty, and that both are entitled to a liberal, rather than a niggardly, interpretation. The courts of the country are entitled to know with as much certainty as possible what scope they cover. The Court's opinion, in my judgment, dissipates the doubt and uncertainty in this field of constitutional law, and I am persuaded, for this and other reasons stated, to depart from my prior views, to accept the Boyd doctrine as controlling in this state case, and to join the Court's judgment and opinion, which are in accordance with that constitutional doctrine.

MR. JUSTICE DOUGLAS, concurring.

Though I have joined the opinion of the Court, I add a few words. This criminal proceeding started with a lawless search and seizure. The police entered a home

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forcefully, and seized documents that were later used to convict the occupant of a crime.

She lived alone with her fifteen-year-old daughter in the second-floor flat of a duplex in Cleveland. At about 1:30 in the afternoon of May 23, 1957, three policemen arrived at this house. They rang the bell, and the appellant, appearing at her window, asked them what they wanted. According to their later testimony, the policemen had come to the house on information from "a confidential source that there was a person hiding out in the home who was wanted for questioning in connection with a recent bombing." [Footnote 1] To the appellant's question, however, they replied only that they wanted to question her, and would not state the subject about which they wanted to talk.

The appellant, who had retained an attorney in connection with a pending civil matter, told the police she would call him to ask if she should let them in. On her attorney's advice, she told them she would let them in only when they produced a valid search warrant. For the next two and a half hours, the police laid siege to the house. At four o'clock, their number was increased to at least seven. Appellant's lawyer appeared on the scene, and one of the policemen told him that they now had a search warrant, but the officer refused to show it. Instead, going to the back door, the officer first tried to kick it in and, when that proved unsuccessful, he broke the glass in the door and opened it from the inside.

The appellant, who was on the steps going up to her flat, demanded to see the search warrant, but the officer refused to let her see it, although he waved a paper in front of her face. She grabbed it and thrust it down the front of her dress. The policemen seized her, took the paper

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from her, and had her handcuffed to another officer. She was taken upstairs, thus bound, and into the larger of the two bedrooms in the apartment; there she was forced to sit on the bed. Meanwhile, the officers entered the house and made a complete search of the four rooms of her flat and of the basement of the house.

The testimony concerning the search is largely nonconflicting. The approach of the officers; their long wait outside the home, watching all its doors; the arrival of reinforcements armed with a paper; [Footnote 2] breaking into the house; putting their hands on appellant and handcuffing her; numerous officers ransacking through every room and piece of furniture while the appellant sat, a prisoner in her own bedroom. There is direct conflict in the testimony, however, as to where the evidence which is the basis of this case was found. To understand the meaning of that conflict, one must understand that this case is based on the knowing possession [Footnote 3] of four little pamphlets, a couple of photographs, and a little pencil doodle--all of which are alleged to be pornographic.

According to the police officers who participated in the search, these articles were found, some in appellant's

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dressers and some in a suitcase found by her bed. According to appellant, most of the articles were found in a cardboard box in the basement; one in the suitcase beside her bed. All of this material, appellant--and a friend of hers--said were odds and ends belonging to a recent boarder, a man who had left suddenly for New York and had been detained there. As the Supreme Court of Ohio read the statute under which appellant is charged, she is guilty of the crime whichever story is true.

The Ohio Supreme Court sustained the conviction even though it was based on the documents obtained in the lawless search. For, in Ohio, evidence obtained by an unlawful search and seizure is admissible in a criminal prosecution, at least where it was not taken from the "defendant's person by the use of brutal or offensive force against defendant." State v. Mapp, 170 Ohio St. 427, 166 N.E.2d at 388, syllabus 2; State v. Lindway, 131 Ohio St. 166, 2 N.E.2d 490. This evidence would have been inadmissible in a federal prosecution. Weeks v. United States, 232 U. S. 383; Elkins v. United States, 364 U. S. 206. For, as stated in the former decision, "The effect of the Fourth Amendment is to put the courts of the United States and Federal officials, in the exercise of their power and authority, under limitations and restraints. . . ." Id. 391-392. It was therefore held that evidence obtained (which in that case was documents and correspondence) from a home without any warrant was not admissible in a federal prosecution.

