

JUSTICE DOUGLAS, dissenting.

*** I agree with Justice Murphy that *** in absence of [an exclusionary] rule of evidence the Amendment would have no effective sanction. ***

MAPP V. OHIO

367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961).

JUSTICE CLARK delivered the opinion of the Court. ***

On May 23, 1957, three Cleveland police officers arrived at appellant's residence in that city pursuant to information that "a person [was] hiding out in the home who was wanted for questioning in connection with a recent bombing, and that there was a large amount of police paraphernalia being hidden in the home." Miss Mapp and her daughter by a former marriage lived on the top floor of the two-family dwelling. Upon their arrival at that house, the officers knocked on the door and demanded entrance but appellant, after telephoning her attorney, refused to admit them without a search warrant. ***

The officers again sought entrance some three hours later when four or more additional officers arrived on the scene. When Miss Mapp did not come to the door immediately, at least one of the several doors to the house was forcibly opened and the policemen gained admittance. Meanwhile Miss Mapp's attorney arrived, but the officers, having secured their own entry, and continuing in their defiance of the law, would permit him neither to see Miss Mapp nor to enter the house. [When the officers broke into the hall, Miss Mapp] demanded to see the search warrant. A paper, claimed to be a warrant, was held up by one of the officers. She grabbed the "warrant" and placed it in her bosom. A struggle ensued in which the officers recovered the piece of paper and as a result of which they handcuffed appellant because she had been "belligerent" in resisting their official rescue of the "warrant" from her person. *** Appellant, in handcuffs, was then forcibly taken upstairs to her bedroom where the officers searched a dresser, a chest of drawers, a closet and some suitcases. *** The search spread to the rest of the second floor ***. The basement of the building and a trunk found therein were also searched. The obscene materials for possession of which she was ultimately convicted were discovered in the course of that widespread search.

At the trial no search warrant was produced by the prosecution, nor was the failure to produce one explained or accounted for. At best [as the Ohio Supreme Court, which affirmed the conviction, expressed it], "there is, in the record, considerable doubt as to whether there ever was any warrant for the search of defendant's home." ***

The State says that even if the search were made without authority, or otherwise unreasonably, it is not prevented from using the unconstitutionally seized evidence at trial, citing *Wolf v. Colorado*, ***. On this appeal, *** it is urged once again that we review that holding. ***

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" ***.

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. * * * 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 * * *." 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 right to privacy." The experience of California that such other remedies have been worthless and futile is buttressed by the experience of other States.

Likewise, time has set its face against what *Wolf* called the "weighty testimony" of *People v. Defore*, 1926, 242 N.Y. 13, 150 N.E. 585. 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." 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, *Elkins v. United States*,^a the relaxation of the formerly strict requirements as to standing to challenge the use of evidence thus seized, * * * and finally, the formulation of a method to prevent state use of evidence unconstitutionally seized by federal agents, *Rea v. United States*.^b * * *

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.

* * * 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 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

^a 364 U.S. 206 (1960). Under the "silver platter" doctrine, evidence of a federal crime seized by state police in the course of an illegal search while investigating a state crime could be turned over to federal authorities and used in a federal prosecution so long as federal agents had not participated in the illegal search but had simply received the evidence on a "silver platter." In rejecting the doctrine, the Court pointed out that the determination in *Wolf* that Fourteenth Amendment Due Process prohibited illegal searches and seizures by state officers, marked the "removal of the doctrinal underpinning" for the admissibility of state-seized evidence in federal prosecutions.

^b 350 U.S. 214 (1956), where the Court held that a federal law enforcement agent who seized evidence on the basis of an invalid search warrant should be enjoined from turning over such evidence to state authorities for use in a state prosecution and from giving testimony concerning the evidence: "The District Court is not asked to enjoin state officials nor in any way to interfere with state agencies in enforcement of state law. * * * The only relief asked is against a federal agent, who obtained the property as a result of the abuse of process issued by a United States Commissioner. * * * In this posture we have then a case that raises not a constitutional question but one concerning our supervisory powers over federal law enforcement agencies."

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.^c

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.'"

