

2014

Is Batman a State Actor? The Dark Knight's Relationship with the Gotham City Police Department and the Fourth Amendment Implications

Joshuah Lisk

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>



Part of the [Law Commons](#)

Recommended Citation

Joshuah Lisk, *Is Batman a State Actor? The Dark Knight's Relationship with the Gotham City Police Department and the Fourth Amendment Implications*, 64 Case W. Res. L. Rev. 1419 (2014)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol64/iss3/21>

This Comments is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

— Comment —

IS BATMAN A STATE ACTOR?
 THE DARK KNIGHT’S RELATIONSHIP
 WITH THE GOTHAM CITY POLICE
 DEPARTMENT AND THE FOURTH
 AMENDMENT IMPLICATIONS

CONTENTS

INTRODUCTION..... 1419

I. THE FOURTH AMENDMENT..... 1422

II. IS BATMAN A STATE ACTOR?..... 1425

A. State Actor Doctrine 1425

B. Batman’s Relationship with the Gotham City Police Department..... 1427

C. Batman’s Intent 1431

D. Applicability of the Exclusionary Rule..... 1432

E. Exceptions to Exclusionary Rule: Exigent Circumstances..... 1435

III. MODERN VIGILANTES 1437

CONCLUSION..... 1439

INTRODUCTION

It is a dark night in Gotham City, but an even darker time for crime. Gotham’s criminal underworld is at its pinnacle and there is no justice to be found. But one man takes on the injustice that plagues the city by night . . . the Batman.

Sitting on the roof of the Gotham City Bank, forty stories above the snowy streets of Gotham City’s uptown district, Batman stares directly across the street into Carmine “the Roman” Falcone’s thirty-eighth-floor penthouse. Batman watches as the Joker and the Roman meet and appear to make some deal. After the Joker leaves, the Roman writes something down in a notebook and places it in the safe behind his desk.

Batman waits until Falcone leaves and watches him as he drives down Fifth Avenue towards the opera. Observing that no one is left in the room Batman leaps and glides from the roof onto the Roman’s study window. Silently Batman cuts a hole through the glass and stretches his arm inside to open the lock. Once inside, Batman locates the safe hidden behind the Roman’s desk. Cracking the safe code proves easy, but the silent alarm is an unexpected surprise. As Batman snatches the ledger the Roman’s henchman burst through the door. Gunfire erupts and tears apart the vases and priceless works of art on the study walls. Batman disarms the first two thugs, tosses his

smoke grenade and leaps out the window. In a feat of acrobatic heroics, Batman fires his grappling hook and pulls himself back to the rooftops of Gotham.

Safe on the roofs, Batman heads stealthily back to the alley where the Batmobile is hidden. As the clouds roll in, Batman's gaze catches a brilliant light cast upon the incoming black clouds. His symbol is calling him.

On the roof of the Gotham City Police Department (GCPD), Commissioner Jim Gordon and District Attorney Harvey Dent stand next to the GCPD's newest toy, the Bat Signal. "How long does he usually take to get here?" Dent asks as he paces around the roof.

"We never have to wait too long." Gordon's face is solemn as he puffs on his pipe. No later than Gordon can finish his sentence, Batman emerges from the shadows and stands in front of the signal. While it is not the first time Dent or Gordon have met with the Batman individually, it is the first time all three have been together.

Dent states, "I've . . . come to appreciate our mutual friend. And how he crosses a line we can't."

"It's still a line," Gordon replies.

"Judging by your clothes Dent, it looks like you've been working on the Roman case again." Batman interrupts the two in their thoughtful exchange.

"Someone has to nail the SOB," Dent says through his teeth. "The police haven't been able to provide me with anything."

The three protectors of Gotham begin discussing the problems caused by Gotham's organized crime, and how the Roman's deep pockets and wide reach have made it impossible to secure enough evidence to bring him down. Soon after, the three agree that putting the Roman behind bars is the top priority.

"We all know what must be done," Batman growls.

As Batman turns to walk away, Gordon, in a stern voice states, "We can let you bend the rules, but we cannot break them. Otherwise, what makes us any different? Promise me, Batman. . . . Give me your word."

". . . Agreed."

Batman disappears into the night. As Gordon and Dent head towards the stairs, Dent notices a notebook on the ground. It is the Roman's personal ledger; the ledger lists names, dates, transactions, and dollar amounts.¹

Months later, during the Roman's prosecution, defense counsel moves to suppress the ledger based on Batman's relationship with the police. Defense counsel contends that Batman's ongoing relationship

1. The above hypothetical and dialogue is an adaptation of the first chapter in the Batman graphic novel, Jeph Loeb & Tim Sale, *Batman: The Long Halloween # 1* (1996), reprinted in *BATMAN: THE LONG HALLOWEEN* (Archie Goodwin et al., eds. 2011).

with Commissioner Gordon, Harvey Dent, and the GCPD makes him a state actor, and, thus, the evidence seized from the penthouse constitutes an unreasonable search and seizure in violation of the Roman's Fourth Amendment rights. This constitutional violation requires that the evidence must be excluded.

Batman's legal status in the universe of superheroes provides an interesting illustration of the state actor doctrine in Fourth Amendment search and seizure situations. The idea of vigilante justice, the actions of private citizens attempting to prevent and punish crime through their own ends, has been around throughout U.S. history and private citizens have long attempted to take the law into their own hands.² The depiction of vigilantes in entertainment, and popular culture through television shows, movies, and comic books is a reflection of the relative politics concerning criminal justice.³ Today, many communities establish their own private citizen community watch programs, in order to ensure the safety of their community and to prevent crime by working with local law enforcement officials.⁴ Millions of Americans are part of an active neighborhood watch program⁵ and millions more live in areas with a community watch program designed to assist the police in local crime prevention.⁶ The use of private citizens to aid the government in combating crime can create certain problems when it comes to the use of evidence obtained by private citizens. Community watch groups and private citizens that act outside the scope of government authority are often overlooked as being purely private citizens. But when these private actors maintain a relationship with government