We held in Wolf v. Colorado, 338 U. S. 25, that the Fourth Amendment was applicable to the States by reason of the Due Process Clause of the Fourteenth Amendment. But a majority held that the exclusionary rule of the Weeks case was not required of the States, that they could apply such sanctions as they chose. That position had the necessary votes to carry the day. But, with all respect, it was not the voice of reason or principle.

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As stated in the Weeks case, if evidence seized in violation of the Fourth Amendment can be used against an accused, "his right to be secure against such searches and seizures is of no value, and . . . might as well be stricken from the Constitution." 232 U.S. at 393.

When we allowed States to give constitutional sanction to the "shabby business" of unlawful entry into a home (to use an expression of Mr. Justice Murphy, Wolf v. Colorado, at 46), we did indeed rob the Fourth Amendment of much meaningful force. There are, of course, other theoretical remedies. One is disciplinary action within the hierarchy of the police system, including prosecution of the police officer for a crime. Yet, as Mr. Justice Murphy said in Wolf v. Colorado, at 42, "Self-scrutiny is a lofty ideal, but its exaltation reaches new heights if we expect a District Attorney to prosecute himself or his associates for well meaning violations of the search and seizure clause during a raid the District Attorney or his associates have ordered."

The only remaining remedy, if exclusion of the evidence is not required, is an action of trespass by the homeowner against the offending officer. Mr. Justice Murphy showed how onerous and difficult it would be for the citizen to maintain that action, and how meagre the relief even if the citizen prevails. 338 U.S. 42-44. The truth is that trespass actions against officers who make unlawful searches and seizures are mainly illusory remedies.

Without judicial action making the exclusionary rule applicable to the States, Wolf v. Colorado, in practical effect, reduced the guarantee against unreasonable searches and seizures to "a dead letter," as Mr. Justice Rutledge said in his dissent. See 338 U.S. at 47.

Wolf v. Colorado, supra, was decided in 1949. The immediate result was a storm of constitutional controversy which only today finds its end. I believe that this is an appropriate case in which to put an end to the asymmetry which Wolf imported into the law. See

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Stefanelli v. Minard, 342 U. S. 117; Rea v. United States, 350 U. S. 214; Elkins v. United States, supra; Monroe v. Pape, 365 U. S. 167. It is an appropriate case because the facts it presents show--as would few other cases--the casual arrogance of those who have the untrammelled power to invade one's home and to seize one's person.

It is also an appropriate case in the narrower and more technical sense. The issues of the illegality of the search and the admissibility of the evidence have been presented to the state court, and were duly raised here in accordance with the applicable Rule of Practice. [Footnote 4] The question was raised in the notice of appeal, the jurisdictional statement and in appellant's brief on the merits. [Footnote 5] It is true that argument was mostly directed to another issue in the case, but that is often the fact. See Rogers v. Richmond, 365 U. S. 534, 535-540. Of course, an earnest advocate of a position always believes that, had he only an additional opportunity for argument, his side would win. But, subject to the sound discretion of a court, all argument must at last come to a halt. This is especially so as to an issue about which this Court said last year that "The arguments of its antagonists and of its proponents have been so many times marshalled as to require no lengthy elaboration here." Elkins v. United States, supra, 216.

Moreover, continuance of Wolf v. Colorado in its full vigor breeds the unseemly shopping around of the kind revealed in Wilson v. Schnettler, 365 U. S. 381. Once evidence, inadmissible in a federal court, is admissible in

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a state court a "double standard" exists which, as the Court points out, leads to "working arrangements" that, undercut federal policy and reduce some aspects of law enforcement to shabby business. The rule that supports that practice does not have the force of reason behind it.

Memorandum of MR. JUSTICE STEWART.

Agreeing fully with Part I of MR. JUSTICE HARLAN's dissenting opinion, I express no view as to the merits of the constitutional issue which the Court today decides. I would, however, reverse the judgment in this case, because I am persuaded that the provision of § 2905.34 of the Ohio Revised Code, upon which the petitioner's conviction was based, is, in the words of MR. JUSTICE HARLAN, not "consistent with the rights of free thought and expression assured against state action by the Fourteenth Amendment."

