Appellant stands convicted of knowingly having in her possession certain lewd and licivious books, pictures and photographs in violation of §2905.34 of Ohio's Revised Code.[1] At all stages of the proceedings included within her defense has been [an] attack on this section under the due process clause of the 14th Amendment and the claim that, under the 4th Amendment, certain books and pictures seized without warrant showed not have been admitted into evidence. Ohio has [elected] not to follow the exclusion rule announced in Weeks v United States 232 US 383 (1914) and the admission of the books + pictures was [therefore sustained] on the authority of Wolf v Colorado, 338 US 25 (1949). On the due process question it appears that four of the seven judges of the Supreme Court of Ohio declared the section [violative] of due process but were nevertheless required to uphold its constitutionality because the Ohio Constitution provides that "no law shall be held unconstitutional and void by the supreme court without the concurrence of at least all but one of the judges"[2] 170 Ohio St. 427. ~~In view of the importance of the question as well as the manner of its disposition~~ we On appeal here we noted probable jurisdiction. ~~because of the~~ importance of the federal question involved. 346 US 868. ~~In view of our disposition we have not considered~~ However, ~~other questions raised by appellant~~, we have concluded that the conviction of the appellant is violative of the due process clause of the 14th Amendment to the Constitution of the United States [which results in a reversal of the judgment. ~~In view of this disposition we do not consider other questions raised by appellant.~~ In view of this disposition we do not pass upon other issues raised by appellant.

On the 4th Amendment question the Court adheres to its rule announced in Wolf v Colorado, supra, and hence this contention of appellant is denied.[3]

On May 23, 1957, three Cleveland police officers arrived at appellant's residence in that city pursuant to information that

> "a person [was] hiding out in the home who was wanted for questioning in connection with a recent bombing, and that there was a large amount of policy paraphernalia being hidden in the home."

~~The two-story brick structure is a two-family dwelling with a full basement.~~ Miss Mapp [and her daughter] lived on the top floor ~~with her~~ [of the two family dwelling, with basement.] ~~daughter. When~~ The officers knocked on the door, ~~the appellant~~ and demanded entrance but appellant, after telephoning her ~~came to a window and asked them what they wanted. Failing~~ attorney, refused to admit them without a search ~~to receive a satisfactory reply, she telephoned her attorney~~ warrant. They continued their surveillance of the house, ~~who advised her to deny the officers entrance unless they had~~ ~~a search warrant. When~~ [advised headquarters and some three hours] appellant informed the police of this, [later additional officers arrived with a police Lieutenant] ~~they sought reinforcements, which arrived about three hours~~ White, who the evidence indicates had a search warrant. ~~later. Whether or not they brought a search warrant is dis-~~ [The officers again attempted entrance and when Mrs puted. As the Ohio court observed, however, if it did exist Mapp did not come down immediately to open the door an officer tried to kick it in, failing which he ~~it certainly would have described only the policy paraphernalia -- not the obscene material.~~ broke the glass and admitted the group. Meanwhile Miss Mapp's attorney arrived but ~~was~~ the officers would not permit him to enter. It seems that Mrs Mapp was half way down the stairs when the officers broke into the hall. She demanded the search warrant be served. A paper, claimed to be the warrant, was shown by one of the officers.

broke in and showed Miss Mapp, who was standing on the stairway, something which purported to be a search warrant. She grabbed the "warrant," and placed it in her bosom. allegedly to read it. A struggle ensued in which the officers took the warrant, handcuffed regained possession of the Miss Mapp and took her up to her bedroom. "warrant." Appellant was ordered handcuffed and taken up-stairs to her bedroom. Both the second floor and a the basement were searched. It is undisputed that policy paraphernalia was found in the basement and an obscene drawing was found in her suitcase under the bed in her room. There is, however, a conflict as to where the other obscene material was found. Appellant claimed that it had belonged to a former tenant and that she had packed it away with the rest of his belongings in a box in the basement. The officers testified that the material had been found in her bedroom. However, in the light of the Ohio Supreme Court's construction of the statute,[3] it is immaterial which story the jury believed. The court stated that

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Appellant in a timely motion had sought to suppress the evidence as to the obscene material seized. The state admits that a proper search warrant was not secured setting forth the confiscated evidence on which the charge was based.

At trial no search warrant was produced nor one demanded and its existence appears under question. It appears, as Ohio's court has observed, if ~~[illegible]~~ a search warrant was issued it would have authorized search only for "policy paraphenalia" - not obscene materials. In any event, under Wolf, supra, even its invalidity would not affect the ~~introduction~~ use of the obscene material in evidence. The case was tried on the theory that if Miss Mapp "had some degree of possession or control" over the obscene material she would violate §2905.34. The jury was so instructed and found her guilty. She was sentenced to a term of one to seven years in the penitentiary. ~~There is no contest here over the question of obscenity of the materials seized and our disposition assumes, but not~~ The Court of Appeals of Cuyahoga County affirmed the conviction by Journal Entry. ~~The Supreme Court of Ohio affirmed and in its opinion, syllabus 1, held that~~ As we have said the Supreme Court of Ohio affirmed, assuming the constitutionality of §2905.34 because less than six of its members were of the opinion it was invalid. It held (in syllabus 1 of its opinion) that the section prohibited "any person from knowingly having in his possession or under his control lewd and lascivious books and pictures" and that therefore

> "a defendant may be convicted thereunder where the evidence discloses that, in packing up the belongings of a former roomer in such defendant's home, such defendant found lewd and lascivious books and pictures and packed them with such former roomer's other belongings for the purpose of storing them for him until he came for them."