*** [I]n extending the substantive protections of due process to all constitutionally unreasonable searches—state or federal—it was 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

^c Although an illegal arrest or other unreasonable seizure of the person is itself a violation of the Fourth and Fourteenth Amendments, the *Mapp* exclusionary sanction comes into play only when the police have obtained evidence as a result of the unconstitutional seizure. Such is the case when, for example, the police make an illegal arrest and then conduct a fruitful search which is "incident to" that arrest and thus dependent upon the lawfulness of the arrest for its legality. Such may also be the case when the connection between the illegality and the evidence is less apparent, and even when the evidence is verbal, such as a confession obtained from a defendant some time after his illegal arrest. As explained in *Wong Sun v. United States*, 371 U.S. 471 (1963), not "all evidence is 'fruit of the poisonous tree' simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is 'whether, granting establishment of the primary illegality [the evidence] has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.'" In making that judgment, the "temporal proximity of the arrest and the confession, the presence of intervening circumstances and, particularly, the purpose and flagrancy of the official misconduct, are all relevant. The voluntariness of the statement is a threshold requirement." *Brown v. Illinois*, 422 U.S. 590 (1975).

In *United States v. Crews*, 445 U.S. 463 (1980), the Court held that an illegally arrested defendant "is not himself a suppressible 'fruit' and the illegality of his detention cannot deprive the Government of the opportunity to prove his guilt through the introduction of evidence wholly untainted by the police misconduct." Moreover, it is no defense to a state or federal criminal prosecution that the defendant was illegally arrested or forcibly brought within the jurisdiction of the court. The trial of such a defendant violates neither Fifth nor Fourteenth Amendment due process. As explained in *Frisbie v. Collins*, 342 U.S. 519 (1952), this rule rests "on the sound basis that due process of law is satisfied when one present in court is convicted of crime after having been fairly apprized of the charges against him and after a fair trial in accordance with constitutional procedural safeguards. There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will." The Court added that even if the conduct in obtaining defendant's presence violated the federal kidnapping statute the result would be the same, for Congress had not included a bar to prosecution as an available sanction under that law.

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respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it.”

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.” * * * [N]othing 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, 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” in their perpetuation of “principles of humanity and civil liberty * * *.” They express “supplementing phases of the same constitutional purpose—to maintain inviolate large areas of personal privacy.” 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.

Moreover, our holding * * * 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. * * *

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*. In some cases this will undoubtedly be the result. But, as was said in *Elkins*, “there is another consideration—the imperative of judicial integrity.” 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 (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. * * *. The Court noted that:

“The federal courts themselves have operated under the exclusionary rule of *Weeks* for almost half a century; yet it has not been suggested either that the Federal Bureau of Investigation 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 toward the rule of exclusion has been halting but seemingly inexorable."

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. 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. * * *

Reversed and remanded.

JUSTICE BLACK, concurring. * * *

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 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. * * *

JUSTICE DOUGLAS, concurring.

* * * I believe that this is an appropriate case in which to put an end to the asymmetry which *Wolf* imported into the law. * * *

Memorandum of JUSTICE STEWART.

* * * I express no view as to the merits of the constitutional issue which the Court today decides. * * *

JUSTICE HARLAN, whom JUSTICE FRANKFURTER and JUSTICE WHITTAKER join, dissenting.

* * * I would not impose upon the States this federal exclusionary remedy. The reasons given by the majority for now suddenly turning its back on *Wolf* seem to me notably unconvincing.

First, it is said that "the factual grounds upon which *Wolf* was based" have since changed, in that more States now follow the *Weeks* exclusionary rule than was so at the time *Wolf* was decided. While that is true, a recent survey indicates that at present one half of the States still adhere to the common-law non-exclusionary rule, and one, Maryland, retains the rule as to felonies. * * * But in any case surely all this is beside the point, as the majority itself indeed seems to recognize. Our concern here, as it was in *Wolf*, is not with the desirability of that rule but only with the question whether the States are Constitutionally free to follow it or not as they may themselves determine, and the relevance of the disparity of views among the States on this point lies simply in the fact that the judgment involved is a debatable one. Moreover, the very fact on which the majority relies, instead of lending support to what is now being done, points away from the need of replacing voluntary state action with federal compulsion.