-
2. See Dennis C. Colson, *Lawless Idaho: The People v. John Williams*, ADVOCATE (Idaho), Sept. 2013, at 47 (discussing the case *The People v. John Williams* in 1866 and how the court's release of the defendant created a period of lawlessness in Idaho during the 1860s when private citizens created a vigilante committee to hunt down and kill Williams for his suspected murder of local citizens); see also Allen Rostron, *The Law and Order Theme in Political and Popular Culture*, 37 OKLA. CITY U. L. REV. 323, 365 (2012) (positing that society's fear of crime can spread the idea of private violence).
 3. See Rostron, *supra* note 2, at 364–75 (tracing the theme of law and order in popular culture and its relationship to political themes from the 1960s through the present).
 4. See, e.g., BUREAU OF CMTY. POLICING, CLEVELAND DIV. OF POLICE, NEIGHBORHOOD WATCH TRAINING MANUAL 1 (2010), available at http://portal.cleveland-oh.gov/clnd_images/Police/NeighWTraining.pdf.
 5. *Id.* at 2; see Vicki Quade, *Our Neighbors' Keepers: Citizens Are Joining with Police to Cut Crime*, 69 A.B.A.J. 1805, 1806 (1983) (mentioning that about two million Americans belong to neighborhood watch programs).
 6. BUREAU OF CMTY. POLICING, *supra* note 4, at 1.

agencies and officials to prevent crime they risk falling under state action and thus must act within constitutional constraints.

This Comment will use the hypothetical world of Batman to discuss the state actor doctrine as applied to a private citizen's vigilante quest to prevent crime. In this Batman hypothetical, whether the judge should exclude the evidence obtained by Batman will depend on his relationship with the police. While Batman's ongoing relationship with the GCPD may lead to the conclusion that he is a state actor, the analysis is not so cut and dry.⁷ The facts of each case will depend on whether Batman is operating with police approval *at the time* of the search and whether the exclusionary rule would prevent Batman from violating the Fourth Amendment's protections. Part I of this Comment will describe the background and development of an individual's rights under the Fourth Amendment. Part II will examine the state actor doctrine and analyze whether Batman would qualify as private or state actor for search and seizure purposes. Whether Batman is a state actor depends not only on Batman's ongoing relationship with the police, but the relationship at the specific time the search occurs as well as the applicability of the exclusionary rule. Courts, and the government, have a duty to prevent vigilantes from breaking laws, even if they are acting with the intent to aid the government. This obligation, however, should not prevent the police from using evidence that was obtained by a private citizen without the government's approval or support. Part III will draw the analysis back to real world vigilantes and provide a test to determine when private actors should fall under state action. Finally, this Comment will conclude that Batman is not a state actor in the posed hypothetical, and while it is possible for a court to determine that Batman acts under police authority at certain times, the police overall rarely have any knowledge of Batman's ongoing actions.

I. THE FOURTH AMENDMENT

The U.S. Constitution places limits on what the government or state can do during criminal investigations and prosecutions. Looking back to the above hypothetical, if Batman is a state actor, or a police officer, his actions must be conducted within the constraints of the Constitution.⁸ Batman's above actions of gathering the ledger from

7. See JAMES E. DAILY & RYAN M. DAVIDSON, *THE LAW OF SUPERHEROES* 2–6 (2012) (discussing the relationship of superheroes to the law, and arguing that Batman would be considered a state actor under the *Lugar* test) [hereinafter DAILY & DAVIDSON, *LAW OF SUPERHEROES*]; see also *infra* Part II.D. The authors also have an online blog. See James Daily & Ryan Davidson, L. & MULTIVERSE, <http://lawandthemultiverse.com/> (last visited March 20, 2014).

8. See *infra* Part II.A.

the Roman's penthouse, if conducted by a police officer would implicate the Fourth Amendment, which states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.⁹

There are two parts to this rule: first, a person is protected against unreasonable searches and seizures; and second, only a warrant justifies a search into a protected area.¹⁰ Warrants are based on probable cause, requiring a written affidavit to be approved by a Magistrate.¹¹ The Magistrate will examine a warrant application and determine that it is supported by substantial evidence, that the items sought are connected with particular, criminal activity; and that it is probable the items will be found where the police want to search.¹²

Traditionally, the Fourth Amendment protected individuals from searches on private property.¹³ But in *Katz v. United States*,¹⁴ the Supreme Court expanded the rule to protect against government intrusion upon a person's legitimate expectation of privacy.¹⁵ The Court held that what a person "seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected."¹⁶ This means that the Fourth Amendment is not limited to protecting only property, but protects the person.¹⁷ The greatest evil of a

9. U.S. CONST. amend. IV.

10. *Id.*; see also *See v. City of Seattle*, 387 U.S. 541, 543 (1967) ("[A] search of private houses is unreasonable if conducted without a warrant.").

11. *See, e.g., Dalia v. United States*, 441 U.S. 238, 255 (1979) ("[W]arrants must be issued by neutral, disinterested magistrates.").

12. *Id.*; Comment, *Search and Seizure in the Supreme Court: Shadows on the Fourth Amendment*, 28 U. CHI. L. REV. 664, 687 (1961).

13. *See Olmstead v. United States*, 277 U.S. 438, 463 (1928) ("The well-known historical purpose of the Fourth Amendment . . . was to prevent the use of governmental force to search a man's house, his person, his papers, and his effects."); see also *Katz v. United States*, 389 U.S. 347, 364-74 (Black, J., dissenting) (arguing that the Fourth Amendment does not create a general right of privacy because it only covers "tangible things").

14. 389 U.S. 347 (1967).

15. *See id.* at 359 (holding that the use of an electronic device to hear a telephone conversation inside of a phone booth constituted a search within the meaning of the Fourth Amendment).

16. *Id.* at 351-52.

17. *Id.* at 351.

violation of the Fourth Amendment is the government's unauthorized intrusion into an individual's right to privacy.¹⁸

Assuming Batman was a police officer, his actions and the unauthorized entry into the Roman's penthouse would constitute a violation of the Fourth Amendment. In order for such actions to be deemed a violation, the first question is whether the Roman had a reasonable expectation of privacy that would be recognized by society.¹⁹ It is clear that the Roman lives in the penthouse and he could reasonably rely on the fact that his actions within the penthouse are away from the public and subject to the privacy requirement.

