Supplementary Material

Chapter 9: Liberalism Divided—Criminal Justice/Due Process and Habeas Corpus/Habeas Corpus

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Stone v. Powell, 428 U.S. 465 (1976)

Lloyd Powell was convicted of murder by a California court in June 1968. Ten hours after the murder was committed, Powell was arrested on a vagrancy charge. During the ensuing search, a revolver was found on his person. At trial, Powell objected to testimony that this revolver was the murder weapon on the ground that the arrest warrant for vagrancy was unconstitutional. The trial judge overruled the objection. On appeal, the Supreme Court of California did not reach the Fourth Amendment claim on the ground that, in light of the other evidence against Powell, the error, if any, was constitutionally harmless. In 1971, Powell asked a federal district court for a writ of habeas corpus against W.T. Stone, the Warden of the California prison system. Powell claimed that he was being unconstitutionally detained because the admission of the revolver violated his Fourth Amendment rights. The federal district judge refused to issue the writ, but that decision was reversed by the federal court of appeals, which found that the arrest warrant for vagrancy was unconstitutionally vague, that the resulting search of Powell was for that reason unconstitutional, and that the use of the revolver at trial in violation of the exclusionary rule was not harmless error. California then appealed that decision to the Supreme Court. The California Public Defenders Association filed an amicus brief supporting Powell. That brief contended,

> *The proposed exclusion of Fourth Amendment claims from this historically flexible remedy is both unwarranted and unnecessary. The state prisoner will be denied an important avenue to assert his federal claim, and the restriction of the exclusionary rule would have little effect on the number of such prisoner petitions filed. The erosion of the exclusionary rule is not consistent with fair implementation of the Fourth Amendment, and those suffering substantial imprisonment (those state prisoners serving short terms are not interested in pursuing such remedies, and although the Court has relaxed the requirements of "custody," experience still indicates that such petitions are filed by those serving long term confinement) should be allowed meaningful access to the federal courts in the assertion of claims arising from an unlawful search and seizure.*

Stone v. Powell *holds that federal courts cannot hear claims based on the exclusionary rule whenever the state court held a full and fair hearing on the matter, even if the state court reached an erroneous legal conclusion. One consequence of that decision is to sharply restrict federal power to police Fourth Amendment violations. The Supreme Court rarely resolves many Fourth Amendment claims on direct appeals from state court judgment. Most cases of constitutional criminal procedure come to federal courts only after the Supreme Court has denied certiorari and the prisoner has sought a writ of habeas from a lower federal court. What reason does Justice Powell give for insisting that federal courts not be allowed to rectify some possible constitutional wrongs? Is Justice Brennan correct to insist that the majority in effect has ranked some constitutional rights as more important than others or is Powell correct to say that the purposes of the exclusionary rule would not be served by allowing claims to be made on that basis in habeas corpus?*

JUSTICE POWELL delivered the opinion of the Court.

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[W]here the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, the Constitution does not require that a state prisoner be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial.

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The exclusionary rule was a judicially created means of effectuating the rights secured by the Fourth Amendment.

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The *Mapp v. Ohio* (1961) majority justified the application of the [exclusionary] rule to the States . . . principally upon the belief that exclusion would deter future unlawful police conduct. . . .

. . . The force of this justification becomes minimal where federal habeas corpus relief is sought by a prisoner who previously has been afforded the opportunity for full and fair consideration of his search-and-seizure claim at trial and on direct review.

The primary justification for the exclusionary rule then is the deterrence of police conduct that violates Fourth Amendment rights. Post-*Mapp* decisions have established that the rule is not a personal constitutional right. It is not calculated to redress the injury to the privacy of the victim of the search or seizure, for any "(r)eparation comes too late." . . .

Mapp Involved the enforcement of the exclusionary rule at state trials and on direct review. . . . But despite the broad deterrent purpose of the exclusionary rule, it has never been interpreted to proscribe the introduction of illegally seized evidence in all proceedings or against all persons. . . . Thus, our refusal to extend the exclusionary rule to grant jury proceedings was based on a balancing of the potential injury to the historic role and function of the grand jury by such extension against the potential contribution to the effectuation of the Fourth Amendment through deterrence of police misconduct. . . .

