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THE EXTENT OF THE EXCLUSIONARY RULE

INTRODUCTION

The landmark case of *Mapp v. Ohio*[1] clarified the perplexing problem concerning the admissibility in criminal proceedings of evidence illegally seized by state or federal officials. The Supreme Court held that, "all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court."[2] This decision represented the conclusive step in a series of cases tending toward this result.[3]

However, there are several problems remaining to be solved. These questions stem from limitations that may be placed on the *Mapp* decision. It can be argued that since the case was a criminal one, the holding only applies to criminal cases. It may also be asserted that the Fourteenth Amendment restricts the Fourth Amendment only to state officials and not to private individuals.[4] The split in authority over the preceding statements raises two central issues: (1) One question is whether evidence illegally seized by a state or federal official is admissible in a civil case. (2) A more complex problem is whether evidence wrongfully seized by a private individual should be admitted in criminal or civil proceedings. This note will explore these problems

1. 367 U.S. 643 (1961).

2. *Id.* at 655.

3. The common law tradition was that the manner of obtaining evidence is not cause for its suppression in a civil or criminal proceeding. 8 WIGMORE, EVIDENCE § 2183. This doctrine has been gradually altered. *See, e.g.*, Boyd v. United States, 116 U.S. 616 (1886) (The Supreme Court first hinted at the exclusionary rule.); Weeks v. United States, 232 U.S. 383 (1914) (The exclusionary rule for criminal proceedings was initially formulated.); Elkins v. United States, 345 U.S. 206 (1960) (Evidence seized illegally by state officials was deemed inadmissible in criminal trials in federal courts.) *See generally*, Note, *The Exclusionary Rule of Illegally Obtained Evidence: Its Development and Application*, 35 S. CAL. L.R. 64 (1961).

4. Since a discussion of whether or not evidence seized by an individual may be seized illegally under the Fourth and Fourteenth Amendments will follow, the term "wrongfully" or "unreasonably" seized will be substituted for "illegally" seized when refering to a situation where a private individual has procured evidence in a manner that would be illegal if he had been a state or federal official. It is first necessary to determine whether individual action falls under the Fourth Amendment. If it is decided that it does, the question remains whether the exclusionary rule is applicable or the common law rule is still in effect. *See generally*, Note, *Mapp v. Ohio and Exclusion of Evidence Illegally Obtained by Private Parties*, 72 YALE L.J. 1062 (1963); Comment, *A Comment on the Exclusion of Evidence Wrongfully Obtained by Private Individuals*, 1966 UTAH L.R. 271 (1966).

in order to determine to what extent the exclusionary rule can be applied beyond the limited situation which was presented to the court in *Mapp*.

The Admissibility of Evidence Illegally Seized by Government Officials in Civil Proceedings

The civil areas in which evidence seized by governmental officials, state or federal, is used may be divided into tax cases, forfeiture cases, and a miscellaneous category containing various other types of civil proceedings.

Tax Proceedings

A current question in need of resolution is whether illegally seized evidence on which civil tax liability is determined can be suppressed under *Mapp*.[5]

It is sometimes difficult to determine whether the court considers the tax case civil or criminal. Where tax proceedings have been considered criminal in nature the exclusionary rule has, of course, been held to be applicable.[6] The principal civil tax case excluding unlawfully obtained evidence is *Rogers v. United States*.[7] The First Circuit Court of Appeals held that in an action to recover customs duties on liquors imported into the United States the admissibility of evidence obtained under a search warrant illegally issued was reversible error. Other court decisions prior to *Mapp* indicate that these courts would also exclude evidence from a civil tax suit if they deemed it to be illegally seized.[8]

Lassoff v. Gray[9] probably best illustrates the trend of the law in tax cases. In *Lassoff* it was found that evidence obtained as a result of an unreasonable search and seizure of the taxpayer's premises was inad-

5. *See generally*, L.J., De Revil, *Applicability of the Fourth Amendment in Civil Cases*, 1963 Duke L.R. 472.

6. *E.g.*, Lord v. Kelly, 223 F. Supp. 684 (D. Mass. 1963) (Evidence obtained in an unlawful seizure of tax records was held inadmissible and a violation of the Fourth Amendment.); Hinchcliff v. Clarke, 230 F. Supp. 91 (N.D. Ohio 1963).

7. 97 F.2d 691 (1st Cir. 1938).

