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**Letters**


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**Over the Fourth Amendment's Dead Body**


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To the Editor:

After reading Joseph McLaughlin's letter suggesting that the country should "experiment" with a weakening of the rule that prevents the government from convicting a person on the basis of evidence that it has seized illegally ["Trial Rule That Suppresses Truth," Aug. 28], I turned to my copy of the Constitution to be sure that there had been no recent changes in that document.

There had not. The Fourth Amendment still provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."

It should be obvious to anyone who reads this provision that to convict a defendant on the basis of evidence seized in violation of it is to compound the offensiveness of the original intrusion.

Of course, as Mr. McLaughlin states, the evidence may be "probative," but so may be a great deal of other evidence, such as that obtained under torture, which — in the service of higher values — the courts will not admit.

Here, as in the case of evidence obtained under torture, the disrespect for the sanctity of individual rights

and the broad possibilities of abuse contained in the contrary rule provide ample justification for not allowing the government to rely on the *post hoc* rationalization that the evidence seized was "probative" and that the actions of the government, although unreasonable, were taken "in good faith."

The remote possibility that a person convicted on tainted evidence may obtain civil damages against the officers responsible hardly operates as a deterrent. But even if it does, the defendant may still reflect from his prison cell, as the Supreme Court explained long ago, that "the protection of the Fourth Amendment declaring his right to be secure against such searches and seizures is of no value, and, so far as [he is] concerned, might as well be stricken from the Constitution."

For this reason, the Court concluded: "The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land."

ERIC M. FREEDMAN  
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