

THE CRIMINAL IS TO GO FREE BECAUSE THE CONSTABLE HAS BLUNDERED: CHALLENGES OF LAW ENFORCEMENT IN THE FACE OF THE EXCLUSIONARY RULE¹

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ABSTRACT

The criminal justice system is in a quagmire; known criminals are easily let off the hook by suppression of the truth in pursuit of the truth. A survey of all state and local law enforcement officers in a large mid-western county revealed the enormity of the challenges that law enforcement officers grapple with against the technicalities and intricacies of the exclusionary rule. This reality, coupled with the outcome of an in-depth literature review inform the twin arguments of this article, that individual rights, which form the basis of the exclusionary rule, should be construed in a manner that does not impede the process of seeking the truth; and when the wider common good is jeopardized by the methods employed by law enforcement officials in safeguarding the same common good, the difference between the ends and the means may become blurred.

QUINTESENCE OF THE EXCLUSIONARY RULE

The exclusionary rule prohibits use of evidence at trial, even when the evidence is unmistakably linked to the suspect, if the rights of the suspect are not upheld at arrest. The rule first came to the fore in the 1886 case of *Boyd v. United States*. Boyd was charged with illegal importation of goods. To prove the case, the government compelled Boyd, through a court order, to produce his invoices for the goods. Boyd produced the invoices but later objected that the act amounted to self incrimination and therefore a violation of his Fifth Amendment rights. In supporting Boyd's objections, the Supreme Court ruled that,

compulsory production of the private books and papers of the owner of the goods sought to be forfeited in such a suit is compelling him to be a witness against himself, within the meaning of the Fifth Amendment to the Constitution; and is the equivalent of a search and seizure, and an unreasonable search and seizure, within the meaning of the Fourth Amendment. (*Boyd v. United States* 1886 634-5)

The Fourth Amendment states that,

The right of people to be secure in their persons, houses, papers, and effect against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath of affirmation, and particularly describing the place to be searched,

and the person or thing to be seized.

Based upon this provision, the Supreme Court later ruled in *Weeks v. United States* in 1914 that the Fourth Amendment barred in a federal prosecution the use of evidence obtained through illegal search and seizure. Later on this interpretation was applied to state criminal actions in the 1961 case of *Mapp v. Ohio*, when the Supreme Court stated that to deter the police from violating the provisions of the Fourth Amendment, the only option was to impose the exclusionary rule. This way state prosecutions, too, would exclude from trial any evidence obtained by any means deemed to have violated the provisions of the Fourth Amendment. Essentially, the key policy goal of the exclusionary rule, according to *Mapp v. Ohio*, was to deter law enforcement officials from violating the provisions of the Fourth Amendment. The focus of this study is the extent of such deterrence on law enforcement and an illumination of the latent and corollary effects of the rule and its implication on crime prevention in particular and public safety in general.

CRIME CONTROL OR DUE PROCESS?

The issue of whether to release offenders on technicalities or to convict guilty persons on technicalities has taken a center stage within criminological thought over many decades with the rift between the two schools only becoming wider (Paulsen 1961; Kaplan 1974; Sunderland 1978; Trant 1981; Brubaker 1985; Crocker 1993; Jackson 1996; Lynch 2000; Mbuba 2004; Caldwell 2006). There is a major concern in the

midst of the efforts to unmask the way forward over the rightfulness or wrongfulness of admitting truthful evidence but which is obtained irregularly, and that concern oscillates between whether the intention is to control crime at whatever cost, which invites a possibility of sanctioning innocent citizens, or to enforce the spirit of the law, whose most conspicuous cost is the potential of failing to take punitive steps on confirmed offenders. A lot of the impetus to these two incongruent approaches was gained after Herbert Packer formulated his renowned two models of the criminal process – crime control and due process (Packer 1966). Although the theme of Packer's two models has since been written, interpreted, and reinterpreted umpteen times, the primary concern of the crime control is efficiency while due process centers on fairness to the accused person. This view is best articulated by Roach:

The criminal process in the crime control model resembles a high speed assembly-line conveyor belt operated by the police and the prosecutor...[with all eyes fixed on a guilty plea while] the due process model is an obstacle course in which defense lawyers argue before judges that the prosecution should be rejected because the accused's rights have been violated. (Roach 1999 676-677)

Due process is borne out of the need to ensure fairness to the accused person and the exclusionary rule is viewed by due process advocates as the epitome of that fairness. Although opponents of the rule label it as a legal apparatus of suppressing the truth in pursuit of the truth, the rule tends to take on the form of a vicious circle unless we define which truth we are interested in pursuing. If one seeks to control crime at whatever cost, the circle stops at admitting all forms of incriminating evidence under all circumstances. If the idea is to safeguard individual rights at whatever cost, it stops at suppressing all the probative evidence in spite of the nature of the crime and any other adduced evidence. Those who champion for the former view aim at fighting crime with every tool available while advocates of the latter have a higher concern for human dignity especially in dealing with criminal suspects.

WHAT LAW ENFORCEMENT OFFICERS SAY OF THE RULE

Most of what is known about the effects and implications of the exclusionary rule is based on scholarly, legal, and judicial commentaries with surprisingly almost no attention on what law enforcement officials themselves say of the rule. To fill this void, state and local law enforcement officers in a large Midwestern county were polled. Surveys were distributed to the local officers during a regular in-service training and collected at the end of the training. The surveys were also delivered to the state police district in whose jurisdiction the county falls, and collected after two weeks. There was a 51 percent overall return rate (n=379). The main questions asked were whether the exclusionary rule serves as an adequate deterrent to police misconduct in dealing with suspects and the perceived effect of the rule on crime occurrence and prevention.

The results of the survey revealed a strong feeling among the officers that the rule does not provide a potent sanction to unscrupulous officers. Seventy two percent of all the officers felt that the rule places a disproportionately higher amount of concern on the rights of the suspect above the rights of everyone else including the victims, thereby leading to an unfair escape by guilty individuals from criminal sanctions. According to the officers, when an offender is released back to the streets on the basis of legal technicalities after a successful arrest, new victims are created and in this way, law-abiding citizens are the ultimate sufferers and not the wayward officer who is purported to be punished by the release of the suspect. According to them, there are suspects who, upon arrest, provide unsolicited verbal admission to criminal involvement without Miranda warnings but things change drastically after the suspect consults with defense attorneys. It is the suppression of evidence gathered in this way that spawns the controversy. A common complaint among officers was that the rules of evidence are so complicated and technical that to rid the streets of guns, drugs, and dangerous criminals, the justice system should take cognizance of the fact that some of the important decisions the officers make take place in the heat of passion. Decisions they make within a split second are scrutinized for years by defense attorneys in search of legal loopholes, which

the law enforcement officers thought impedes their efforts in preventing crime and ultimately brings unfairness to the law-abiding members of society.

Of the 379 respondents, only 14 percent perceived the rule as a successful attempt at safeguarding the interests of all citizens and a paltry 4 percent claimed that the rule does not help anybody. This pattern did not change with the officer's educational level neither did it change with the racial background of the officer, but it did change with the officer's rank, years of service, gender, and agency type. Seventy nine percent of all entry-level officers felt that the rule only benefits criminal suspects but this percentage dropped to 67 for middle-level cadre officers who include sergeants and lieutenants at the local level, and senior troopers at the state level. This pattern could be explained by two factors. First, entry-level officers, the majority of whom are patrol officers, deal with criminal suspects more directly than mid- and top-level administrators and so they are more likely to hold stronger views of the effect of the exclusionary rule on criminal suspects. Secondly, mid- and top-level managers are more likely to respond to survey questions in a manner that reflects the official agency position rather than what they personally believe.