The same pragmatic analysis of the exclusionary rule's usefulness in a particular context was evident earlier in *Walder v. United States* (1954), . . . where the Court permitted the Government to use unlawfully seized evidence to impeach the credibility of a defendant who had testified broadly in his own defense. The Court held, in effect, that the interests safeguarded by the exclusionary rule in that context were outweighed by the need to prevent perjury and to assure the integrity of the trial process. The judgment in *Walder* revealed most clearly that the policies behind the exclusionary rule are not absolute. Rather, they must be evaluated in light of competing policies. In that case, the public interest in determination of truth at trial was deemed to outweigh the incremental contribution that might have been made to the protection of Fourth Amendment values by application of the rule.

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The costs of applying the exclusionary rule even at trial and on direct review are well known: the focus of the trial, and the attention of the participants therein, are diverted from the ultimate question of guilt or innocence that should be the central concern in a criminal proceeding. Moreover, the physical evidence sought to be excluded is typically reliable and often the most probative information bearing on the guilt or innocence of the defendant. . . .

Application of the rule thus deflects the truthfinding process and often frees the guilty. The disparity in particular cases between the error committed by the police officer and the windfall afforded a guilty defendant by application of the rule is contrary to the idea of proportionality that is essential to the concept of justice. Thus, although the rule is thought to deter unlawful police activity in part through the nurturing of respect for Fourth Amendment values, if applied indiscriminately it may well have the opposite effect of generating disrespect for the law and administration of justice.

Evidence obtained by police officers in violation of the Fourth Amendment is excluded at trial in the hope that the frequency of future violations will decrease. Despite the absence of supportive empirical evidence, we have assumed that the immediate effect of exclusion will be to discourage law enforcement officials from violating the Fourth Amendment by removing the incentive to disregard it. More importantly, over the long term, this demonstration that our society attaches serious consequences to violation of constitutional rights is thought to encourage those who formulate law enforcement policies, and the officers who implement them, to incorporate Fourth Amendment ideals into their value system.

We adhere to the view that these considerations support the implementation of the exclusionary rule at trial and its enforcement on direct appeal of state-court convictions. But the additional

contribution, if any, of the consideration of search-and-seizure claims of state prisoners on collateral review is small in relation to the costs. . . . There is no reason to believe, however, that the overall educative effect of the exclusionary rule would be appreciably diminished if search-and-seizure claims could not be raised in federal habeas corpus review of state convictions.

In sum, we conclude that where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial. In this context the contribution of the exclusionary rule, if any, to the effectuation of the Fourth Amendment is minimal, and the substantial societal costs of application of the rule persist with special force.

CHIEF JUSTICE BURGER, concurring.

. . . [I]t seems clear to me that the exclusionary rule has been operative long enough to demonstrate its flaws. The time has come to modify its reach, even if it is retained for a small and limited category of cases.

Over the years, the strains imposed by reality, in terms of the costs to society and the bizarre miscarriages of justice that have been experienced because of the exclusion of reliable evidence when the "constable blunders," have led the Court to vacillate as to the rationale for deliberate exclusion of truth from the factfinding process. The rhetoric has varied with the rationale to the point where the rule has become a doctrinaire result in search of validating reasons.

In evaluating the exclusionary rule, it is important to bear in mind exactly what the rule accomplishes. Its function is simple the exclusion of truth from the factfinding process. . . . The operation of the rule is therefore unlike that of the Fifth Amendment's protection against compelled self-incrimination. A confession produced after intimidating or coercive interrogation is inherently dubious. If a suspect's will has been overborne, a cloud hangs over his custodial admissions; the exclusion of such statements is based essentially on their lack of reliability. This is not the case as to reliable evidence a pistol, a packet of heroin, counterfeit money, or the body of a murder victim which may be judicially declared to be the result of an "unreasonable" search. The reliability of such evidence is beyond question; its probative value is certain.

