CASELAW APPENDIX (D)

Evidence That Must Be Suppressed

Cruse v. State, 584 P.2d 1141, (Ak.,1978). "Constitutional protection against warrantless invasions of privacy is endangered by concealment of relevant facts from district court issuing search warrant, as search warrants issue ex parte, & issuing court must rely upon trustworthiness of affidavit before it."

Gustafson v. State, 854 P.2d 751, (Ak.,1993). "Prosecutors and police officers applying for a warrant owe a duty of candor to the court; they may neither attempt to mislead the magistrate nor recklessly misrepresent facts material to the magistrate's decision to issue the warrant."

Lewis v. State, 9 P.3d 1028. (Ak.,2000). "Once defendant has shown that specific statements in affidavit supporting search warrant are false, together with statement of reasons in support of assertion of falsehood, burden then shifts to State to show that statements were not intentionally or recklessly made." "If a false statement in affidavit in support of a search warrant was intentionally made, then the search warrant is invalidated." "A non-material omission or misstatement in an affidavit in support of search warrant-one on which probable cause does not hinge-requires suppression only when the court finds a deliberate attempt to mislead the magistrate."

Mapp v. Ohio, 367 U.S. 643 (1961), held that all evidence obtained by searches & seizures in violation of the Federal Constitution is inadmissible in a criminal trial in a state. Since the Fourth Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth, it is enforceable against them by the same sanction of exclusion as is used against the Federal Government. Only last year the court itself recognized that the purpose of the exclusionary rule "is to deter - to compel respect for the constitutional guaranty in the only effectively available way - by removing the incentive to disregard it." If the fruits of an unconstitutional search had been inadmissible in both state & federal courts, this inducement to evasion would have been sooner eliminated. There are those who say, as did Justice (then Judge) Cardozo, that under our constitutional exclusionary doctrine "[t]he criminal is to go free because the constable has blundered." *People v. Defore*, 242 N. Y., at 21, 150 N. E., at 587. In some cases this will undoubtedly be the result. But, as

was said in Elkins, "there is another consideration - the imperative of judicial integrity." ***Elkins v. U.S***., 364 U.S., at 222. The criminal goes free, if he must, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence.

McLaughlin v. State, 818 P.2d 683, (Ak.,1991). "Search warrant based on inaccurate or incomplete information may be invalidated only when misstatements or omissions that led to its issuance were either intentionally or recklessly made."

As Justice Brandeis, dissenting, said in ***Olmstead v. U.S***., 277 U.S. 438, 485 (1928): "Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example ... . If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."

Having once recognized that the right to privacy embodied in the Fourth Amendment is enforceable against the States, & that the right to be secure against rude invasions of privacy by state officers is, therefore, constitutional in origin, we can no longer permit that right to remain an empty promise. Because it is enforceable in the same manner & to like effect as other basic rights secured by the Due Process Clause, we can no longer permit it to be revocable at the whim of any police officer who, in the name of law enforcement itself, chooses to suspend its enjoyment. Our decision, founded on reason & truth, gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, &, to the courts, that judicial integrity so necessary in the true administration of justice. The judgment of the Supreme Court of Ohio is reversed & the cause remanded for further proceedings not inconsistent with this opinion. Reversed & remanded. *U.S. v. Thomas*, 489 F.2d 664, (C.A.5.La.,1973); *U.S. v. Stanert*, 762 F.2d 775, (C.A.9.Cal.,1985); *U.S. v. Luna*, 525 F.2d 4, (C.A.6.Mich.,1975); *State v. Groff*, 323 N.W.2d 204, (Iowa,1982); *State v. Byrd*, 568 So.2d 554, (La.,1990); *U.S. v. Hunt*, 496 F.2d 888, (C.A.5.Tex.,1974); *U.S. v. Lee*, 540 F.2d 1205, C.A.4 (Md.,1976).

People v. Reagan, 235 N.W.2d 581, 587 (Mich. S.Ct. 1975). "The gravamen of our holding is that, law enforcement processes are committed to civilized courses of action. When mistakes of significant proportion are made, it is better that the

consequences be suffered than that civilized standards be sacrificed."

State v. Davenport, 510 P.2d 78, (Ak.,1973). "State & federal constitutional requirement that warrants issue only upon a showing of probable cause contains the implied mandate that the factual representations in the affidavit be truthful."

State v. Faust, 265 Neb. 845, 660 N.W.2d 844 (2003). An error in admitting or excluding evidence in a criminal trial, whether of a constitutional magnitude or otherwise, is prejudicial unless it can be said that the error was harmless beyond a reasonable doubt.

State v. Malkin, 722 P.2d 943 (Ak. 1986). "Search warrant must be invalidated, & evidence seized pursuant thereto & must be suppressed, whenever supporting affidavit contains intentional misstatements, even though remainder of affidavit provides probable cause for warrant."

Stavenjord v. State, 2003 WL1589519, (Ak.,2003). "In evaluating a defendant's claim that an application for a search warrant included material misstatements or omissions, a non-material omission or misstatement, one on which probable cause does not hinge, requires suppression only when the court finds a deliberate attempt to mislead the magistrate."

U.S. v. Hunt, 496 F.2d 888, C.A.5.Tex.,1974. If affiant intentionally makes false statements to mislead judicial officer on application for search warrant, falsehoods render warrant invalid whether or not statements are material to establishing probable cause

U.S. v. Markey, 131 F.Supp.2d 316, D.Conn.,2001. To demonstrate recklessness in making of false statements in search warrant affidavit, as required to support *Franks* hearing, defendant must show that officer in fact entertained serious doubts as to truth of his allegations; fact finder may infer reckless disregard from circumstances evincing obvious reasons to doubt veracity of allegations. *Franks* hearing is required only as to false search warrant affidavit statement made by, or reckless disregard which is that of, affiant; no right to hearing exists when challenge is to information provided by informant or other source. Good faith exception to exclusionary rule does not apply where: (1) issuing magistrate has been knowingly misled.

U.S. v. Thomas, 489 F.2d 664 (1973). "Search warrant affidavits containing misrepresentations made with intent to deceive magistrate are invalid whether or not the error is material to showing probable cause, but if the misrepresentations were made unintentionally, the affidavits are invalid only if the erroneous statement is material to establishing probable cause."