There are other similar situations that the privacy requirement would come into question. A recurring theme is when Batman enters a villain's secret lair in order to find evidence of the Joker's plan or to find the origin behind a mysterious powder causing people to go insane. The question would be whether the villains, i.e. the Joker, have a reasonable expectation of privacy in those establishments. In the comic series, *Batman: Streets of Gotham*, the Gotham villains pay for and own their respected hideouts through The Broker, who serves as a real-estate agent procuring hideouts for Gotham's seedy individuals.²⁰ This would give the villains a reasonable expectation of privacy. In fact, many of the villains found in the Batman universe utilize abandoned factories and warehouses for their operations.²¹ Such places are generally not open to the public, and therefore in order for the police to enter and search, they would be required to first obtain a warrant.²²

-
18. United States v. U.S. Dist. Court (*Keith*), 407 U.S. 297, 313 (1972).
 19. Oliver v. United States, 466 U.S. 170, 177 (1984) (“The [Fourth] Amendment does not protect the merely subjective expectation of privacy, but only those ‘expectation[s] . . . that society is prepared to recognize as reasonable.’” (quoting *Katz*, 389 U.S. at 361 (Harlan, J., concurring))).
 20. See Paul Dini et al., *Batman: Streets of Gotham*, 1 BATMAN: STREETS OF GOTHAM: # 4, (Nov. 2009).
 21. *Batman: The Animated Series: Read My Lips* (Fox television broadcast May 10, 1993) [hereinafter *Batman: Read My Lips*].
 22. See *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 311–13 (1978) (stating that the Fourth Amendment “protects commercial buildings” in addition to private residences); see also *Gateway 2000, Inc. v. Limoges*, 552 N.W.2d 591, 594 (S.D. 1996) (discussing the differences for the purpose of the Fourth Amendment between areas open to the public in commercial buildings, such as visitor centers, and private areas, such as working areas closed off to the public).

II. IS BATMAN A STATE ACTOR?

A. *State Actor Doctrine*

In order for the Fourth Amendment and the exclusionary rule to come into play,²³ the alleged constitutional violation must have been caused by a state actor. The question becomes, who is a state actor? Easily the police, government officials, and any type of government employee in law enforcement acting under their public authority would fall under the state action. Private parties and individuals are excluded from the Fourth Amendment analysis. But there are certain situations where a private citizen would be engaging in activity which can be attributable to the state. These actions would include private companies conducting official state business,²⁴ employing private police or security guards,²⁵ or paying for the services of an informant.²⁶ The goal of including private parties as state actors is to prevent and deter police from using private individuals to be an end around their constitutional restraints.

The Supreme Court first addressed the issue of private parties and Fourth Amendment implications in *Burdeau v. McDowell*,²⁷ which was decided prior to the development of the exclusionary rule.²⁸ In *Burdeau*, a company employee opened the safe of another employee who had been fired and stole incriminating papers which were turned over to the government.²⁹ The Court held that the evidence was admissible, reasoning: “It is manifest that there was no invasion of the security afforded by the Fourth Amendment against unreasonable search and seizure, as whatever wrong was done was the act of individuals in taking the property of another.”³⁰ In support of this

23. *See also infra* Part II.D.

24. *See, e.g.,* *Marsh v. Alabama*, 326 U.S. 501, 506 (1946) (discussing the point that a privately held business operating a facility that primarily serves a public function, such as a bridge or a road, may be held accountable for infringing on the constitutional rights of individuals).

25. *See, e.g.,* *United States v. Newton*, 510 F.2d 1149 (7th Cir. 1975) (holding that where private airline acts under the direction of government to search a passenger’s luggage, the Fourth Amendment applies).

26. *See* *United States v. Walther*, 652 F.2d 788 (9th Cir. 1981); *see also* *Hoffa v. United States*, 385 U.S. 293 (1966) (treating government informant as state actor for Fourth Amendment analysis but holding that the defendant’s misplaced confidence in informant did not implicate the Fourth Amendment).

27. 256 U.S. 465 (1921).

28. The Supreme Court adopted the exclusionary rule for violations of the Fourth Amendment in 1961 with its decision in *Mapp v. Ohio*. 367 U.S. 643 (1961); *see also infra* Part II.D.

29. *Burdeau*, 256 U.S. at 472–73.

30. *Id.* at 475.

reasoning, the Court stated that “no official of the Federal government had *anything* to do with the wrongful seizure.”³¹

The Court implied that evidence should be excluded when officials engage in unlawful activities, but in this case the federal government had nothing to do with the stolen papers. The Fourth Amendment’s “origin and history clearly show that it was intended as a restraint upon the activities of sovereign authority, and was not intended to be a limitation upon other than governmental agencies.”³²

Courts have applied this rule without hesitation.³³ In order to determine who is a government official, the Court employed a two-part test in *Lugar v. Edmondson Oil Co.*³⁴ to decide whether a party is a state actor for civil claims under 42 U.S.C. § 1983.³⁵ The first requirement is that “the deprivation must be caused by the exercise of some right . . . created by the State or by a rule . . . imposed by the state or by a person for whom the State is responsible.”³⁶ Then, courts look into whether it would be “fair” to attribute to the state, which may happen when a private party “has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State.”³⁷ Under this analysis, Batman may be a state actor so long as he receives aid from the GCPD.³⁸

The *Lugar* test, however, must be taken for what it is; a civil remedy for constitutional violations.³⁹ Excluding evidence seized by a private party and possibly resulting in a criminal defendant going free requires a heightened restriction and a more established connection between the private party and the government.

Batman is a good example of how the line between a state actor and a private citizen is not clear-cut, but rather is dependent upon the facts of each case. Evidence obtained in violation of the Fourth Amendment will be excluded so long as the violation is done by a state actor. Turning our attention to the above hypothetical, we can

31. *Id.* (emphasis added).

32. *Id.*

33. *See, e.g.,* *Coolidge v. New Hampshire*, 403 U.S. 443, 489–90 (1971) (holding that a wife’s surrendering her husband’s property to police is not a search or seizure under the Fourth Amendment).

34. 457 U.S. 922 (1982).

35. 42 U.S.C. § 1983 (Supp. III 1980) (current version at 42 U.S.C. § 1983 (2006)). The Supreme Court in *Lugar* also held that the requirements for state action for Fourteenth Amendment violations and acting “under color of state law” for purposes of § 1983 were identical. *Lugar*, 457 U.S. at 929.

36. *Lugar*, 457 U.S. at 937.

37. *Id.*

38. *See* DAILY & DAVIDSON, LAW OF SUPERHEROES, *supra* note 7, at 2–4.

39. *Lugar*, 457 U.S. at 928 n.9.

start the analysis by determining whether Batman's actions violated the Roman's constitutional rights. If Batman is a state actor, the answer is a simple yes because the Roman had a legitimate expectation of privacy and Batman entered without a warrant. But in order for the court to exclude the evidence based on a violation of his Fourth Amendment rights, Batman must first be established as a state actor.