8. *E.g.*, Jarecki v. Whetstone, 82 F. Supp. 367 (N.D. Ill. 1948) (Court recognized Fourth Amendment applied where one is required to produce papers and records on an Internal Revenue *subpoena duces tecum*.); Tovar v. Jarecki, 83 F. Supp. 47 (N.D. Ill. 1948) (dictum) *rev'd on other grounds*, 173 F.2d 449 (7th Cir. 1949). (A tax assessment based on evidence in unlawful search and seizure would be illegal, but here the assessment was found to be based on other grounds.)

9. 207 F. Supp. 843 (W.D. Ky. 1962).

missible to establish liability of the taxpayer for a wagering tax. However, the court held that this evidence could be used to impeach the defendant's testimony.[10]

As has been noted, tax cases while civil in form are usually criminal in nature. It appears that the exclusionary rule will continue to be applied in both federal and state tax cases, although there are no state court decisions to substantiate this proposition.

Forfeiture Proceedings

The exclusionary rule was first constructed during the forfeiture proceeding of *Boyd v. United States*.[11] Speaking for the majority, Mr. Justice Bradley stated:

> We are clearly of opinion that proceedings instituted for the purpose of declaring the forfeiture of a man's property by reason of offenses committed by him, though they may be civil in form are in their nature criminal.[12]

It would appear that it has been well settled that the exclusionary rule does apply to forfeiture proceedings on two principles. First, the Supreme Court applied the exclusionary rule to forfeiture proceedings in *Boyd*. Second, a forfeiture case being criminal in nature would be subjected to the exclusionary rule as expounded in *Weeks v. United States*[13] and extended to the states by *Mapp*.

Nevertheless, the circuit courts were split on the question of whether illegally seized evidence could be offered into evidence in forfeiture proceedings. In *Dodge v. United States*[14] it was held that the jurisdiction of the court depended wholly upon whether the government had possession of the *res* at the time of trial and the way in which possession was acquired was irrelevant. The confusion resulted when one district court construed the *Dodge* case as standing for the proposition that the exclusionary rule does not apply in forfeiture proceedings.[15] Despite this decision most courts continued to rely on *Boyd*.[16]

10. *Accord,* Walder v. United States, 347 U.S. 62 (1954).
11. 116 U.S. 616 (1886).
12. *Id.* at 633-634.
13. 232 U.S. 383 (1914).
14. 272 U.S. 530 (1926).
15. United v. One 1956 Ford Tudor Sedan, 185 F. Supp. 76 (E.D. Ky. 1960).
16. *E.g.,* United States v. Physic, 175 F.2d 338 (2d Cir. 1949); United States v. One 1946 Plymouth Sedan, 167 F.2d 3 (7th Cir. 1948); United States v. Butler, 156 F.2d 897 (10th Cir. 1946); United States v. One 1963 Cadillac Hardtop, 220 F. Supp. 841

The decisive opinion in *One 1958 Plymouth Sedan v. Pennsylvania*[17] settled the conflict in this area. The Supreme Court asserted that unlawfully seized evidence by state police is inadmissible in proceedings for forfeiture of a car which had allegedly been used in illegal transportation of liquors. This not only settled federal law on forfeiture, but also through *Mapp* applied the exclusionary rule to state forfeiture cases.

Other Civil Proceedings

There are cases other than tax and forfeiture proceedings that are quasi-criminal in nature. The court in *Leogrande v. State Liquor Authority*[18] held that the exclusionary rule extends to any official state or federal proceeding brought to impose forfeitures, penalties, or similar sanctions for violation of laws or regulations.[19] This would include, for example, a civil suit brought by a city to recover a penalty for violation of an ordinance prohibiting the showing of lewd movies.[20] In *McColl v. Hardin*,[21] a suit seeking an injunction to close the defendant's dance hall as a nuisance because of violations of liquor laws, the opposite view was taken. The court maintained that evidence obtained by unlawful search and seizure was admissible, since the suit was not a criminal case, though quasi-criminal in nature. More recent decisions considering nuisances have held that *Mapp* applies to civil cases as well as criminal ones, where state or federal officials are involved.[22]

An early anti-trust case, *Hale v. Henkel*,[23] established that a corporation charged with violation of an anti-trust act is entitled to immunity under the Fourth Amendment, from such an unreasonable search and seizure as the compulsory production, before a grand jury, under a *subpoena duces tecum*, of all records and papers of the cor-

(D.C. Wis. 1963); United States v. Four Thousand One Hundred Seventy-One Dollars in United States Currency, 200 F. Supp. 28 (N.D. Ill. 1961).

