

Hogan & Snee, supra, pages 21-33, and I would suggest that particular heed be paid to that section. They conclude:

"The court must never confine itself to the question whether justice is being done; it must also take heed how it is being done" (id., p. 30).

The real answer is that no other way has been found effective to enforce proper police practices. As long ago as *Neuslein v. District of Columbia*, 115 F. 2d 690, 695 (D.C. Cir. 1940), our court commented:

"The rights given by the fourth amendment are something quite distinct from the determination of whether the defendant was driving under the influence of liquor. The two problems must be considered together, however, in effectuating either the protection of the Constitution, or the punishment of the guilty. When two interests conflict, one must prevail. To us the interest of privacy safeguarded by the amendment is more important than the interest of punishing all those guilty of misdemeanors. Happy would be the result if both interests could be completely protected. If this declaration is admissible and justice meted out on the issue of drunken driving, where is the defendant's remedy for the inexcusable entry into his home? The casuist answers—a civil action against the officers. That remedy has been found wanting. Such remedy scarcely satisfies the nonbelligerent, nonlegal mind of a person whose security has already been violated and who stands convicted. To follow that procedure means delay, expense, unwanted publicity; it asks the individual to stake too much, and to take too great a chance, in the hope of compensating the interference to his privacy. A criminal remedy is also possible, but it is likely to be too strict or too lax. If criminal actions are brought consistently against the enforcing officers, before long their diligence will be enervated. If no prosecutions are brought, which appears to be the case, it cannot be said that statutory criminal provisions afford any deterrent to the infringement of the fourth amendment. Even if the criminal and civil remedies worked, the protection would not be complete. The amendment does not outline the method by which the protection shall be afforded, but some effective method must be administered; the protection granted by constitutional provisions must not be dealt with as abstractions. A simple, effective way to assist in the realization of the security guaranteed by the fourth amendment, in this type of case, is to dissolve the evidence that the officers obtained after entering and remaining illegally in the defendant's home."

In adopting such an exclusionary rule, the Supreme Court of California, in *People v. Cahan*, 44 Cal. 2d 434, 282 P. 2d 905, 50 A.L.R. 2d 513 (1955), reviewed the entire history of the rule, pro and con, and concluded:

"We have been compelled to reach that conclusion because other remedies have completely failed to secure compliance with the constitutional provisions on the part of police officers with the attendant result that the courts under the old rule have been constantly required to participate in, and in effect condone, the lawless activities of law enforcement officers."

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"Moreover, even when it becomes generally known that the police conduct illegal searches and seizures, public opinion is not aroused as it is in the case of other violations of constitutional rights. Illegal searches and seizures lack the obvious brutality of coerced confessions and the third degree and do not so clearly strike at the very basis of our civil liberties as do unfair trials or the lynching of even an admitted murderer. 'Freedom of speech, of the press, of religion, easily summon powerful support against encroachment. The prohibition against unreasonable search and seizure is normally invoked by those accused of crime, and criminals have few friends.' (Frankfurter, J. dissenting in *Harris v. United States*, 331 U.S. 145, 156; 67 S. Ct. 1098, 1104; 91 L. Ed. 1399). There is thus all the more necessity for courts to be vigilant in protecting these constitutional rights if they are to be protected at all. *People v. Mayen* (188 Cal. 237, 205 p. 435; 24 A.L.R. 1383) was decided over 30 years ago. Since then case after case has appeared in our appellate reports describing unlawful searches and seizures against the defendant on trial, and those cases undoubtedly reflect only a small fraction of the violations of the constitutional provisions that have actually occurred. On the other hand, reported cases involving civil actions against police officers are rare, and those involving successful criminal prosecutions against officers are nonexistent. In short, the constitutional provisions are not being enforced."

Certainly, this does not mean, as both Katzenbach and Acheson seem to imply, that no confessions while in custody are admissible. The so-called "threshold