B. Batman's Relationship with the Gotham City Police Department

Since the police had no knowledge of Batman's actions, the evidence would be admissible because Batman is a private party under the traditional rule from *Burdeau*.⁴⁰ But looking at the history of Batman's relationship with the GCPD provides a more definitive answer.

In the 1960s television show, *Batman*, Commissioner Gordon maintained a direct phone line with the bat cave and often spoke with Batman. In this context, Gordon relied on Batman's services to prevent and defeat crime. Through the phone, Gordon utilized Batman to enforce the laws of Gotham. In this context, it would be a losing argument to say that Gordon did not request Batman's assistance in obtaining information that would lead to the Roman's conviction. In a simplified manner, Gordon's direct line of communication with Batman would establish a strong relationship between Batman's private actions and Government, knowledge, approval and acquiescence so as to make Batman a de facto police officer. The key factor is that Gordon relies on Batman to act as a super police officer and can elicit his help at any time.

If, however, the context of the above hypothetical sets the relationship as more of a mutual understanding between Gordon and Batman, the analysis might be different. In the hypothetical, Batman obtains the evidence *prior* to discussing any plans to take on organized crime. His actions are relatively independent of the police and Harvey Dent. Therefore, under *Burdeau*, Batman would not be a state actor.⁴¹

Rather than apply the *Lugar* test in criminal cases, circuits courts have applied a similar, but different applied a similar, but different, two-part test to determine whether an individual is a state actor. This test requires the court to examine first, whether the government ordered, knew, or acquiesced to the private party's intrusive conduct; and second, whether the individual acted with the intent of aiding the conviction of the individual or for their own ends.⁴² In order for the

40. *Burdeau v. McDowell*, 256 U.S. 465, 475 (1921).

41. *Burdeau*, 256 U.S. at 475.

42. *United States v. Bowers*, 594 F.3d 522, 526 (6th Cir. 2010); *United States v. Souza*, 223 F.3d 1197, 1201 (10th Cir. 2000); *United States v. Blocker*,

private party conduct to be deemed a governmental act, both prongs must be satisfied.⁴³

Bounty hunters supply a real-life example of the interworking of the state actor doctrine. As they are not governmental employees, they often enter a person's home without consent in order to capture a defendant who has forfeited bond.⁴⁴ The Tenth Circuit applied its two-part test in *United States v. Poe*,⁴⁵ where a bounty hunter broke into a residence to apprehend the defendant and in the process found drugs, drug-related paraphernalia, and a loaded firearm.⁴⁶ Subsequently, the bounty hunter notified the police who arrested the defendant and confiscated the drugs and gun.⁴⁷ The defendant appealed a conviction and argued that the bounty hunters were state actors. The Tenth Circuit found that the bounty hunters did not meet either requirement of the two-part test. The bounty hunters were not state actors because the police did *not* have knowledge of the search until after the evidence had been obtained and because the bounty hunters were motivated by an independent financial gain.⁴⁸

Like a bounty hunter, Batman intrudes into criminal's private area without government knowledge or acquiescence. When Batman entered the Roman's penthouse, neither Gordon nor Dent were aware that such an act was occurring. Unless Gordon or Dent requested that Batman enter the Roman's penthouse in order to find evidence, or approved Batman's actions, they could not have acquiesced to his behavior. Before Batman left behind the ledger, Gordon specifically stated that Batman was not to break the rules. Even though the police often use evidence procured by bounty hunters or other private actors, the mere approval or acceptance of a private individual's actions are not to justify excluding evidence.⁴⁹

104 F.3d 720, 725 (5th Cir. 1997); *United States v. McAllister*, 18 F.3d 1412, 1417 (7th Cir. 1994); *United States v. Malbrough*, 922 F.2d 458, 462 (8th Cir. 1990); *United States v. Miller*, 688 F.2d 652, 657 (9th Cir. 1982).

43. *See supra* note 42.

44. Emily Michael Stout, Comment, *Bounty Hunters as Evidence Gatherers: Should They Be Considered State Actors Under the Fourth Amendment When Working With the Police?* 65 U. CIN. L. REV. 665, 670 (1997).

45. 556 F.3d 1113 (10th Cir. 2009).

46. *Id.* at 1117. The Tenth Circuit two-part test as stated in *United States v. Souza* is "1) whether the government knew of and acquiesced in the intrusive conduct, and 2) whether the party performing the search intended to assist law enforcement efforts or to further his own ends." *Souza*, 223 F.3d at 1201.

47. *Poe*, 556 F.3d at 1117.

48. *Id.* at 1123.

49. *See Blum v. Yaretsky*, 457 U.S. 991, 1004–05 (1982) ("Mere approval of or acquiescence in the initiatives of a private party is not sufficient to

One argument is that Batman's ongoing assistance and relationship with the GCPD makes him a de facto officer. In many of the Batman comics and shows, Batman is seen talking to Commissioner Gordon inside police headquarters, at crimes scenes, and is even allowed in the interrogation room during suspect interviews.⁵⁰ In these instances, Batman is likely a state actor because he is conducting police procedure. Simply because Batman is a state actor in some situations, it does not mean that he is always acting in that capacity. In *United States v. Gingles*,⁵¹ two off-duty police officers were found to act as private citizens when they searched their father's home and had the intent to turn him over to the authorities.⁵² The Sixth Circuit reasoned that they were not acting on behalf of the police.⁵³ The police were not aware of their actions and it did not matter that the sons were planning to turn their father over to authorities.⁵⁴ Applying this reasoning to Batman's association with the government at certain times does not carry over to all subsequent acts. As stated before, Batman's evidence will be excluded only if the police had knowledge or knowingly approved the illegal search that took place.

If, however, the hypothetical were changed and Batman received information or aid from Gordon prior to the unlawful entry then Batman would likely be a state actor. For example, Gordon and the GCPD are unable to solve a string of robberies plaguing Gotham. Gordon turns on the bat signal to request Batman's help. Batman arrives and enters Gordon's office through the window, as he has done countless times before, and Gordon describes the robberies. To assist Batman, Gordon provides him with surveillance footage of the masked individuals robbing various businesses around town. Gordon believes that Batman most likely has access to high tech equipment, and if anyone can find out who the perpetrators are, it would be Batman. Batman takes the videotapes and then conducts his own investigation which leads him to the Ventriloquist and Scarface's hideout.⁵⁵ There, Batman enters the bedroom and places a bug on the lapel of the

justify holding the State responsible for those initiatives under the terms of the Fourteenth Amendment.”).