The preservation of a proper balance between state and federal responsibility in the administration of criminal justice demands patience on the part of those who might like to see things move faster among the States in this respect. Problems of criminal law enforcement vary widely from State to State. One State, in considering the totality of its legal picture, may conclude that the need for embracing the *Weeks* rule is pressing because other remedies are unavailable or inadequate to secure compliance with the substantive Constitutional principle involved. Another, though equally solicitous of Constitutional rights, may choose to pursue one purpose at a time, allowing all evidence relevant to guilt to be brought into a criminal trial, and dealing with Constitutional infractions by other means. Still another may consider the exclusionary rule too rough and ready a remedy, in that it reaches only unconstitutional intrusions which eventuate in criminal prosecution of the victims. Further, a State after experimenting with the *Weeks* rule for a time may, because of unsatisfactory experience with it, decide to revert to a non-exclusionary rule. And so on. * * * For us the question remains, as it has always been, one of state power, not one of passing judgment on the wisdom of one state course or another. In my view this Court should continue to forbear from fettering the States with an adamant rule which may embarrass them in coping with their own peculiar problems in criminal law enforcement. * * *

* * * Our role in promulgating the *Weeks* rule and its extensions * * * was quite a different one than it is here. There, in implementing the Fourth Amendment, we occupied the position of a tribunal having the ultimate responsibility for developing the standards and procedures of judicial administration within the judicial system over which it presides. Here we review State procedures whose measure is to be taken not against the specific substantive commands of the Fourth Amendment but under the flexible contours of the Due Process Clause. I do not believe that the Fourteenth Amendment empowers this Court to mould state remedies effectuating the right to freedom from "arbitrary intrusion by the police" to suit its own notions of how things should be done * * *.

Finally, it is said that the overruling of *Wolf* is supported by the established doctrine that the admission in evidence of an involuntary confession renders a state conviction constitutionally invalid. Since such a confession may often be entirely reliable, and therefore of the greatest relevance to the issue of the trial, the

argument continues, this doctrine is ample warrant in precedent that the way evidence was obtained and not just its relevance, is constitutionally significant to the fairness of a trial. I believe this analogy is not a true one. The "coerced confession" rule is certainly not a rule that any illegally obtained statements may not be used in evidence. I would suppose that a statement which is procured during a period of illegal detention is, as much as unlawfully seized evidence, illegally obtained, but this Court has consistently refused to reverse state convictions resting on the use of such statements. * * *

The point, then, must be that in requiring exclusion of an involuntary statement of an accused, we are concerned not with an appropriate remedy for what the police have done, but with something which is regarded as going to the heart of our concepts of fairness in judicial procedure. The operative assumption of our procedural system is that "ours is the accusatorial as opposed to the inquisitorial system. * * *." * * * The pressures brought to bear against an accused leading to a confession, unlike an unconstitutional violation of privacy, do not, apart from the use of the confession at trial, necessarily involve independent Constitutional violations. What is crucial is that the trial defense to which an accused is entitled should not be rendered an empty formality by reason of statements wrung from him, for then "a prisoner * * * [has been] made the deluded instrument of his own conviction." That this is a *procedural right*, and that its violation occurs at the time his improperly obtained statement is admitted at trial, is manifest. * * *

This, and not the disciplining of the police, as with illegally seized evidence, is surely the true basis for excluding a statement of the accused which was unconstitutionally obtained. In sum, I think the coerced confession analogy works strongly *against* what the Court does today. * * *

UNITED STATES V. LEON

468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984).

JUSTICE WHITE delivered the opinion of the Court. * * *

This case presents the question whether the Fourth Amendment exclusionary rule should be modified so as not to bar the use in the prosecution's case-in-chief of evidence obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by probable cause. * * *

The Fourth Amendment contains no provision expressly precluding the use of evidence obtained in violation of its commands, and an examination of its origin and purposes makes clear that the use of fruits of a past unlawful search or seizure "work[s] no new Fourth Amendment wrong." The wrong condemned by the Amendment is "fully accomplished" by the unlawful search or seizure itself, and the exclusionary rule is neither intended nor able to "cure the invasion of the defendant's rights which he has already suffered." The rule thus operates as "a judicially created remedy designed to safeguard Fourth Amendment rights

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Here, the background social norms that invite a visitor to the front door do not invite him there to conduct a search.

The State points to our decisions holding that the subjective intent of the officer is irrelevant. But those cases merely hold that a stop or search that is objectively reasonable is not vitiated by the fact that the officer's real reason for making the stop or search has nothing to do with the validating reason. * * * Here, however, the question before the court is precisely whether the officer's conduct was an objectively reasonable search. As we have described, that depends upon whether the officers had an implied license to enter the porch, which in turn depends upon the purpose for which they entered. Here, their behavior objectively reveals a purpose to conduct a search, which is not what anyone would think he had license to do.