17. 380 U.S. 693 (1965).

18. 268 N.Y.S. 2d 433 (1966).

19. *Accord*, Incorporated Village of Laurel Hollow v. Laverne, Inc., 262 N.Y.S. 2d 622 (1965); *But cf.*, Camden County Beverage Co. v. Blair, 46 F.2d 648 (D.N.J. 1930).

20. 3 Ill. App. 2d 410, 122 N.E. 2d 489 (1954), *aff'd*, 7 Ill. App. 2d 379, 130 N.E. 2d 504 (1955). (The Court said the proceeding was quasi-criminal and the defendant could avail himself of the privileges of the Fourth and Fifth Amendments.)

21. 70 S.W. 2d 327 (Tex. Civ. App. 1934).

22. *E.g.*, Carson v. State, 221 Ga. 299, 144 S.E. 2d 384 (1965); Carlisle v. State, 276 Ala. 436, 163 S. 2d 596 (1964). (Both cases involved an attempt to abate gambling as a public nuisance.)

23. 201 U.S. 43 (1906).

poration.[24] Evidence obtained by federal officials illegally has also been excluded from treble damage action under the Emergency Price Act.[25]

In the civil deportation case of *Schenck v. Ward*,[26] the Court held that evidence obtained by governmental officials in violation of one's rights under the Fourteenth Amendment is not admissible in either criminal or civil proceedings.[27] It has further been implied that the Fourth Amendment and the exclusionary rule are applicable in tort actions.[28]

The Admissibility of Evidence Unreasonably Seized by Private Individuals

Criminal Cases

The leading case involving the question of the admissibility of evidence "wrongfully" [29] seized by an individual in a criminal trial is *Burdeau v. McDowell*.[30] In that case the defendant's private papers were taken unlawfully by a private detective and then used in a criminal proceeding for fraudulent use of the mails. The Supreme Court held that the Fourth Amendment protection against unlawful searches and seizures applies only to government action. In 1961 a federal district court in *Geniviva v. Bingler*[31] applied this rule intact. The court stated:

> The rule as to exclusion, in both federal and state courts, of evidence obtained by an unreasonable search and seizure in violation of the Fourth or the Fourteenth Amendment has been broadened and expanded since *Burdeau v. McDowell*. The rule, however, has not been expanded to the extent that evidence obtained by persons not acting in concert with either state or federal officials must be excluded. In this case, no constitutional rights were invaded by or under color of official authority and in view of the principles set

24. *Accord*, United States v. Wallace and Tiernan Co., 336 U.S. 793 (1949).

25. *E.g.*, Bowles v. Beatrice Creamery Co., 56 F. Supp. 805 (D. Wyo. 1944); Brown v. Glick Brothers Lumber Company, 52 F. Supp. 913 (S.D.Cal. 1943), *rev'd on other grounds*, 146 F.2d 566 (9th Cir. 1944), *cert. denied*, 325 U.S. 877 (1945).

26. 24 F. Supp. 776 (D. Mass. 1938).

27. *Accord, Ex parte* Jackson, 263 Fed. 110 (D. Mont. 1920); *but cf.* United States v. Lee Hee, 53 F.2d 681 (W.D. N.Y. 1931) (*dictum*) (Even if illegally procured, a confession is admissible in a deportation proceeding.)

28. Contestible v. Brookshire, 355 S.W. 2d 36 (Mo. 1962) (Wrongful death action.).

29. *Supra* note 4.

30. 256 U.S. 465 (1921).

31. 206 F. Supp. 81 (W.D. Pa. 1961). (Persons whose residence was burglarized were not entitled to suppress as evidence items of their property taken in the burglary and obtained by police upon arrest of the burglars.)

> forth in *Burdeau v. McDowell* plaintiff's motion to suppress will be denied.[32]

Both federal and state courts that considered this question follow *Burdeau*.[33] The military courts also hold that the Constitution is a limitation on the powers of government and does not proscribe individual actions as far as the admissibility of evidence is concerned.[34]

The recent case of *State v. Robinson*[35] illustrates that the state of the law has not changed since the *Mapp* decision. A New Jersey court found that the exclusionary rule would not apply in a larceny prosecution to evidence unlawfully taken from an employee's locker in a silver plant by the employer's security guard.