50. *E.g.*, *Batman: Read My Lips*, *supra* note 21; *THE DARK KNIGHT* (Warner Bros. 2008).
51. 467 F.3d 1071 (7th Cir. 2006).
52. *Id.* at 1075.
53. *Id.*
54. *Id.*
55. Arnold Wesker is a ventriloquist with multiple personality disorder. While Arnold is a weak individual, through his dummy, Scarface, he is a ruthless criminal. *Batman: Read My Lips*, *supra* note 21.

Ventriloquist's tuxedo, which records discussions about the past and future robberies.⁵⁶ The evidence obtained as a result of the tap would be subject to the exclusionary rule because the police, Gordon specifically, sought out Batman for help, supplied Batman with assistance to solve the crime and thus acquiesced to Batman's actions. Because of the relationship between Batman and Gordon, it can be assumed that Gordon knows Batman operates outside the law. Furthermore, Gordon giving assistance to Batman would qualify Batman as a state actor because he is operating based on the government's advice and direction.⁵⁷ But only in this instance would the evidence be excluded, as compared to the Roman's case, where Gordon was not aware that Batman was even aiding the investigation.

The distinction between the two situations is about the timing of government involvement. Acquiescence requires more than prior knowledge of an individual's acts. Courts applying this test found that the government acquiesces to a private party's conduct when; the government has knowledge of the search, and is present at the time of the search;⁵⁸ the government exercises some degree of control over the actor;⁵⁹ or, when the government influences the private individual by requesting help gathering certain evidence.⁶⁰

The Ninth Circuit in *United States v. Walther*⁶¹ took a somewhat different approach and recognized that previous behavior of searches conducted by a private party can transform the private party into a government agent. The court stated that because a private airline employee had previously provided evidence to the DEA and been rewarded, the fact that the DEA had no prior knowledge of the particular search at issue was irrelevant and there was reasonable proof of government acquiescence.⁶² Under this definition of

56. This hypothetical is adapted from *Batman: The Animated Series: Read My Lips. Id.*

57. See *Walter v. United States*, 447 U.S. 649, 660 n.2 (1980) (White, J., concurring); *supra* notes 27–33 and accompanying text.

58. See *United States v. Jarrett*, 338 F.3d 339, 345–46 (4th Cir. 2003) (creating agency relationship with a hacker after the hacker searched the defendant's computer did not amount to state action); *State v. Santiago*, 217 P.3d 89, 95 (N.M. 2009) (searching done by private security guards before police arrived was not state action). *But see State v. Jorgensen*, 660 N.W.2d 127, 131–32 (Minn. 2003) (finding police officer's presence alone during a private-party break in did not amount to acquiescence).

59. See *United States v. Koenig*, 856 F.2d 843, 851 (7th Cir. 1988) (finding “no reason to treat anti-crime efforts . . . as deputizing the person or corporation as a governmental agent”).

60. *State v. Malkuch*, 154 P.3d 558, 561 (Mont. 2007).

61. 652 F.2d 788 (9th Cir. 1981).

62. *Id.* at 793.

acquiescence, the government's previous reliance on Batman's searches may be enough to make him a state actor. But unlike the private individual in *Walther*,⁶³ Batman is not, and does not expect a reward for his actions. The key requirement in the interpretation of acquiescence is at what time the government becomes aware of the search. Post-search knowledge or acquiescence does not transform the relationship between a private actor and the government into one of state action.⁶⁴

C. *Batman's Intent*

The issue of Batman's intent on finding evidence to be used successfully in a criminal prosecution is relevant. Courts have, at times, found the intent of the private party determinative of whether the individual is a state actor. Under a ratified intent theory for state actors, a private individual's intent to gain evidence for use in a criminal prosecution requires the evidence be suppressed. This principle was established in *Knoll Associates, Inc. v. FTC*.⁶⁵ In that case, an individual, Herbert Prosser, stole documents from the defendant corporation and gave them to the FTC for the purpose of supporting the prosecution of Knoll Inc.⁶⁶ The Court differentiated its holding from *Burdeau* by stating that in *Burdeau*, the government was unaware of any search until months after the incident, whereas here, Prosser contacted the FTC and became a witness. This created a sufficient connection between the government and the individual to justify excluding the evidence.⁶⁷

Under a ratified intent theory, it may be more difficult for the prosecution to have the ledger be admissible. Batman's traditional goals are that he intends to aid the government authorities and in this hypothetical, there was a current investigation going on, similar to the pending investigation in *Knoll*.⁶⁸ Batman broke into a known, organized establishment to secure evidence, which he knew would be relevant to the District Attorney (DA). Simply because the DA was hoping to take down organized crime, Batman's actions cannot automatically be attributable to the state; rather, it is Batman's intent to aid the government which would create state action.

63. *Id.* at 791.

64. *See* *United States v. Jarret*, 338 F.3d 339, 346–47 (4th Cir. 2003) (thanking hacker for first search was not acquiescing to hacker's second search seven months later).

65. 397 F.2d 530 (1968).

66. *Id.* at 533.

67. *Id.* at 535 n.5; *see also supra* notes 27–32 and accompanying text.

68. *Knoll*, 397 F.2d at 535.

The ratified intent theory, however, has also been largely rejected by courts. Courts uniformly apply the *Burdeau* rule notwithstanding the intent of the private actor.⁶⁹ Furthermore, the ratified intent theory wrongly assumes that the government has some control over the private party's intent.⁷⁰ The Fourth Amendment is directed at the government and is intended to deter government action. Focusing on the government's subsequent knowledge of the intrusive conduct would be contrary to the *Burdeau* decision.⁷¹ Instead the inquiry should be left to the government's prior knowledge of, and participation in the seizure itself.⁷² Inquiring into Batman's motive may help into determining whether the police acquiesce, or participate, in the illegal seizure. Batman's intent alone, however, is not sufficient to justify exclusion.

D. Applicability of the Exclusionary Rule

In regards to the question whether Batman would constitute a state actor, the analysis will weigh heavily on whether use of the exclusionary rule would "deter" Batman's illegal search and seizures.