The State argues that investigation by a forensic narcotics dog by definition cannot implicate any legitimate privacy interest. The State cites for authority our decisions in *United States v. Place*, [fn. a, p. 282], *United States v. Jacobsen*, 466 U.S. 109 (1984), and *Illinois v. Caballes*, [fn. c, p. 300] * * *.

[But], we need not decide whether the officers' investigation of Jardines' home violated his expectation of privacy under *Katz*. One virtue of the Fourth Amendment's property-rights baseline is that it keeps easy cases easy. That the officers learned what they learned only by physically intruding on Jardines' property to gather evidence is enough to establish that a search occurred. * * *

JUSTICE KAGAN, with whom JUSTICE GINSBURG and JUSTICE SOTOMAYOR join, concurring. * * *

The Court today treats this case under a property rubric; I write separately to note that I could just as happily have decided it by looking to Jardines' privacy interests. A decision along those lines would have looked . . . well, much like this one. * * *

It is not surprising that in a case involving a search of a home, property concepts and privacy concepts should so align. The law of property "naturally enough influence[s]" our "shared social expectations" of what places should be free from governmental incursions. And so the sentiment "my home is my own," while originating in property law, now also denotes a common understanding—extending even beyond that law's formal protections—about an especially private sphere. Jardines' home was his property; it was also his most intimate and familiar space.

* In *Collins v. Virginia*, 138 S.Ct. 1663 (2018), involving a warrantless search of a vehicle parked within a dwelling's adjacent curtilage, the Court emphasized that the automobile exception recognized in *California v. Carney*, p. 234 *infra*, extends no further than the vehicle itself, and thus did not justify physical entry of the curtilage in order to conduct a search under a tarp covering a motorcycle, in light of *Jardines*. Because both *Jardines* and *Collins* were search cases and not seizure cases, query what the result would be if the cycle had not been covered, so that the officer had probable cause to seize it before entering the curtilage for the sole purpose of making a seizure. Consider that the Court in *Collins* said that the reasoning underlying existing limits on "warrantless entry into the home," such as that "under the plain-view doctrine, 'any valid warrantless seizure of incriminating evidence' requires that the officer 'have a lawful right of access to the object itself,' applies equally well in this context."

Although the right to counsel had dominated the confessions scene in the years immediately preceding *Miranda*, there was some reason to think that, at long last, the self-incrimination clause might move to centerstage. In *Malloy v. Hogan*, 378 U.S. 1 (1964) (which did not involve a confession), the Court, per Brennan, J., performed what some called a "shotgun wedding" of the privilege against self-incrimination to the confession rule. *Malloy* not only held the self-incrimination clause applicable to the states, but declared that whenever a question arises in a state or federal court "whether a confession is incompetent because not voluntary, the issue is controlled by [the self-incrimination] portion of the Fifth Amendment."

Whether or not this view made good sense, it constituted very questionable recent history. In none of the dozens of state or federal confession cases decided in the 1930s, 40s or 50s had the self-incrimination clause been the basis for judgment (although it had occasionally been mentioned in an opinion). But how the *Malloy* opinion looked back was not as important as how it looked forward. The confession rules and the privilege against self-incrimination had become intertwined in *Malloy*—and they would be fused in *Miranda*.

MIRANDA V. ARIZONA (No. 759)*

384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

CHIEF JUSTICE WARREN delivered the opinion of the Court.

The cases before us raise questions which go to the roots of American criminal jurisprudence: the restraints society must observe consistent with the Federal Constitution in prosecuting individuals for crime. More specifically, we deal with the admissibility of statements obtained from an individual who is subjected to custodial police interrogation and the necessity for procedures which assure that the individual is accorded his privilege under the Fifth Amendment to the Constitution not to be compelled to incriminate himself. * * *

We start here, as we did in *Escobedo* with the premise that our holding is not an innovation in our jurisprudence, but is an application of principles long recognized and applied in other settings. We have undertaken a thorough re-examination of the *Escobedo* decision and the principles it announced, and we reaffirm it. That case was but an explication of basic rights that are enshrined in our Constitution—that "No person * * * shall be compelled in any criminal case to be a witness against himself," and that "the accused [shall] have the Assistance of Counsel"—rights which were put in jeopardy in that case through official overbearing. * * *

Our holding will be spelled out with some specificity in the pages which follow but briefly stated it is this: the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean

* Together with No. 760, *Vignera v. New York* [and] No. 761, *Westover v. United States* [and] No. 584, *California v. Stewart* * * *.

questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.⁴ As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned.