Footnote

[Footnote 1]

The statute provides in pertinent part that

"No person shall knowingly . . . have in his possession or under his control an obscene, lewd, or lascivious book [or] . . . picture. . . ."

"Whoever violates this section shall be fined not less than two hundred nor more than two thousand dollars or imprisoned not less than one nor more than seven years, or both."

[Footnote 2]

A police officer testified that "we did pry the screen door to gain entrance"; the attorney on the scene testified that a policeman "tried . . . to kick in the door" and then "broke the glass in the door and somebody reached in and opened the door and let them in"; the appellant testified that "[t]he back door was broken."

[Footnote 3]

Other issues have been raised on this appeal but, in the view we have taken of the case, they need not be decided. Although appellant chose to urge what may have appeared to be the surer ground for favorable disposition, and did not insist that Wolf be overruled, the amicus curiae, who was also permitted to participate in the oral argument, did urge the Court to overrule Wolf.

[Footnote 4]

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

[Footnote 5]

The close connection between the concepts later embodied in these two Amendments had been noted at least as early as 1765 by Lord Camden, on whose opinion in Entick v. Carrington, 19 Howell's State Trials 1029, the Boyd court drew heavily. Lord Camden had noted, at 1073:

"It is very certain that the law obligeth no man to accuse himself, because the necessary means of compelling self-accusation, falling upon the innocent as well as the guilty, would be both cruel and unjust, and it should seem that search for evidence is disallowed upon the same principle. There too, the innocent would be confounded with the guilty."

[Footnote 6]

See, however, National Safe Deposit Co. v. Stead, 232 U. S. 58 (1914), and Adams v. New York, 192 U. S. 585 (1904).

[Footnote 7]

Less than half of the States have any criminal provisions relating directly to unreasonable searches and seizures. The punitive sanctions of the 23 States attempting to control such invasions of the right of privacy may be classified as follows:

Criminal Liability of Affiant for Malicious Procurement of Search Warrant.--Ala.Code, 1958, Tit. 15, § 99; Alaska Comp.Laws Ann., 1949, § 66-7-15; Ariz.Rev.Stat.Ann., 1956, § 13-1454; Cal.Pen.Code § 170; Fla.Stat., 1959, § 933.16; Ga.Code Ann., 1953, § 27-301; Idaho Code Ann., 1948, § 18-709; Iowa Code Ann., 1950, § 751.38; Minn.Stat.Ann., 1947, § 613.54; Mont.Rev.Codes Ann., 1947, § 94-35-122; Nev.Rev.Stat. § 199.130, 199.140; N.J.Stat.Ann., 1940, § 33:1-64; N.Y.Pen.Law § 1786, N.Y.Code Crim.Proc. § 811; N.C.Gen.Stat., 1953, § 15-27 (applies to "officers" only); N.D.Century Code Ann., 1960, § 12-17-08, 29-29-18; Okla.Stat., 1951, Tit. 21, § 585, Tit. 22, § 1239; Ore.Rev.Stat. § 141.990; S.D.Code, 1939 (Supp. 1960), § 34.9904; Utah Code Ann., 1953, 77-54-21.

Criminal Liability of Magistrate Issuing Warrant Without Supporting Affidavit.--N.C.Gen.Stat., 1953, § 15-27; Va.Code Ann., 1960 Replacement Volume, § 19.1-89.

Criminal Liability of Officer Willfully Exceeding Authority of Search Warrant.--Fla.Stat.Ann., 1944, § 933.17; Iowa Code Ann., 1950, § 751.39; Minn.Stat.Ann., 1947, § 613.54; Nev.Rev.Stat. § 199.450; N.Y.Pen.Law § 1847, N.Y.Code Crim.Proc. § 812; N.D.Century Code Ann., 1960, § 12-17-07, 29-29-19; Okla.Stat., 1951, Tit. 21, § 536, Tit. 22, § 1240; S.D.Code, 1939 (Supp. 1960), § 34.9905; Tenn.Code Ann., 1955, § 40-510; Utah Code Ann., 1953, § 77-54-22.