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The drastically changed nature of judicial concern from the protection of personal papers or effects in one's private quarters, to the exclusion of that which the accused had no right to possess is only one of the more recent anomalies of the rule. . . . The rule is based on the hope that events in the courtroom or appellate chambers, long after the crucial acts took place, will somehow modify the way in which policemen conduct themselves. A more clumsy, less direct means of imposing sanctions is difficult to imagine, particularly since the issue whether the policeman did indeed run afoul of the Fourth Amendment is often not resolved until years after the event. . . .

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[P]roof is lacking that the exclusionary rule, a purely judge-created device based on "hard cases," serves the purpose of deterrence. Notwithstanding Herculean efforts, no empirical study has been able to demonstrate that the rule does in fact have any deterrent effect. . . .

To vindicate the continued existence of this judge-made rule, it is incumbent upon those who seek its retention and surely its Extension to demonstrate that it serves its declared deterrent purpose and to show that the results outweigh the rule's heavy costs to rational enforcement of the criminal law. . . . The burden rightly rests upon those who ask society to ignore trustworthy evidence of guilt, at the expense of setting obviously guilty criminals free to ply their trade.

In my view, it is an abdication of judicial responsibility to exact such exorbitant costs from society purely on the basis of speculative and unsubstantiated assumptions. . . .

It can no longer be assumed that other branches of government will act while judges cling to this Draconian, discredited device in its present absolutist form. Legislatures are unlikely to create statutory alternatives, or impose direct sanctions on errant police officers or on the public treasury by way of tort actions so long as persons who commit serious crimes continue to reap the enormous and undeserved

benefits of the exclusionary rule. And of course, by definition the direct beneficiaries of this rule can be none but persons guilty of crimes. . . . I venture to predict that overruling this judicially contrived doctrine or limiting its scope to egregious, bad-faith conduct would inspire a surge of activity toward providing some kind of statutory remedy for persons injured by police mistakes or misconduct.

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JUSTICE BRENNAN, with whom JUSTICE MARSHALL concurs, dissenting.

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The Court's opinion does not specify the particular basis on which it denies federal habeas jurisdiction over claims of Fourth Amendment violations brought by state prisoners. The Court insists that its holding is based on the Constitution, . . . but in light of the explicit language of 28 U.S.C. s 2254 (significantly not even mentioned by the Court), I can only presume that the Court intends to be understood to hold either that respondents are not, as a matter of statutory construction, "in custody in violation of the Constitution or laws . . . of the United States," or that " 'considerations of comity and concern)for the orderly administration of criminal justice,' " . . . . are sufficient to allow this Court to rewrite jurisdictional statutes enacted by Congress. Neither ground of decision is tenable; the former is simply illogical, and the latter is an arrogation of power committed solely to the Congress.

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Understandably the Court must purport to cast its holding in constitutional terms, because that avoids a direct confrontation with the incontrovertible facts that the habeas statutes have heretofore always been construed to grant jurisdiction to entertain Fourth Amendment claims of both state and federal prisoners, that Fourth Amendment principles have been applied in decisions on the merits in numerous cases on collateral review of final convictions, and that Congress has legislatively accepted our interpretation of congressional intent as to the necessary scope and function of habeas relief. Indeed, the Court reaches its result without explicitly overruling any of our plethora of precedents inconsistent with that result or even discussing principles of stare decisis. Rather, the Court asserts, in essence, that the Justices joining those prior decisions or reaching the merits of Fourth Amendment claims simply overlooked the obvious constitutional dimension to the problem in adhering to the "view" that granting collateral relief when state courts erroneously decide Fourth Amendment issues would effectuate the principles underlying that Amendment. But, shorn of the rhetoric of "interest balancing" used to obscure what is at stake in this case, it is evident that today's attempt to rest the decision on the Constitution must fail so long as *Mapp v. Ohio* (1961) . . . remains undisturbed.

Under *Mapp*, as a matter of federal constitutional law, a state court must exclude evidence from the trial of an individual whose Fourth and Fourteenth Amendment rights were violated by a search or seizure that directly or indirectly resulted in the acquisition of that evidence. . . . [I]t escapes me as to what logic can support the assertion that the defendant's unconstitutional confinement obtains during the process of direct review, no matter how long that process takes, but that the unconstitutionality then suddenly dissipates at the moment the claim is asserted in a collateral attack on the conviction.