The constitutional issue we decide in each of these cases is the admissibility of statements obtained from a defendant questioned while in custody and deprived of his freedom of action in any significant way. In each, the defendant was questioned by police officers, detectives, or a prosecuting attorney in a room in which he was cut off from the outside world. In none of these cases was the defendant given a full and effective warning of his rights at the outset of the interrogation process. In all the cases, the questioning elicited oral admissions, and in three of them, signed statements as well which were admitted at their trials. They all thus share silent features—incommunicado interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights. * * *

Again we stress that the modern practice of in-custody interrogation is psychologically rather than physically oriented. * * * Interrogation still takes place in privacy. Privacy results in secrecy and this in turn results in a gap in our knowledge as to what in fact goes on in the interrogation rooms. A valuable source of information about present police practices, however, may be found in various police manuals and texts which document procedures employed with success in the past, and which recommend various other effective tactics. These texts are used by law enforcement agencies themselves as guides.⁹ It should be noted that these texts

⁴ This is what we meant in *Escobedo* when we spoke of an investigation which had focused on an accused.

⁹ The methods described in Inbau and Reid, *Criminal Interrogation and Confessions* (1962), are a revision and enlargement of material presented in three prior editions of a predecessor text, *Lie Detection and Criminal Interrogation* (3d ed. 1953). The authors and their associates are officers of the Chicago Police Scientific Crime-Detection Laboratory and have had extensive experience in writing, lecturing and speaking to law enforcement authorities over a 20-year period. They say that the techniques portrayed in their manuals reflect their experiences and are the most effective psychological stratagems to employ during interrogations. Similarly, the techniques described in O'Hara, *Fundamentals of Criminal Investigation* (1959), were gleaned from long service as observer, lecturer in police science, and work as a federal criminal investigator. All these

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Fourth Amendment question is not one of broad import, reviewing courts could decide in particular cases that magistrates under their supervision need to be informed of their errors and so evaluate the officers' good faith only after finding a violation. In other circumstances, those courts could reject suppression motions posing no important Fourth Amendment questions by turning immediately to a consideration of the officers' good faith. We have no reason to believe that our Fourth Amendment jurisprudence would suffer by allowing reviewing courts to exercise an informed discretion in making this choice. * * *

In the absence of an allegation that the magistrate abandoned his detached and neutral role, suppression is appropriate only if the officers were dishonest or reckless in preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause. Only respondent Leon has contended that no reasonably well-trained police officer could have believed that there existed probable cause to search his house; significantly, the other respondents advance no comparable argument. Officer Rombach's application for a warrant clearly was supported by much more than a "bare bones" affidavit. The affidavit related the results of an extensive investigation and, as the opinions of the divided panel of the Court of Appeals make clear, provided evidence sufficient to create disagreement among thoughtful and competent judges as to the existence of probable cause. Under these circumstances, the officers' reliance on the magistrate's determination of probable cause was objectively reasonable, and application of the extreme sanction of exclusion is inappropriate.*

* Prior to *Leon*, the Supreme Court had often applied the exclusionary rule even when the police acted in reliance upon a subsequently invalidated statute conferring authority to search. But when confronted with such a situation once again in *Illinois v. Krull*, 480 U.S. 340 (1987), the Court, 5-4, ruled otherwise. Blackmun, J., reasoned for the majority: "The approach used in *Leon* is equally applicable to the present case. The application of the exclusionary rule to suppress evidence obtained by an officer acting in objectively reasonable reliance on a statute would have as little deterrent effect on the officer's actions as would the exclusion of evidence when an officer acts in objectively reasonable reliance on a warrant. Unless a statute is clearly unconstitutional, an officer cannot be expected to question the judgment of the legislature that passed the law." The Court in *Krull* further reasoned that there was no "evidence to suggest that legislators 'are inclined to ignore or subvert the Fourth Amendment' " or "to indicate that applying the exclusionary rule to evidence seized pursuant to the statute prior to the declaration of its invalidity will act as a significant additional deterrent" of legislators.

