Once again, as in the Rochin and Lisenba cases, lawless activities of California police have been denounced by the Supreme Court of the United States. Though technically the victor in the recent appeal of Irvine v. California, our state was the loser in a more fundamental sense.

Suspecting Irvine of being a bookie, the police, without claim of authority, made a key to his house, surreptitiously entered, drilled holes in the wall, and concealed a dictaphone in his bedroom. For over a month every word uttered by the suspect, his family, and associates was picked up by listening police. Finally the police entered without a warrant, ransacked the house, and took the suspect.

The United States Supreme Court refused to reverse the conviction, based largely on the dictaphone record, holding that the admissibility of this type of evidence was a problem for the individual states. But the justices were unanimous in condemning the police conduct as “incredible,” “repulsive,” “smack[ing] of the police state,” “frightening . . . surveillance and invasion of privacy,” and “flagrantly, deliberately, and persistently [violative of] the fundamental principle declared by the Fourth Amendment . . . .”
That California should be continually embarrassed nationally by “flagrant” and “deliberate” violations of both the California and Federal Constitutional guaranties against unreasonable searches and seizures is intolerable.

Use of such hidden dictaphones and unlawful searches to obtain evidence countenances—indeed, encourages—deliberate violations of a basic right of citizenship in a free society—the right to a reserved area of privacy. Lawless invasions of the home, whether by force, by stealth, or by electronics, are an earmark of modern tyranny.

This policy, if continued, will lead to the demoralization of the police force itself. Continued reliance on eavesdropping and illegal raids to obtain incriminating evidence and convictions can only cause relaxation of that high degree of critical judgment and scientific routine required to combat resourceful criminals.

Most important, this practice breeds disrespect for law. A distinguishing mark of a democratic society is the respect which the citizen knows he owes the law. If its agents become peeping toms, common trespassers, and thieves, this respect will change to contempt and—finally—to fear.

It is no easy task to describe an area of permissible police activity broad enough for effective law enforcement yet limited enough to protect fundamental rights. However, there are possible lines of approach. The California courts, or legislature, might exclude from criminal trials evidence obtained through violations of the Constitution. Criminal prosecutions of lawless police, possibly by the state attorney general, might deter these practices. An initial step in this direction would be the repeal of that portion of Penal Code § 653h which, on its face, protects the police from the criminal consequences of unlawfully installing dictaphones, but which must be void to the extent that it sanctions unconstitutional searches. An effective civil remedy might be fashioned by the legislature. Those in charge of police administration can, of course, always direct officers to forbear such unconstitutional conduct.

Whatever the best remedy, thoughtful Californians, particularly members of the bar, should be concerned with freeing this state from the consequences of a sanctioned course of conduct squarely in the teeth of our best democratic traditions—a course of conduct destructive of a free society.