When the government violates the Fourth Amendment, all evidence obtained in result of the violation is subject to the exclusionary rule.⁷³ In *Weeks v. United States*,⁷⁴ the Supreme Court held that evidence acquired in violation of Fourth Amendment in federal investigation must be excluded.⁷⁵ But the Court declined to extend the rule outside of federal government actors, reasoning that the "Fourth Amendment is not directed to individual misconduct of

69. See *United States v. Huber*, 404 F.3d 1047, 1053–54 (8th Cir. 2005) (holding that where a bookkeeper talked to police, but not asked to conduct a search, and then engaged in an illegal search for purposes of aiding the government, did not justify exclusion of the evidence since there was no evidence the government acquiesced or knew about the actions taken by the bookkeeper); *United States v. Veatch*, 674 F.2d 1217, 1221 (9th Cir. 1981) (admitted evidence that hotel manager turned over after learning police investigation); *United States v. Ziperstein*, 601 F.2d 281, 288–90 (7th Cir. 1979) (finding Fourth Amendment did not prevent government from using employer records given by pharmacist employee that were part of his employment).

70. Comment, *Constitutional Law—Search and Seizure—Evidence Stolen by Private Individual with Intent to Aid the Government Held Inadmissible in Administrative Proceeding*, 44 N.Y.U. L. REV. 206, 210 (1969).

71. *Id.*

72. *Id.*

73. See *Weeks v. United States*, 232 U.S. 383, 398 (1914) (holding evidence wrongly seized in violation of the Fourth Amendment was not permitted in federal prosecution).

74. 232 U.S. 383 (1914).

75. *Id.*

[state] officials.”⁷⁶ Over five decades later, the Supreme Court extended the *Weeks* exclusionary rule to the state level. In *Mapp v. Ohio*,⁷⁷ the Court held that “the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments.”⁷⁸

The Court recognized that even though the exclusionary rule would allow criminals to go free if the police failed to properly execute a search, “it is the law that sets him free” and not the courts.⁷⁹ The focus is on requiring the government to observe its own laws and allowing the government to break its own laws “invites anarchy.”⁸⁰ The Court has imposed a variety of exceptions, such as good faith reliance on a valid warrant.⁸¹

The exclusionary rule serves the purpose of creating a deterrent effect against police misconduct.⁸² It is a judicially created remedy to deter illegal government conduct. The Court expressed two purposes of the exclusionary rule in *Elkins v. United States*.⁸³ It first stated that the “rule is calculated to prevent, not to repair” a violation of the Fourth Amendment and to “remove [any] incentive to disregard” the Fourth Amendment.⁸⁴ Second, the Court found that the rule preserves judicial integrity by preventing the use of wrongfully seized evidence.⁸⁵ Overall, however, the first purpose, deterrence, has been recognized as the primary purpose.⁸⁶

In order to justify excluding Batman’s evidence, it would need to deter Batman’s conduct. The analysis can be examined under the bounty hunter context. Courts do not want to chill bounty by limiting their actions because hunter actions because they play a vital role in apprehending those that forfeit bail.⁸⁷ Unless the police

76. *Id.* at 398.

77. 367 U.S. 643 (1961).

78. *Id.* at 657.

79. *Id.* at 659.

80. *Id.* (quoting *Olmstead v. United States*, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting)).

81. *United States v. Leon*, 468 U.S. 897, 913 (1984).

82. *See, e.g., id.* at 909 (discussing several previous cases in which the Court balanced the social costs of the exclusionary rule with the rule’s deterrent effect).

83. 364 U.S. 206 (1960).

84. *Id.* at 217.

85. *Id.* at 222.

86. *Stone v. Powell*, 428 U.S. 465, 486 (1976); Stout, *supra* note 44, at 672.

87. *See Stout, supra* note 44, at 670 (noting that bounty hunters do not face the same Fourth Amendment restrictions as police in apprehending bond skippers).

specifically engage the help of bounty hunters for the purposes of a search, bounty hunters should be free to enter a home for the purposes of apprehending a defendant and if there happens to be evidence, it would be bad policy for the bounty hunters to be forced to ignore available evidence. Furthermore, it is better that the bounty hunter does not question whether their actions comply with the Constitution.

Batman, however, is not serving an independent or private purpose. Courts will question whether there is a benefit to chill Batman's actions. When Batman is breaking into the Roman's home, he is not serving a separate private function like a bounty hunter, but is acting with the purpose of searching for evidence. Like a police officer, a court can exclude the evidence in order to deter Batman from engaging in the illegal conduct. Batman is after all a vigilante, and vigilantism is not accepted in society.⁸⁸ But the concern is that the government should not be prevented from using evidence that they obtained with clean hands and no knowledge of Batman's actions. The Fourth Amendment protections are designed to prevent the government from violating citizens' right to privacy, not designed to prevent vigilantes from violating a private citizen's right to privacy.

While in some instances, preventing the use of Batman's evidence may deter Batman from violating the Constitution, it overall it will have little impact on his actions. Batman, like most vigilantes, focuses on preventing crime from occurring, rather than securing convictions.⁸⁹ Excluding evidence would, at most, stop Batman from working with Gordon and the GCPD directly, rather only leaving evidence behind anonymously. Batman's first and foremost concern is to thwart the commission of criminal activities, and to save Gotham from the grasps of the likes of the Joker and the Penguin. In the course of his activities, Batman may find evidence that can be used, but it is not his priority. Excluding the evidence would be contrary to the interests of justice and would force the government to investigate every instance of evidence that came into their hands from private citizens.

The exclusionary rule may also affect how the police behave with Batman. Excluding evidence seized in violation of the Fourth Amendment would create an incentive for the police to avoid any contact with Batman, most likely resulting in the destruction of the Bat Signal so as to make the statement that the police have no relationship with Batman.⁹⁰ Furthermore, the police attempt to

88. See Stout, *supra* note 44 at 364.

89. See, e.g., Loeb & Sale, *supra* note 1.

90. In the comic series *Gotham Central* the GCPD attempt to get around the Bat Signal issue by hiring an employee to turn the signal on and off.

prevent Batman from violating the law. Gordon tells Batman that he cannot break the rules, and thus, does not acquiesce to his conduct. Unless Gordon is actually saying one thing, but intends and hopes that Batman breaks the rules, he is not acquiescing to Batman's private actions, and excluding the evidence would have no additional effect on how the police view a vigilante like Batman.

Batman is necessary in a city like Gotham, where mass murders and imminent terrorist attacks by the Joker are common. Even if the police refused to take evidence from Batman, in the end Batman would most likely not change as he is mainly concerned with stopping the commission of crimes rather than overall convictions. As such, Batman would continue to operate on his own and may anonymously provide evidence to the police as he obtains it.