The only conceivable rationale upon which the Court's "constitutional" thesis might rest is the statement that "the (exclusionary) rule is not a personal constitutional right. . . . Instead, 'the rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect.' " . . . However, the Court reinterprets *Mapp*, and whatever the rationale now attributed to *Mapp*'s holding or the purpose ascribed to the exclusionary rule, the prevailing constitutional rule is that unconstitutionally seized evidence Cannot be admitted in the criminal trial of a person whose federal constitutional rights were violated by the search or seizure. The erroneous admission of such evidence is a violation of the Federal Constitution—*Mapp* inexorably means at least this much, or there would be no basis for applying the exclusionary rule in state criminal proceedings—and an accused against whom such evidence is admitted has been convicted in derogation of rights mandated by, and is "in custody in violation," the Constitution of the United States. . . .

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Today's opinion itself starkly exposes the illogic of the Court's seeming premise that the rights recognized in *Mapp* somehow suddenly evaporate after all direct appeals are exhausted. For the Court would not bar assertion of Fourth Amendment claims on habeas if the defendant was not accorded "an opportunity for full and fair litigation of his claim in the state courts." . . . But this "exception" is impossible if the Court really means that the "rule" that Fourth Amendment claims are not cognizable on habeas is constitutionally based. For if the Constitution mandates that "rule" because it is a "dubious assumption that law enforcement authorities would fear that federal habeas review might reveal flaws in a search or seizure that went undetected at trial and on appeal," . . . is it not an equally "dubious assumption" that those same police officials would fear that federal habeas review might reveal that the state courts had denied the defendant an opportunity to have a full and fair hearing on his claim that went undetected at trial and on appeal? . . .

. . . [B]y conceding that today's "decision does not mean that the federal (district) court lacks jurisdiction over (respondents') claim(s)," . . . the Court admits that respondents have sufficiently alleged that they are "in custody in violation of the Constitution" within the meaning of § 2254 and that there is no "constitutional" rationale for today's holding. Rather, the constitutional "interest balancing" approach to this case is untenable, and I can only view the constitutional garb in which the Court dresses its result as a disguise for rejection of the longstanding principle that there are no "second class" constitutional rights for purposes of federal habeas jurisdiction; it is nothing less than an attempt to provide a veneer of respectability for an obvious usurpation of Congress' Art. III power to delineate the jurisdiction of the federal courts.

Therefore, the real ground of today's decision—a ground that is particularly troubling in light of its portent for habeas jurisdiction generally—is the Court's novel reinterpretation of the habeas statutes; this would read the statutes as requiring the district courts routinely to deny habeas relief to prisoners "in custody in violation of the Constitution or laws . . . of the United States" as a matter of judicial "discretion"—a "discretion" judicially manufactured today contrary to the express statutory language—because such claims are "different in kind" from other constitutional violations in that they "do not 'impugn the integrity of the fact-finding process,' " . . . and because application of such constitutional strictures "often frees the guilty." . . . Much in the Court's opinion suggests that a construction of the habeas statutes to deny relief for non-"guilt-related" constitutional violations, based on this Court's vague notions of comity and federalism, . . . is the actual premise for today's decision, and although the Court attempts to bury its underlying premises in footnotes, those premises mark this case as a harbinger of future eviscerations of the habeas statutes that plainly does violence to congressional power to frame the statutory contours of habeas jurisdiction. . . .

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Federal habeas corpus review of Fourth Amendment claims of state prisoners was merely one manifestation of the principle that "conventional notions of finality in criminal litigation cannot be permitted to defeat the manifest federal policy that federal constitutional rights of personal liberty shall not be denied without the fullest opportunity for plenary federal judicial review." . . . This Court's precedents have been "premised in large part on a recognition that the availability of collateral remedies is necessary to insure the integrity of proceedings at and before trial where constitutional rights are at stake. Our decisions leave no doubt that the federal habeas remedy extends to state prisoners alleging that unconstitutionally obtained evidence was admitted against them at trial."