Among the officers who had served for five years or less, 81 percent thought that the exclusionary rule only benefits suspects and criminals but this percentage fell steadily to 48 percent of the officers who had served for twenty five years and above. This could be explained by the correlation between years of service and rank. The longer the period of service, the higher the likelihood that the officer will be higher ranking, and therefore the higher the likelihood of supporting the agency position against personal views. With respect to gender, 83 percent of all female officers and 72 percent of all male officers maintained that criminal suspects stand to benefit from the exclusionary rule disproportionately more than other citizens. This disparity could be a result of the fact that there are fewer female officers at the top agency management ranks, where the official position would be to support the rule as a tool of safeguarding all citizens.

Across the agencies polled, 81 percent of local law enforcement officials and 15 percent of state law enforcement officials be-

lieved that criminal suspects were the main beneficiaries of the rule. This pattern is supported by the fact that outside of the crimes that occur on or along interstate highways, which are the preserve of state police officers, most street patrol activities are conducted by local law enforcement agencies. The higher amount of contact between these agencies and typical street criminal suspects explains the stronger views by officers at the local level on the effect of the exclusionary rule on crime.

When officers were asked whether they would favor abolishment of the exclusionary rule as a way of making law enforcement easier, 61 percent answered in the affirmative and 16 percent in the negative, while 23 percent remained noncommittal. This trend remained largely the same across agency types but varied by rank, gender, educational level, years of service, and officers' racial background. With respect to rank, 59 percent of patrol officers, corporals, and troopers supported abolishment of the rule compared to 47 percent of lieutenants, master troopers, and upper level management. There were proportionately more female respondents (66 percent) than male respondents (61 percent) who favored removal of the rule, a fact that again may reflect the agency position since more males than females are at the top administrative positions.

The higher the officers' educational level, the lower was the likelihood of supporting abolishment of the rule. Abolishment was supported by 70 percent of the respondents with no more than a high school diploma compared to 61 percent of officers with some college education or associate degrees, 56 percent of officers with bachelor's degrees, and 53 percent of those with masters degrees and above. As already noted, since educational achievement is likely to influence rank, these responses could as well be reflective of the fact that officers who are directly involved with criminal suspects would favor an environment that is totally devoid of technical restraints to law enforcement. There was not much variation of this response by years of service – 63 percent of officers who had served for five years or less supported abolishment compared to 60 percent of officers with twenty five or more years of service. When responses on support for abolishing the exclusionary rule were cross-tabulated with the respondent's race, a sig-

nificant variation was found between white and racial minority officers. Sixty four percent of white officers were in favor of abolishment, compared to 47 percent of all minority officers. If the common belief that racial minorities are often the target of police brutality and other forms of illegality by law enforcement is true (see D'Alessio & Stolzenberg 2003; Reitzel & Piquero 2006; Becket, Nyrop & Pfingst 2006), then minority police officers, who are conceivably the product of their own communities, are more likely than the white majority to stand with any law that limits police discretionary powers in dealing with criminal suspects.

Finally, the respondents in the survey were asked how often they would let go of clearly guilty law breakers for fear that the exclusionary rule would set them free any way. Only 14 percent would let them free very often or often, 44 percent would do so rarely, and 42 percent very rarely or never. When these responses were cross-tabulated with officers' rank, the results failed to show a consistent pattern. Since educational level, years of service, and gender are all correlated with rank, they, too, did not show a regular pattern and neither did the officer's racial background. The trend of responses, however, did confirm one thing, that despite the widely supported notion that law enforcement officers are not at ease with the exclusionary rule, they still do their part diligently, leaving the decision of exclusion of evidence to the judiciary and others as mandated by the law.

IS THE RULE AN UNDUE REPRIEVE TO GUILTY PERSONS?

The Fourth Amendment is unequivocal in forbidding unreasonable search and seizure, but the Amendment is silent on how to prevent such behavior or even how to remedy it if and when it occurs. The exclusionary rule as interpreted by the Court in *Mapp v. Ohio* (1961) provides the mechanism of enforcing the Fourth Amendment. But the rule, which is a judicial creation, has been cited so often in legal, judicial and academic discourse, that it has come to be construed as a "constitutional right of the accused" instead of being seen as a "constitutional common law", if at all (Brubaker 1985). By viewing it this way, there has been a general failure to allow for the necessary liveness in the face of the growing public concern over the limitation it places on effective law enforcement.