Civil Cases

Where evidence has been unreasonably seized by a private individual, state courts have been split as to the admissibility of such evidence in civil proceedings. Although there were few occasions to answer the question, the case of *Mercer v. Parsons*[36] probably best illustrates the attitude of the majority of the courts during the period immediately following *Weeks*. There, a letter was ruled admissible in a suit for alienation of affection, although it had been seized by a private individual in violation of the postal laws. The years before *Mapp* saw this decision gain wide acceptance.[37] A California court was one of the few judicial bodies to exhibit a forward-looking philosophy when in *Kohn v. Superior Court*[38] it held that a husband was entitled to a writ of prohibition restraining the court from admitting letters wrongfully taken from

32. *Id.* at 83.

33. *E.g.*, United States v. Goldberg, 330 F. 2d 30 (3rd Cir. 1964), *cert. denied*, 377 U.S. 953 (1964); Knoll Association v. Dixon, 232 F. Supp. 283 (D.C. N.Y. 1964); People v. Randazzo, 220 Cal. App. 2d 768, 34 Cal. Rptr. 65 (Ct. App. 1963), *cert. denied* 377 U.S. 1000 (1964) (In a shoplifting case the court decided *Burdeau* had not been overruled); People v. Trimarco, 245 N.Y.S. 2d 795 (Sup. Ct. 1963).

34. United States v. Carter, 15 U.S.C.M.A. 495, 35 C.M.R. 467 (1965).

35. 86 N.J. Super. 308, 206 A. 2d 779 (1965).

36. 95 N.J.L. 224, 112 Atl. 254 (1920).

37. *E.g.*, Munson v. Munson, 27 Cal. 2d 659, 166 P.2d 268 (1946); State v. Lock, 302 Mo. 400, 259 S.W. 117 (1924). In *Munson*, a proceeding by a husband to modify an annulment decree to award custody of a child to him, the court admitted into evidence a love letter written by the wife to a third person and wrongfully taken by the husband. It must be pointed out, however, that the exclusionary rule was not even used in criminal cases in California at the time.

38. 12 Cal. App. 2d 459, 55 P.2d 1186 (1936); *cf.*, Lebel v. Swincicki, 354 Mich. 427, 93 N.W.2d 281 (1958).

him by his estrangled wife in an action for alienation of affection. Notwithstanding this holding, most courts prior to 1961 felt that the federal rule respecting suppression of evidence procured by an unreasonable search and seizure referred largely, if not exclusively, to criminal proceedings and did not apply in civil cases between individuals.[39]

The conflict of authority continues after *Mapp*, but the trend seems to have been reversed. Two recent cases with almost identical fact situations perfectly illustrate the wide diversity of opinion. In *Sackler v. Sackler*,[40] proof as to the wife's adultery was admitted in a divorce action even though it had been obtained by means of an illegal forcible entry into the wife's home by the husband and several private investigators employed by him. It appears that the New York courts who so carefully avoided using the exclusionary rule in criminal cases before *Mapp* are now going to retain the antiquated common law rule in civil proceedings. On the other hand, the Superior Court of New Jersey in *Del Presto v. Del Presto*[41] found in a divorce action that evidence seized under similar circumstances was inadmissible as a violation of the wife's Fourth Amendment rights.

The most recent decision in this area, *Williams v. Williams*,[42] is soundly reasoned and the principles espoused by the court in that case should be adopted when the Supreme Court renders its opinion and ultimately resolves the problem. The Ohio court in *Williams* held that letters illegally obtained by a divorced husband from the auto of his ex-wife were not admissible under the search and seizure provisions of the Fourth Amendment on motion for a new trial in a divorce case on the ground of newly discovered evidence. The court asserted: "Certainly no individual has a greater power than the government itself." [43]

Arguments for Extending the Exclusionary Rule

The great majority of American courts apply the exclusionary rule to quasi-criminal and civil cases involving evidence illegally seized by state

39. Walker v. Penner, 190 Ore. 542, 227 P.2d 316 (1951) (Motion to suppress evidence —an uncorked whiskey bottle—wrongfully seized in a personal injury suit arising out of an auto accident was denied.); *accord*, Kendalls v. Commonwealth, 202 Ky. 169, 259 S.W. 71 (1924).

40. 255 N.Y.S. 2d 83, 203 N.E. 2d 481 (1965); *but cf.*, Chambers v. Rosetti, 226 N.Y.S. 2d 27 (1962).

41. 92 N.J. Super. 305, 223 A.2d 217 (1966).

42. 80 Ohio Misc. 156, 221 N.E. 2d 622 (1966).