At least since *Brown v. Allen* (1953) detention emanating from judicial proceedings in which constitutional rights were denied has been deemed "contrary to fundamental law," and all constitutional claims have thus been cognizable on federal habeas corpus. There is no foundation in the language or history of the habeas statutes for discriminating between types of constitutional transgressions, and efforts to relegate certain categories of claims to the status of "second-class rights" by excluding them from that jurisdiction have been repulsed. Today's opinion, however, marks the triumph of those who have sought to establish a hierarchy of constitutional rights, and to deny for all practical purposes a federal forum for review of those rights that this Court deems less worthy or important. Without even paying the slightest deference to principles of Stare decisis or acknowledging Congress' failure for two decades to alter the habeas statutes in light of our interpretation of congressional intent to render all

federal constitutional contentions cognizable on habeas, the Court today rewrites Congress' jurisdictional statutes as heretofore construed and bars access to federal courts by state prisoners with constitutional claims distasteful to a majority of my Brethren. But even ignoring principles of Stare decisis dictating that Congress is the appropriate vehicle for embarking on such a fundamental shift in the jurisdiction of the federal courts, I can find no adequate justification elucidated by the Court for concluding that habeas relief for all federal constitutional claims is no longer compelled under the reasoning of *Brown v. Allen*, *Fay v. Noia* (1963), and *Kaufman v. United States* (1969).

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The Court, focusing on Fourth Amendment rights as it must to justify such discrimination, thus argues that habeas relief for non-"guilt-related" constitutional claims is not mandated because such claims do not affect the "basic justice" of a defendant's detention, . . . this is presumably because the "ultimate goal" of the criminal justice system is "truth and justice." . . . This denigration of constitutional guarantees and Constitutionally mandated procedures, relegated by the Court to the status of mere utilitarian tools, must appall citizens taught to expect judicial respect and support for their constitutional rights. Even if punishment of the "guilty" were society's highest value—and procedural safeguards denigrated to this end—in a constitution that a majority of the Members of this Court would prefer, that is not the ordering of priorities under the Constitution forged by the Framers, and this Court's sworn duty is to uphold that Constitution and not to frame its own. The procedural safeguards mandated in the Framers' Constitution are not admonitions to be tolerated only to the extent they serve functional purposes that ensure that the "guilty" are punished and the "innocent" freed; rather, every guarantee enshrined in the Constitution, our basic charter and the guarantor of our most precious liberties, is by it endowed with an independent vitality and value, and this Court is not free to curtail those constitutional guarantees even to punish the most obviously guilty. Particular constitutional rights that do not affect the fairness of factfinding procedures cannot for that reason be denied at the trial itself. What possible justification then can there be for denying vindication of such rights on federal habeas when state courts do deny those rights at trial? To sanction disrespect and disregard for the Constitution in the name of protecting society from law-breakers is to make the government itself lawless and to subvert those values upon which our ultimate freedom and liberty depend. . . . Enforcement of Federal constitutional rights that redress constitutional violations directed against the "guilty" is a particular function of Federal habeas review, lest judges trying the "morally unworthy" be tempted not to execute the supreme law of the land. State judges popularly elected may have difficulty resisting popular pressures not experienced by federal judges given lifetime tenure designed to immunize them from such influences, and the federal habeas statutes reflect the congressional judgment that such detached federal review is a salutary safeguard against any detention of an individual "in violation of the Constitution or laws . . . of the United States."

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Congress' action following *Townsend v. Sain* (1963) and *Fay v. Noia* emphasized "the choice of Congress how the superior authority of federal law should be asserted" in federal courts. *Townsend v. Sain* outlined the duty of federal habeas courts to conduct fact-finding hearings with respect to petitions brought by state prisoners, and *Fay v. Noia* defined the contours of the "exhaustion of state remedies" prerequisite in s 2254 in light of its purpose of according state courts the first opportunity to correct their own constitutional errors. Congress expressly modified the habeas statutes to incorporate the *Townsend* standards so as to accord a limited and carefully circumscribed res judicata effect to the factual determinations of state judges. But Congress did not alter the principle of *Brown*, *Fay*, and *Kaufman* that collateral relief is to be available with respect to any constitutional deprivation and that federal district judges, subject to review in the courts of appeals and this Court, are to be the spokesmen of the supremacy of federal law. Indeed, subsequent congressional efforts to amend those jurisdictional statutes to effectuate the result that my Brethren accomplish by judicial fiat have consistently proved unsuccessful. There remains, as noted before, no basis whatsoever in the language or legislative history of the habeas statutes for establishing such a hierarchy of federal rights; certainly there is no constitutional warrant in this Court to override a congressional determination respecting federal-court review of decisions of state judges determining constitutional claims of state prisoners.

