A publication of The Rockford Institute.
Editorial and Advertising Offices:
934 North Main Street, Rockford, IL 61103.
Editorial Phone: (815) 964-5054.
Advertising Phone: (815) 964-5811.
Subscription Department: P.O. Box 800,
Mount Morris, IL 61054. Call 1-800-877-5459.
For information on advertising in *Chronicles*,
please call Rochelle Frank at (815) 964-5811.

U.S.A. Newsstand Distribution by Eastern News Distributors, Inc., 1130 Cleveland Road, Sandusky, OH 44870.

Chronicles (ISSN 0887-5731) is published monthly for $39.00 per year by The Rockford Institute, 934 North Main Street, Rockford, IL 61103-7061. Second-class postage paid at Rockford, IL and additional mailing offices. POSTMASTER: Send address changes to *Chronicles*, P.O. Box 800, Mount Morris, IL 61054.

Chronicles
A MAGAZINE OF AMERICAN CULTURE

Vol. 20, No. 3 March 1996

Printed in the United States of America

On the Fourth Amendment

In his December essay, "The Mark of the Beast," Larry Pratt implies that those who oppose unconstitutional searches and seizures by the government should be in favor of the exclusionary rule. But such a rule, whereby probative (i.e., valid) evidence may not be introduced in court if it was obtained in violation of the Fourth Amendment, is not required by the Constitution, nor was it favored by the Founders, as Pratt intimates. In fact, not until 1914, in the Supreme Court case *Weeks* v. *United States*, was an exclusionary sanction applied to evidence obtained in violation of the Fourth Amendment, and this case involved federal criminal litigation. It was not until 1952 that the Supreme Court imposed a federal constitutional exclusionary requirement on the states. The exclusionary rule is simply not required by the Constitution, nor is it implied by rules prohibiting certain types of searches and seizures.

Whether the Constitution *ought* to provide for the exclusion of illegally obtained evidence is another matter. In my view it should not, because it does not violate the rights of truly guilty criminals to convict them with any probative evidence, no matter how obtained, and because there are better ways to sanction errant police than to let criminals go free. For example, any individual subject to an illegal search or seizure who is not proved guilty should have a cause of action for damages against the police and the state, and the policemen involved ought to be subject to criminal action, if warranted. Further, no advocate of federalism should support federal imposition of an exclusionary rule on states, no matter how one views the merits of the exclusionary rule.

—*N. Stephan Kinsella*
Philadelphia, PA

Larry Pratt Replies:

While the exclusionary rule was not articulated until 1914, the principle dated from colonial times. It seems that the Supreme Court established the exclusionary rule as a way of correcting the slippage of the later part of the 19th century.

One of the Intolerable Acts involved general warrants, better known at the time as Writs of Assistance. These writs empowered the Crown's troops to enter homes without specifying a time or a person. They were often used by customs officers who were afraid that contraband might disappear before troops could make a surprise entry. Sound similar to today's War on Drugs?

In 1780, a Declaration of Rights was attached to the Constitution of Massachusetts. It reiterates the Fourth Amendment and adds: "All warrants therefore are contrary to this right, if the cause of foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure; and no warrant ought to be issued but in cases, and with the formalities, prescribed by the laws." According to a case tried in England at the time, if the goods named in the warrant are not found, then the one swearing out the warrant is a trespasser. As another contemporary said: "For every man's house is looked upon by the law to be his castle."

In 1810, the Pennsylvania Supreme Court (*Conner* v. *Commonwealth*) overturned a conviction because of a faulty warrant. If that is not the exclusionary rule, what is?

On the West

I always enjoy Chilton Williamson's writings. Yet when I hear him referring to incoming Californians (in Polemics & Exchanges, December 1995) as "fleeing the once-lovely state they have managed to ruin in a couple of generations . . . like locusts, they are moving in to find someplace else to consume," without noting that many are internal political refugees (quite a few prosperous, but no doubt less so in future waves), native Californians fleeing a state being wrecked by their national government's deranged and