43. *Id.* at 626.

or federal officials. The exclusionary rule is obviously applicable to all the quasi-criminal cases under *Weeks* and *Mapp*. The forfeiture proceedings are subject to this rule by virtue of *Boyd* and *One 1958 Plymouth Sedan*. Evidence illegally seized by federal officials would be inadmissible in all other cases by virtue of the rule set forth in *Silverthorne Lumber Co. v. United States*[44] where the Court stated:

> The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court, but that it shall not be used at all.[45]

This view that evidence illegally seized by federal officials (state officials would now be included by the *Mapp* decision) is not admissible at all, certainly includes civil cases.

The question that remains is whether the Fourth Amendment applies to actions of private individuals or merely protects the public from unreasonable intrusions by governmental officials. The courts that refuse to apply the Fourth Amendment to actions of individuals use a circular reasoning to support their decisions. It is often asserted that the historical purpose of the Fourth Amendment was to protect the citizens from unfettered governmental action, and that this deep-rooted principle precludes its application to individual action. Our society will not tolerate this rigid philosophy, nor reverence of this well-established rule merely because of its age. The Supreme Court has also indicated that it will not blindly adhere to this most respected limitation. In *Frank v. Maryland*[46] the Court stated:

> While these concerns for individual rights were the historic impulses behind the Fourth Amendment and its analogies in state constitutions, the application of the Fourth Amendment and the extent to which the essential right of privacy is protected by the Due Process Clause of the Fourteenth Amendment are of course not restricted within these historic bounds.[47]

The Supreme Court has not ruled on the question although some courts construe its decision in *Burdeau*[48] to mean it believes that the

44. 251 U.S. 385 (1920). (Contempt proceeding for failure to produce papers requested on a *subpoena duces tecum*.)

45. *Id.* at 392.

46. 359 U.S. 360 (1959).

47. *Id.* at 365-66. This idea is more fully developed in See v. Seattle, 87 S. Ct. 1737 (1967); and Camara v. San Francisco, 87 S. Ct. 1727 (1967).

48. *Supra*, note 30.

Constitution does not apply to individuals.[49] It must be noticed that *Burdeau* was a criminal case and its circumstances were such that the issue being discussed was not clearly outlined. There is also some authority that *Elkins v. United States*[50] overruled the *Burdeau* decision.[51]

The Fourth Amendment and the exclusionary rule should be applied to individual action on the basis of either one of two sound arguments. First, the principle of "state action" [52] can be used to prevent individuals from capitalizing on their own illegal activity. In *Shelly v. Kraemer*[53] the Supreme Court held:

> That the action of state courts and judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth, is a proposition which has long been established by decisions of this Court.[54]

The principles set forth in *Shelly* have been applied in cases outside the area of civil rights[55] and could be adapted to include all cases involving unreasonably seized evidence. Using this reasoning, a state or federal court could not admit evidence unlawfully seized by an individual, since such admission would be an act of the state and fall under the rule of *Mapp v. Ohio*.[56] A state court speaking about the case of *Potter v. Beal*[57] commented:

> Although the court was in no manner responsible for the wrongful act of taking said documents from the possession of this plaintiff and had done nothing regarding the production of the papers in court, nevertheless when the nature of the documents appeared the prohibitions contained in the Constitution were a clear limit on the power of the court to receive said evidence or to make any inspection thereof.[58]

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49. *E.g.*, Sackler v. Sackler, 255 N.Y.S. 2d 83, 203 N.E. 2d 481 (1965); Walker v. Penner, *supra* note 39.

50. 364 U.S. 206 (1960).

51. Sackler v. Sackler, *supra* note 40. (dissent); Williams v. United States, 282 F. 2d 940 (6th Cir. 1960) (dictum).

52. *See generally*, Lewis, *The Meaning of State Action*, 60 COLUM. L. REV. 1083 (1960).

53. 334 U.S. 1 (1948).

54. *Id.* at 14.

55. *E.g.*, Kreshik v. St. Nicholas Cathedral, 363 U.S. 190 (1960); Railway's Employers' Dept., AFL v. Hanson, 351 U.S. 225, 232 n.4 (1956).

56. 367 U.S. 643 (1961).

57. 50 F. 860 (1st Cir. 1892).