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In summary, while unlike the Court I consider that the exclusionary rule is a constitutional ingredient of the Fourth Amendment, any modification of that rule should at least be accomplished with some modicum of logic and justification not provided today. . . . The Court does not disturb the holding of *Mapp v. Ohio* (1961) that, as a matter of federal constitutional law, illegally obtained evidence must be excluded from the trial of a criminal defendant whose rights were transgressed during the search that resulted in acquisition of the evidence. In light of that constitutional rule it is a matter for Congress, not this Court, to prescribe what federal courts are to review state prisoners' claims of constitutional error committed by state courts. Until this decision, our cases have never departed from the construction of the habeas statutes as embodying a congressional intent that, however substantive constitutional rights are delineated or expanded, those rights may be asserted as a procedural matter under federal habeas jurisdiction. Employing the transparent tactic that today's is a decision construing the Constitution, the Court usurps the authority vested by the Constitution in the Congress to reassign federal judicial responsibility for reviewing state prisoners' claims of failure of state courts to redress violations of their Fourth Amendment rights. Our jurisdiction is eminently unsuited for that task, and as a practical matter the only result of today's holding will be that denials by the state courts of claims by state prisoners of violations of their Fourth Amendment rights will go unreviewed by a federal tribunal. I fear that the same treatment ultimately will be accorded state prisoners' claims of violations of other constitutional rights; thus the potential ramifications of this case for federal habeas jurisdiction generally are ominous. The Court, no longer content just to restrict forthrightly the constitutional rights of the citizenry, has embarked on a campaign to water down even such constitutional rights as it purports to acknowledge by the device of foreclosing resort to the federal habeas remedy for their redress.

JUSTICE WHITE, dissenting.

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Under the present habeas corpus statute, neither Rice's nor Powell's application for habeas corpus should be dismissed on the grounds now stated by the Court. I would affirm the judgments of the Courts of Appeals as being acceptable applications of the exclusionary rule applicable in state criminal trials by virtue of *Mapp v. Ohio* (1961). . . .

I feel constrained to say, however, that I would join four or more other Justices in substantially limiting the reach of the exclusionary rule as presently administered under the Fourth Amendment in federal and state criminal trials.

Both *Weeks v. United States* (1914) and *Mapp v. Ohio* had overshot their mark insofar as they aimed to deter lawless action by law enforcement personnel and that in many of its applications the exclusionary rule was not advancing that aim in the slightest and that in this respect it was a senseless obstacle to arriving at the truth in many criminal trials.

The rule has been much criticized and suggestions have been made that it should be wholly abolished, but I would overrule neither *Weeks v. United States* nor *Mapp v. Ohio*. I am nevertheless of the view that the rule should be substantially modified so as to prevent its application in those many circumstances where the evidence at issue was seized by an officer acting in the good-faith belief that his conduct comported with existing law and having reasonable grounds for this belief. . . .

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In these situations, and perhaps many others, excluding the evidence will not further the ends of the exclusionary rule in any appreciable way; for it is painfully apparent that in each of them the officer is acting as a reasonable officer would and should act in similar circumstances. Excluding the evidence can in no way affect his future conduct unless it is to make him less willing to do his duty. It is true that in such cases the courts have ultimately determined that in their view the officer was mistaken; but it is also true that in making constitutional judgments under the general language used in some parts of our Constitution, including the Fourth Amendment, there is much room for disagreement among judges, each of whom is convinced that both he and his colleagues are reasonable men. Surely when this Court

divides five to four on issues of probable cause, it is not tenable to conclude that the officer was at fault or acted unreasonably in making the arrest.

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