O'Connor, J., for the dissenters, emphasized: (1) "The distinction drawn between the legislator and the judicial officer is sound" because "a legislature's unreasonable authorization of searches may affect thousands or millions" and thus "poses a greater threat to liberty." (2) "[L]egislators by virtue of their political role are more often subjected to the political pressures that may threaten Fourth Amendment values than are judicial officers." (3) "Providing legislatures a grace period during which the police may freely perform unreasonable searches in order to convict those who might have otherwise escaped creates a positive incentive to promulgate unconstitutional laws."

Analogizing to *Leon* and *Krull*, the Court in *Davis v. United States*, 564 U.S. 229 (2011), concluded that since the exclusionary rule does not apply when the police reasonably relied on a search warrant or statute later determined to violate the Fourth Amendment, the same should be true with respect to "searches conducted in objectively reasonable reliance on binding appellate precedent" that is later overruled. Sotomayor, J., concurring, stressed that the instant case "does not present the markedly different question whether the exclusionary rule applies when the law governing the constitutionality of a particular search is unsettled," where the fact "that the officer's conduct could be characterized as nonculpable" would not necessarily foreclose the conclusion that "exclusion would result in appreciable deterrence." Breyer and Ginsburg, JJ., dissenting, read the majority opinion as "plac[ing] determinative weight upon the culpability of an individual officer's conduct," which would mean "the 'good faith' exception will swallow the exclusionary rule."

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JUSTICE STEVENS, * * * dissenting * * *.

* * * It is probable, though admittedly not certain, that the Court of Appeals would now conclude that the warrant in *Leon* satisfied the Fourth Amendment if it were given the opportunity to reconsider the issue in the light of *Gates*. Adherence to our normal practice following the announcement of a new rule would therefore postpone, and probably obviate, the need for the promulgation of the broad new rule the Court announces today.

[W]hen the Court goes beyond what is necessary to decide the case before it, it can only encourage the perception that it is pursuing its own notions of wise social policy, rather than adhering to its judicial role. I do not believe the Court should reach out to decide what is undoubtedly a profound question concerning the administration of criminal justice before assuring itself that this question is actually and of necessity presented by the concrete facts before the Court. * * *

HUDSON V. MICHIGAN

547 U.S. 586, 126 S.Ct. 2159, 165 L.Ed.2d 56 (2006).

JUSTICE SCALIA delivered the opinion of the Court * * *.

[Police executing a warrant authorizing search for drugs and firearms at Hudson's home announced their presence, but waited only a short time, perhaps "three to five seconds," before entering. Hudson moved to suppress the drugs and weapon found, arguing that the premature entry violated his Fourth Amendment rights. The trial court granted his motion, but the appellate court reversed on the ground that suppression is inappropriate when entry is made pursuant to warrant but without proper "knock and announce."]'

The common-law principle that law enforcement officers must announce their presence and provide residents an opportunity to open the door is an ancient one. See *Wilson v. Arkansas*, 514 U.S. 927 (1995). * * * Finally, in *Wilson*, we were asked whether the rule was also a command of the Fourth Amendment. Tracing its origins in our English legal heritage, we concluded that it was.

We recognized that the new constitutional rule we had announced is not easily applied. *Wilson* and cases following it have noted the many situations in which it is not necessary to knock and announce. It is not necessary when "circumstances presen[t] a threat of physical violence," or if there is "reason to believe that evidence would likely be destroyed if advance notice were given," or if knocking and announcing would be "futile." *Richards v. Wisconsin*, 520 U.S. 385 (1997). We require only that police "have a reasonable suspicion . . . under the particular circumstances" that one of these grounds for failing to knock and announce exists, and we have acknowledged that "[t]his showing is not high."

When the knock-and-announce rule does apply, it is not easy to determine precisely what officers must do. How many seconds' wait are too few? Our "reasonable wait time" standard, see *United States v. Banks*, 540 U.S. 31 (2003), is necessarily vague. *Banks* (a drug case, like this one) held that the proper measure was not how long it would take the resident to reach the door, but how long it would

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HERRING V. UNITED STATES

555 U.S. 135, 129 S.Ct. 695, 172 L.Ed.2d 496 (2009).

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

The Fourth Amendment forbids “unreasonable searches and seizures,” and this usually requires the police to have probable cause or a warrant before making an arrest. What if an officer reasonably believes there is an outstanding arrest warrant, but that belief turns out to be wrong because of a negligent bookkeeping error by another police employee? The parties here agree that the ensuing arrest is still a violation of the Fourth Amendment, but dispute whether contraband found during a search incident to that arrest must be excluded in a later prosecution.