58. Kohn v. Superior Court, 12 Cal. App. 2d 459, 55 P.2d 1186, 1188 (1936).

Second, the Fourth Amendment is applicable to civil cases through its close relation to the Fifth Amendment. In *Boyd v. United States*,[59] Mr. Justice Bradley stated:

> [The two amendments] throw light on each other. For the "unreasonable searches and seizures" condemned in the Fourth Amendment are almost always made for the purpose of compelling a man to give evidence against himself, which in criminal cases is condemned in the Fifth Amendment; and compelling a man "in a criminal case to be a witness against himself," which is condemned in the Fifth Amendment, throws light on the question as to what is an "unreasonable search and seizure" within the meaning of the Fourth Amendment.[60]

Since the *Boyd* ruling, it has become an established principle that the Fifth Amendment is available in a civil proceeding.[61] The Supreme Court in unequivocal terms has stated that:

> [t]he government insists broadly that the constitutional privilege against self-incrimination does not apply in any civil proceeding. The contrary must be accepted as settled. The privilege is not ordinarily dependent upon the nature of the proceeding in which the testimony is sought or is to be used.[62]

It has been said that the Fourth and Fifth Amendments are so intertwined that they continuously operate together. Therefore, it is incongruous to say that one applies to civil proceedings not involving governmental officials while the other does not. It has been proposed that for this reason the Fourth Amendment should be applied only to civil cases where the evidence seized could lead to a criminal prosecution.[63] While this solution is an improvement, it is submitted that the public be given full protection under the Fourth Amendment and *all* evidence seized illegally be inadmissible in *all* courts.[64]

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59. 116 U.S. 616 (1886).

60. *Id.* at 633.

61. McCarthy v. Arndstein, 266 U.S. 34 (1922).

62. *Id.* at 45.

63. Note, *Mapp v. Ohio and Exclusion of Evidence Illegally Obtained by Private Parties*, 72 YALE L.J. 1062, 1067-68 (1963).

64. If read literally, *Mapp* can be construed to stand for this proposition. The court in *Del Presto v. Del Presto*, 92 N.J. Super. 305, 223 A.2d 217 (1966) takes the position that it does.

If it is found that the Fourth Amendment does not apply to the actions of private parties, the exclusionary rule may be still applied to these cases by the use of a flexible rule of evidence. It has been suggested that the court in determining admissibility would take into consideration the nature of the crime involved in obtaining evidence.[65] This is the least desirable solution, but it is adequate to prevent individuals from resorting to self-help and benefiting from an illegal act.

One of these three views must be adopted. Private searches are not effectively deterred by existing civil and criminal sanctions.[66] Many minor offenses are not prosecuted, and the money and time necessary to bring a civil action compared to the probable recovery in these cases discourage many from seeking this remedy. A state court has concluded:

> . . . certainly, if the Federal Government or the State of Ohio is prohibited, under the provision of these Articles of the Federal and State Constitutions, in using the illegally seized papers in a Court proceeding against the individual whose property has been seized, that an individual so seizing such property should not be granted a greater privilege.[67]

CONCLUSION

The practical legal reasons given above for applying the exclusionary rule in *all* cases is not outweighed by the extremely technical and sometimes dogmatic arguments favoring its use only in criminal proceedings. The basic purpose of the Fourth Amendment prohibition against unreasonable searches and seizures is to safeguard individuals' privacy. The right of privacy was first articulated by the Supreme Court in *Griswold v. Connecticut*[68] where Justice Douglas in reporting the opinion of the court pointed out that the guarantees of the first, third, fourth, fifth and ninth amendments create a zone of privacy. The need for a legally

65. Note, *Exclusion of Evidence Obtained By An Unreasonable Search in a Civil Action*, 48 CORNELL L.Q. 345 (1963). In *Williams v. Williams*, *supra* note 42 at 626, the court lends support to the approach based on rules of evidence when it stated:

> A further but less important reason seems to be that the individual stealing property, at least as against the rights of the lawful owner, has no interest therein, would not be able to submit these papers in evidence in a court proceeding against the wishes of the lawful owner.

66. Comment, *A Comment on the Exclusion of Evidence Wrongfully Obtained by Private Individuals*, 1966 UTAH L.R. 271 (1966).

67. *Supra*, note 42.

68. 381 U.S. 479 (1965). (A Connecticut anticontraception statute was struck down.)

recognized right to privacy arises from the increasing and varied assaults on the intimate thoughts and actions of individuals. Highly sophisticated electronic devices, most competent psychological tests and numerous "confidential" information forms constantly invade one's inner life. The extension of the exclusionary rule as advocated would arrest this unwanted intrusion.

The right of privacy is basic to a free society and the courts should do everything to preserve this right by utilizing the exclusionary rule, be it based on a constitutional standard or a rule of evidence, in *all* cases involving an illegal search and seizure.

Jon W. Bruce