Criminal Liability of Officer for Search with Invalid Warrant or no Warrant.--Idaho Code Ann., 1948, § 18-703; Minn.Stat.Ann., 1947, § 613.53, 621.17; Mo.Ann.Stat., 1953, § 558.190; Mont.Rev.Codes Ann., 1947, § 94-3506; N.J.Stat.Ann., 1940, § 33:1-65; N.Y.Pen.Law § 1846; N.D. Century Code Ann., 1960, § 12-17-06; Okla.Stat.Ann., 1958, Tit. 21, § 535; Utah Code Ann., 1953, § 76-28-52; Va.Code Ann., 1960 Replacement Volume, § 19.1-88; Wash.Rev.Code § 10.79.040, 10.79.045.

[Footnote 8]

But compare Waley v. Johnston, 316 U. S. 101, 104, and Chambers v. Florida, 309 U. S. 227, 236, with Weeks v. United States, 232 U. S. 383, and Wolf v. Colorado, 338 U. S. 25.

[Footnote 9]

As is always the case, however, state procedural requirements governing assertion and pursuance of direct and collateral constitutional challenges to criminal prosecutions must be respected. We note, moreover, that the class of state convictions possibly affected by this decision is of relatively narrow compass when compared with Burns v. Ohio, 360 U. S. 252, Griffin v. Illinois, 351 U. S. 12, and Herman v. Claudy, 350 U. S. 116. In those cases, the same contention was urged and later proved unfounded. In any case, further delay in reaching the present result could have no effect other than to compound the difficulties.

[Footnote 10]

See the remarks of Mr. Hoover, Director of the Federal Bureau of Investigation, FBI Law Enforcement Bulletin, September, 1952, pp. 1-2, quoted in Elkins v. United States, 364 U. S. 206, 218-219, note 8.

[Footnote 11]

Cf. Marcus v. Search Warrant, post, p. 717.

[Footnote 1]

232 U.S. 383, decided in 1914.

[Footnote 2]

338 U.S. 25, 33.

[Footnote 3]

Id. at 39-40.

[Footnote 4]

The interrelationship between the Fourth and the Fifth Amendments in this area does not, of course, justify a narrowing in the interpretation of either of these Amendments with respect to areas in which they operate separately. See Feldman v. United States, 322 U. S. 487, 502-503 (dissenting opinion); Frank v. Maryland, 359 U. S. 360, 374-384 (dissenting opinion).

[Footnote 5]

116 U.S. 616.

[Footnote 6]

Id. at 633.

[Footnote 7]

338 U.S. at 47-48.

[Footnote 8]

116 U.S. at 635. As the Court points out, Mr. Justice Bradley's approach to interpretation of the Bill of Rights stemmed directly from the spirit in which that great charter of liberty was offered for adoption on the floor of the House of Representatives by its framer, James Madison:

"If they [the first ten Amendments] are incorporated into the Constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the Legislative or Executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights."

I Annals of Congress 439 (1789).

[Footnote 9]

342 U.S. 165.

[Footnote 10]

Id. at 173.

[Footnote 11]

Id. at 172.

[Footnote 12]

Id. at 172, 173

[Footnote 13]

Id. at 174-177

[Footnote 14]

For the concurring opinion of MR. JUSTICE DOUGLAS see id. at 177-179.

[Footnote 15]

347 U.S. 128.

[Footnote 16]

Id. at 138.

[Footnote 17]

See also United States v. Rabinowitz, 339 U. S. 56, 66-68 (dissenting opinion).

[Footnote 1]

This "confidential source" told the police, in the same breath, that "there was a large amount of policy paraphernalia being hidden in the home."

[Footnote 2]

The purported warrant has disappeared from the case. The State made no attempt to prove its existence, issuance or contents, either at the trial or on the hearing of a preliminary motion to suppress. The Supreme Court of Ohio said:

"There is, in the record, considerable doubt as to whether there ever was any warrant for the search of defendant's home. . . . Admittedly . . . there was no warrant authorizing a search . . . for any 'lewd, or lascivious book . . . print, [or] picture.'"