E. Exceptions to Exclusionary Rule: Exigent Circumstances

Exigent circumstances create an exception to the exclusionary rule; "when the exigencies of the situation make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment."⁹¹ There are a variety of scenarios where police can engage in a warrantless search or arrest, based on an exigent circumstance.⁹² In some situations, pursuing suspects from a public place and into a protected area, in a hot pursuit, would be exigent circumstances,⁹³ and one that superheroes engage in quite often.⁹⁴

Exigent circumstances play a predominant role in the Batman universe. In times of public emergencies, the question of whether Batman is a state actor will not be determinative of the issue because

It becomes official policy that the police cannot touch the signal. *See* Ed Brubaker et al., *In the Line of Duty 2* (2003), reprinted in 1 GOTHAM CENTRAL 31, 45 (2008). While creative, this would not remove sever the relationship between Batman and the GCPD because a temporary worker is considered an agent of the government and thus the use of the signal is still attributable to the state.

91. *Kentucky v. King*, 131 S. Ct. 1849, 1856 (2011) (alteration in original) (internal quotation marks omitted).
92. For instance, police are permitted to enter a home without a warrant under the "emergency aid exception." *See, e.g., Michigan v. Fisher*, 558 U.S. 45, 47, 49 (2009) (per curiam) (permitting entrance into defendant's home after enraged defendant injured himself); *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006) (witnessing fist fight at a loud house party that injured one party made officers' entry reasonable). Another exigent circumstance that makes a warrantless search is searches done to prevent the destruction of evidence. *See Cupp v. Murphy*, 412 U.S. 291, 295 (1973) (allowing search of defendant's fingernails).
93. *United States v. Santana*, 427 U.S. 38, 42-43 (1976).
94. DAILY & DAVIDSON, LAW OF SUPERHEROES, *supra* note 7, at 102.

the evidence could still be admissible under exigent circumstances. In the comics, the police use the Bat Signal only when there is an emergency; such as a risk that Mr. Freeze is going to target a celebration and kill everyone inside.⁹⁵ The use of the Bat Signal will create, at most, a state actor relationship for the requested help,⁹⁶ but it will not carry over to Batman's subsequent actions. Even if Batman is acting as a state actor during the events subsequent to the Bat Signal, if there is an emergency situation that would allow a police officer to engage in a warrantless search or arrest, the same would apply to Batman.

One example, in the Fifth Amendment context, is a public safety concern. In *The Dark Knight*, Batman interrogates the Joker inside police headquarters about the whereabouts of Rachel Dawes and the DA, Harvey Dent. Batman enters the interrogation room and proceeds to smack the Joker around, all while asking "Where are they!"⁹⁷ Here Batman is almost undoubtedly a state actor, as he is allowed in the interrogation room with both police knowledge, and permission, but also there to elicit a response from the Joker regarding the location of two individuals. Batman's failure to provide *Miranda* warnings and Batman's coercive tactics, while a violation of the Fifth Amendment,⁹⁸ may still yield to the public safety exception. In *New York v. Quarles*,⁹⁹ the Court stated that the considerations of public safety justify an officer's failure to provide *Miranda* warnings.¹⁰⁰ In that case, Quarles was suspected of rape, and was tackled by police officers in a supermarket. When the police saw an empty holster on Quarles, they asked where the gun was, and Quarles responded by saying "the gun is over there."¹⁰¹ The statement was admitted at trial against Quarles, because of the public safety exception and the danger to those in the store of a loose gun.¹⁰² The Joker's statements as a response to Batman's interrogation may be admitted because of the danger to the lives of Rachel and Harvey Dent and the necessity of rescuing them before the bomb goes off.

95. Brubaker et al., *supra* note 90, at 44, 47–51.

96. *See State v. Malkuch*, 154 P.3d 558, 561 (Mont. 2007).

97. *THE DARK KNIGHT*, *supra* note 50.

98. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966) (describing required procedural safeguards for custodial interrogations).

99. 467 U.S. 649 (1984).

100. *Id.* at 654–57.

101. *Id.* at 652.

102. *Id.* at 659.

III. MODERN VIGILANTES

Batman is a work of fiction and very rarely do actual citizens don a cape and cowl to patrol the streets in order to destroy the criminal underworld. But it happens, and there is a growing trend of private citizens acting as vigilantes and taking on superhero personas.¹⁰³ Phoenix Jones, the leader of the Seattle-based Superhero movement and the Alliance, an international group composed of 34 members organized to prevent crime, takes to the Seattle streets five nights a week to find and prevent crime.¹⁰⁴ Among other community-based projects to prevent crime, Phoenix Jones has stopped fights, prevented a car from being stolen,¹⁰⁵ and even helped apprehend a stabbing suspect.¹⁰⁶ Jones' goal is to watch for crime, to call the police when there is suspected criminal activity and to track the suspect.¹⁰⁷ While no issues as of late have amounted to a question of Fourth Amendment scrutiny, it is not difficult to imagine a situation when Phoenix Jones subdues an individual and finds incriminating evidence. Like with Batman, the analysis focuses on government knowledge and acquiescence. Phoenix Jones is a known vigilante attempting to help the police and he has established a working a relationship with the police. He was arrested for assault when pepper spraying individuals fighting, but those charges were dropped.¹⁰⁸ Videos show Phoenix Jones working with the police to apprehend suspects, even shaking their hands with officers after the arrest.¹⁰⁹ Would this relationship and knowing government assistance be enough to make him a state actor? The answer would depend on how closely Phoenix Jones works and remains in contact with the police.

Other private entities create similar problems. Community watch groups patrol neighborhoods, on the lookout for criminals, with the

103. Kirk Johnson, *Crusaders Take Page, and Outfits, from Comics*, N.Y. TIMES, Dec. 26, 2011, at A1.

104. Milena Veselinovic, *Caped Crusaders on Patrol - Meet the Real Life Superheroes*, CNN, <http://www.cnn.com/2013/06/20/showbiz/comic-book-real-life-superheroes-phoenix-jones/> (last updated (June 20, 2013, 6:40 AM).

105. *Id.*

106. Tim Haeck, *"Superhero" Phoenix Jones Chases Down Stabbing Suspect*, MYNORTHWEST.COM, <http://mynorthwest.com/11/584559/Superhero-Phoenix-Jones-chases-down-stabbing-suspect> (last updated Nov. 28, 2011).

107. Veselinovic, *supra* note 104.

108. *Id.* The police, however, did not return his suit from that evening. Haeck, *supra* note 106.