Our cases establish that such suppression is not an automatic consequence of a Fourth Amendment violation. Instead, the question turns on the culpability of the police and the potential of exclusion to deter wrongful police conduct. Here the error was the result of isolated negligence attenuated from the arrest. We hold that in these circumstances the jury should not be barred from considering all the evidence.

On July 7, 2004, Investigator Mark Anderson learned that Bennie Dean Herring had driven to the Coffee County Sheriff’s Department to retrieve something from his impounded truck. Herring was no stranger to law enforcement, and Anderson asked the county’s warrant clerk, Sandy Pope, to check for any outstanding warrants for Herring’s arrest. When she found none, Anderson asked Pope to check with Sharon Morgan, her counterpart in neighboring Dale County. After checking Dale County’s computer database, Morgan replied that there was an active arrest warrant for Herring’s failure to appear on a felony charge. Pope relayed the information to Anderson and asked Morgan to fax over a copy of the warrant as confirmation. Anderson and a deputy followed Herring as he left the impound lot, pulled him over, and arrested him. A search incident to the arrest revealed methamphetamine in Herring’s pocket, and a pistol (which as a felon he could not possess) in his vehicle.

There had, however, been a mistake about the warrant. The Dale County sheriff’s computer records are supposed to correspond to actual arrest warrants, which the office also maintains. But when Morgan went to the files to retrieve the actual warrant to fax to Pope, Morgan was unable to find it. She called a court clerk and learned that the warrant had been recalled five months earlier. Normally when a warrant is recalled the court clerk’s office or a judge’s chambers calls Morgan, who enters the information in the sheriff’s computer database and disposes of the physical copy. For whatever reason, the information about the recall of the warrant for Herring did not appear in the database. Morgan immediately called Pope to alert her to the mixup, and Pope contacted Anderson over a secure radio. This all unfolded in 10 to 15 minutes, but Herring had already been arrested and found with the gun and drugs, just a few hundred yards from the sheriff’s office.

Herring was indicted in the District Court for the Middle District of Alabama for illegally possessing the gun and drugs * * *. He moved to suppress the evidence on the ground that his initial arrest had been illegal because the warrant had been

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argument continues, this doctrine is ample warrant in precedent that the way evidence was obtained and not just its relevance, is constitutionally significant to the fairness of a trial. I believe this analogy is not a true one. The "coerced confession" rule is certainly not a rule that any illegally obtained statements may not be used in evidence. I would suppose that a statement which is procured during a period of illegal detention is, as much as unlawfully seized evidence, illegally obtained, but this Court has consistently refused to reverse state convictions resting on the use of such statements. * * *

The point, then, must be that in requiring exclusion of an involuntary statement of an accused, we are concerned not with an appropriate remedy for what the police have done, but with something which is regarded as going to the heart of our concepts of fairness in judicial procedure. The operative assumption of our procedural system is that "ours is the accusatorial as opposed to the inquisitorial system. * * *." * * * The pressures brought to bear against an accused leading to a confession, unlike an unconstitutional violation of privacy, do not, apart from the use of the confession at trial, necessarily involve independent Constitutional violations. What is crucial is that the trial defense to which an accused is entitled should not be rendered an empty formality by reason of statements wrung from him, for then "a prisoner * * * [has been] made the deluded instrument of his own conviction." That this is a *procedural right*, and that its violation occurs at the time his improperly obtained statement is admitted at trial, is manifest. * * *

This, and not the disciplining of the police, as with illegally seized evidence, is surely the true basis for excluding a statement of the accused which was unconstitutionally obtained. In sum, I think the coerced confession analogy works strongly *against* what the Court does today. * * *

UNITED STATES V. LEON

468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984).

JUSTICE WHITE delivered the opinion of the Court. * * *

This case presents the question whether the Fourth Amendment exclusionary rule should be modified so as not to bar the use in the prosecution's case-in-chief of evidence obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by probable cause. * * *

The Fourth Amendment contains no provision expressly precluding the use of evidence obtained in violation of its commands, and an examination of its origin and purposes makes clear that the use of fruits of a past unlawful search or seizure "work[s] no new Fourth Amendment wrong." The wrong condemned by the Amendment is "fully accomplished" by the unlawful search or seizure itself, and the exclusionary rule is neither intended nor able to "cure the invasion of the defendant's rights which he has already suffered." The rule thus operates as "a judicially created remedy designed to safeguard Fourth Amendment rights

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