170 Ohio St. 427, 430, 166 N.E.2d 387, 389. (Emphasis added.)

[Footnote 3]

Ohio Rev.Code, § 2905.34:

"No person shall knowingly . . . have in his possession or under his control an obscene, lewd, or lascivious book, magazine, pamphlet, paper, writing, advertisement, circular, print, picture . . . or drawing . . . of an indecent or immoral nature. . . . Whoever violates this section shall be fined not less than two hundred nor more than two thousand dollars or imprisoned not less than one nor more than seven years, or both."

[Footnote 4]

"The notice of appeal . . . shall set forth the questions presented by the appeal. . . . Only the questions set forth in the notice of appeal or fairly comprised therein will be considered by the court."

Rule 10(2)(c), Rules of the Supreme Court of the United States.

[Footnote 5]

"Did the conduct of the police in procuring the books, papers and pictures placed in evidence by the Prosecution violate Amendment IV, Amendment V, and Amendment XIV Section 1 of the United States Constitution . . . ?"

[Footnote 1]

The material parts of that law are quoted in note 1 of the Court's opinion Ante, p. 643.

[Footnote 2]

In its note 3 ante, p. 646, the Court, it seems to me, has turned upside down the relative importance of appellant's reliance on the various points made by him on this appeal.

[Footnote 3]

See 170 Ohio St. 427, 166 N.E.2d 387. Because of the unusual provision of the Ohio Constitution requiring "the concurrence of at least all but one of the judges" of the Ohio Supreme Court before a state law is held unconstitutional (except in the case of affirmance of a holding of unconstitutionality by the Ohio Court of Appeals), Ohio Const., Art. IV, § 2, the State Supreme Court was compelled to uphold the constitutionality of § 2905.34 despite the fact that four of its seven judges thought the statute offensive to the Fourteenth Amendment.

[Footnote 4]

Respecting the "substantiality" of the federal questions tendered by this appeal, appellant's Jurisdictional Statement contained the following:

"The Federal questions raised by this appeal are substantial for the following reasons: "

"The Ohio Statute under which the defendant was convicted violates one's sacred right to own and hold property, which has been held inviolate by the Federal Constitution. The right of the individual"

"to read, to believe or disbelieve, and to think without governmental supervision is one of our basic liberties, but to dictate to the mature adult what books he may have in his own private library seems to be a clear infringement of the constitutional rights of the individual"

"(Justice Herbert's dissenting Opinion, Appendix 'A'). Many convictions have followed that of the defendant in the State Courts of Ohio based upon this very same statute. Unless this Honorable Court hears this matter and determines once and for all that the Statute is unconstitutional as defendant contends, there will be many such appeals. When Sections 2905.34, 2905.37 and 3767.01 of the Ohio Revised Code [the latter two Sections providing exceptions to the coverage of § 2905.34 and related provisions of Ohio's obscenity statutes] are read together, . . . they obviously contravene the Federal and State constitutional provisions; by being convicted under the Statute involved herein, and in the manner in which she was convicted, Defendant-Appellant has been denied due process of law; a sentence of from one (1) to seven (7) years in a penal institution for alleged violation of this unconstitutional section of the Ohio Revised Code deprives the defendant of her right to liberty and the pursuit of happiness, contrary to the Federal and State constitutional provisions, for circumstances which she herself did not put in motion, and is a cruel and unusual punishment inflicted upon her contrary to the State and Federal Constitutions."

[Footnote 5]

The appellant's brief did not urge the overruling of Wolf. Indeed, it did not even cite the case. The brief of the appellee merely relied on Wolf in support of the State's contention that appellant's conviction was not vitiated by the admission in evidence of the fruits of the alleged unlawful search and seizure by the police. The brief of the American and Ohio Civil Liberties Unions, as amici, did, in one short concluding paragraph of its argument, "request" the Court to reexamine and overrule Wolf, but without argumentation. I quote in full this part of their brief:

"This case presents the issue of whether evidence obtained in an illegal search and seizure can constitutionally be used in a State criminal proceeding. We are aware of the view that this Court has taken on this issue in Wolf v. Colorado, 338 U. S. 25. It is our purpose by this paragraph to respectfully request that this Court reexamine this issue and conclude that the ordered liberty concept guaranteed to persons by the due process clause of the Fourteenth Amendment necessarily requires that evidence illegally obtained in violation thereof, not be admissible in state criminal proceedings."