109. Haeck, *supra* note 106.

purpose of reporting to suspected activity to the police.¹¹⁰ The step from a private observer to an actor engaging in a search of an individual's privacy resulting in incriminating evidence is slight and does in fact occur. For example in *Spetalieri v. Kavanaugh*,¹¹¹ a community watch member, who engaged in frequent contact with the local police department, recorded a police administrator's racially charged telephone conversations.¹¹² The conversations were given to the local prosecutor and eventually used the police administrator's official sanctions.¹¹³ In a civil suit, the court held that the community watch member was not a state actor and thus the government was not responsible for the breach of the plaintiff's constitutional right to privacy.¹¹⁴

Other neighborhood-watch groups play a more pivotal role in actual criminal justice work. The Shomrim are a licensed citizen patrol group found in Jewish Hasidic communities across the United States¹¹⁵ and wear blue and white uniforms, often being mistaken for the police.¹¹⁶ The Shomrim often act without notifying the police first, but attempt to find and detain those suspected of violating the laws of their community, and then contact the police.¹¹⁷ Unless the Shomrim are acting in conjunction with the police at the time of an arrest or search of an individual, they do not fall under the state actor doctrine, even though they serve a public function in their respective communities.

The above examples of modern vigilante and private citizens acting with a purpose to prevent crime do not fall under the traditional test of state action. Regardless of the relationship between private citizens and the police prior to the subsequent action, so long as the government does not have knowledge and does not acquiesce to the actions of private citizens, there is no state action. This is not an acceptable result. In order to prevent acts of vigilante justice, courts should focus on the ongoing relationship between private actors and

110. See BUREAU OF CMTY. POLICING, *supra* note 4, at 3-4; USAONWATCH, NAT'L SHERIFFS' ASS'N, NEIGHBORHOOD WATCH MANUAL 2-3 (2010), available at http://www.usaonwatch.org/assets/publications/0_NW_Manual_1210.pdf.

111. 36 F. Supp. 2d 92 (N.D.N.Y. 1998).

112. *Id.* at 100-01.

113. *Id.* at 101.

114. *Id.* at 103.

115. Nick Pinto, *Gotham's Crusaders*, VILLAGE VOICE, Sept. 7, 2011, at 9.

116. Sarah M. Sternlieb, Comment, *When the Eyes and Ears Become an Arm of the State: The Danger of Privatization Through Government Funding of Insular Religious Groups*, 62 EMORY L.J. 1411, 1413 (2013).

117. *Id.* at 1448.

the government. When the government is aware of past activity by a private citizen and have come to rely on their assistance, the state actor doctrine should come into effect. This would prevent the police from using private individuals to violate the constitutional rights of others and would deter private individuals from taking the law into their own hands. The two-part test in used by courts examining (1) the government knowledge and acquiescence along with (2) the private citizens' intent at the time of the search, should also incorporate (3) the ongoing relationship between private and government actors. This expansion would allow bounty hunters to continue their work, but limit people such as Phoenix Jones, and the Shomrim, and even Batman, from acting as law enforcement. The test would also continue to allow for private actors to step in during times of emergencies in order to help others.

CONCLUSION

The actions of Batman and his relationship with Gotham are not so far removed from applicable issues facing the current legal climate. Society does not face growing number vigilantes in capes dashing around rooftops and breaking into bad guy hideouts. But modern technology makes it easier for private citizens to spy on the members of their community. Computer hackers can access files from laptops and can communicate directly with government officials while searching a citizen's hard drive. If a hacker establishes a consistent relationship with the government and on occasion provides information on suspected terrorist activities, would this constitute state action?¹¹⁸ At what point does a friendly hacker turn into a government agent?

Furthermore, the current controversy over the National Security Agency's wiretaps and data collection also demonstrate the highly complicated nature of state action. Wireless companies store metadata from calls, emails, and other communication devices on their own servers, and acting in as a private actor do not violate the Fourth Amendment.¹¹⁹ But the fact that the private companies provide the data to the government upon request the state action analysis is key. The issue becomes whether the government had knowledge and acquiesced to the wireless companies' searches and seizures of the private data. Like Batman in some aspects, the wireless companies are

118. *See* United States v. Jarrett, 338 F.3d 339, 347 (4th Cir. 2003) (holding that prior communication between the government and a hacker over unrelated searches and a promise not to prosecute did not transform the hacker into government agent).

119. *See* Joe Pappalardo, *NSA Data Mining: How It Works*, POPULAR MECHANICS, Oct. 2013, at 59, 61. (describing the current process of how the NSA collects data from cell phone companies).

gathering the information prior to government knowledge; but in others, the Government may request specific data from named individuals.¹²⁰ Courts will have to base a decision on whether the government is encouraging the search, instigating it, and at what time they became involved.

Turning back to the posed hypothetical, the Roman's ledger should be admitted as evidence at trial. Batman was not acting as an agent or on behalf of the government at the time he intruded into the Roman's penthouse, but as a private vigilante. Batman operates on his own agenda and often without police knowledge. While his ongoing relationship with Gordon and the GCPD may, at times, require that Batman be viewed as a state actor, Batman is usually a private party and can assist the government as he deems necessary. The government's lack of knowledge and acquiesce to Batman's actions is sufficient to create a separation between private conduct and official state action. Overall, the police rarely interact with Batman, only Gordon maintains official contact. Batman knows and is well aware, that any evidence he gathers might be used in a criminal prosecution. But Batman's goals are not limited to securing convictions; rather he is acting to prevent crimes and catastrophes from occurring. When Batman operates under the direction of the police, he is a state actor. If, however, the government is unaware of Batman's actions they have not acquiesced to his intrusive conduct.

Courts should be weary of this gap in the current law, and pay close attention to overall and ongoing relationship between vigilantes with the government. Allowing private individuals to run around the community and violating the constitutional rights of others in order to help the police is a dangerous path. But so long as the government did not know of the act, or acquiesce at the time of the search, the evidence is admissible. Excluding this evidence would deter citizens who are motivated by justice from acting on their own, and would force citizens to contact the police immediately.

In Batman's context, the exclusionary rule would only prevent the police from contacting Batman, which could be detrimental in times of emergency. Emergencies and public safety situations are where Batman usually plays an important role. The police should avoid using Batman to violate the Constitution and cannot ask him to engage in activities that they cannot. But Batman operates independently, without government knowledge, interference, and direction. In Gotham, a city overrun with criminal activity, Batman is a necessary protector.

Joshuah Lisk[†]

120. *Id.*

[†] J.D. Candidate, 2014, Case Western Reserve University School of Law; B.A., University of Colorado–Boulder.