It is arguable that, thanks to the Fourth Amendment, Americans are now more secure from the wanton intrusion into their private lives by errant law enforcement officials. As Crocker (1993 311) explains, "the exact degree of that increased security and its distribution between the guilty and the innocent are difficult to measure". When an unjustifiable search is conducted on a suspect, the search is typically expected to yield no evidence of criminal conduct. If, indeed, the search yields no evidence, the suspect can redress the matter by opting to sue the searching officer for the intrusion of privacy and for any other inconveniences appertaining. Such suits provide a comparatively strong deterrence to unscrupulous agents of law enforcement for the irregular invasion of privacy and other forms of behavior that amount to violation of the constitutional guarantees of the Fourth Amendment. The most central law in that regard is encapsulated in Title 42, Section 1983 of the U.S. Code, which allows citizens to sue anyone who, "acting under color of law" denies them their constitutional rights. Titles 42, and any other tort law for that matter, have their own deficiencies but that was outside of the realm of this study.

Suppose, in contrast, a search based on standards of evidence which are less than probable cause leads to the discovery of enormous amounts of evidence that can be used to solve, say, a spate of murders, burglaries, or other serious crimes. A verdict to throw away such evidence and to acquit the suspect on technicalities arising from the way the evidence was gained does not only allot the benefits of the exclusionary rule entirely to criminal suspects, but it also defeats the very essence of law as a tool of ensuring justice for all. In order not to defeat that noble essence, a conviction needs to be predicated not on the splendid performance of detectives – although of course detectives ought to be unambiguously precise – but on existence of unmistakable evidence that links suspects to criminal acts.

Trial outcomes are thought to be binary; an accused person is either guilty of the offense, whereupon he/she should face legal sanctions, or innocent, which necessitates his/her non-conditional release. This paves way for the need to recognize the distinction between what Roach (1999) refers to as "factual guilt", in which the suspect probably com-

mitted the offense, and “legal guilt”, which is established in judicial proceedings, and which must take into account the rights of the criminal suspect. The import of treating factual guilt as a bona fide phenomenon cannot be gainsaid because failure to incapacitate an offender on technicalities where guilt is already established beyond public knowledge does not only grant the offender a chance to commit further crimes thereby hurting the society even more, but it also demoralizes victims and law-abiding citizens in their hope to witness justice being served.

Clearly, it matters less to a rape victim, for example, how the assailant was arrested, than the fact that the goon is finally apprehended. The fact that a platoon of police officers descended upon a defenseless murder suspect with kicks and blows does not obliterate the simple fact that the suspect killed, if indeed he did. It only means a second crime is being committed, this time by agents of the law, and the two crimes should be processed separately. In other words, truth does not change with the methods used to unearth it. Marcus (1990 610) puts it more candidly, “it does not matter by which methods truth has been obtained so long as it has been obtained.”

The purpose of law enforcement is to facilitate what ought to be the duty of every citizen, namely, to stop crime and to apprehend criminals, which are the twin pillars of ensuring public and personal safety. To acquit a clearly guilty suspect for no other reason than an alleged wrong procedure of collecting the incriminating evidence would erroneously elevate the law to a position higher than the citizens for whom the law exists in the first place. Unfortunately, this outcome tends to be a goal in itself, at least in the minds of those who champion for the total preservation of the integrity of the warrant-issuing authorities (see Lynch 2000). Although nothing much has been done to remedy it, the weakness of the exclusionary rule was noted as early as 1954 by an authority no less than the Supreme Court in the case of *Irvin v. California*, when the Court bewailed that:

That the rule of exclusion and reversal results in the escape of guilty persons is more capable of demonstration than that it deters invasions of right by the police. The case is made, so far as the police are concerned,

when they announce that they have arrested their man. Rejection of the evidence does nothing to punish the wrong-doing official, while it may, and likely will, release the wrong-doing defendant. It deprives society of its remedy against one lawbreaker because he has been pursued by another. It protects one against whom incriminating evidence is discovered, but does nothing to protect innocent persons who are the victims of illegal but fruitless searches. (347 U.S. 128 1954 136-137)

In the face of the exclusionary rule, judicial proceedings tend to pit the offender more against law enforcement officials than any other witness including the victims of the crime. According to the rule, only one wrong move by the police either in apprehending the suspect or in collecting evidence, and the criminal is set free, notwithstanding the weight and truthfulness of the available evidence. As a result, the prosecuting officers are forced to operate as though they were themselves on trial, to such an extent that some will tell lies (Calabresi 2003 113) in a desperate move not to have an otherwise guilty person freed.

As explained above, guilt is not relative; it is absolute. With no gimmicks, a person who abducts and kills another has clearly committed homicide and this fact is not obliterated by the methods the police use to gain ingress into the suspect's house where the body of the victim is found. This stance does not contradict the due process argument that in the absence of the exclusionary rule, nothing would keep the police from invading citizens' privacy. Instead, it begs an answer to a fundamental question: is it possible to deal with the violation against the suspect's rights and at the same time save the society from further depredation by handing the offender their just deserts? The answer is a resounding yes. The yet-to-be-taken move in dealing with this intrinsically two-in-one case might be to divorce the suspect's original crime from the officer's misconduct and to treat the two as separate offenses instead of using one to defuse the other. Such a move would pave the way for dealing more appropriately with the individual police officer, and then proceeding with the original trial. Unfortunately, what we see is an exclusionary rule that Cardwell (2006 2) likens to the weather: “everyone talks about it but nobody does any-

thing”.

The exclusionary rule was originally meant to deter future misbehavior by unscrupulous agents of law enforcement. But until the law agents are made accountable directly and personally, the rule's deterrence power is likely to remain a mirage. If an officer has a characteristic bias against a particular category of people or is bent on settling a personal vendetta with an innocent citizen, there are innumerable opportunities for dragging the innocent citizen to court, regardless of whether the case would be sustained or not. In any case, the search itself, the seizure, the arraignment, and the concomitant events the suspect goes through before the court ultimately suppresses the evidence represent a colossal amount of suffering, much to the gratification of the officer. To the extent that the exclusionary rule does not redress the injury visited on the person whose rights are violated by the officer, and to the extent that the rule is totally quiet on how to protect the innocent from unreasonable searches which end up yielding nothing, it fails to ensure justice both inherently and at the face value. If the suppression of evidence presents no directly or indirectly punitive value to the officer, the assumption that suppression will deter any officer from future misconduct will remain unfounded.

From a different perspective, the numerous flaws in the justice system including inaccuracy, inadequacy of counsel, prosecutorial misconduct, and scientific and forensic testing errors have all given rise to the recently discovered widespread wrongful convictions of innocent persons (Klein 2006). The effect is that non-criminals are persecuted while known criminals are left to roam. However, all is not lost in the apparent jurisprudential quagmire – research has shown that serious crime is more likely than less serious crime to arouse the need to act tough, and jurors in serious crime trials are less willing to disregard otherwise inadmissible evidence (Rind, Jaeger, & Strohmets 1995). This is perhaps the only hope that the number of confirmed serious criminals who are set free by the proviso of the exclusionary rule is not alarmingly high.

DISCUSSION

Supporters of the exclusionary rule begin by protecting it as both necessary and indis-

pensable in a free society, arguing that it preserves judicial integrity and maintains individual dignity (Jackson 1996; Lynch 2000). But critics maintain that the society cannot tolerate freeing of individuals, whose guilt would clearly be established by the introduction at trial of the suppressed evidence, arguing that there is little firm, empirically verifiable evidence that the rule has any deterrence effect on bad law enforcement practices (Sunderland 1978; Brubaker 1985). This study corroborates this stance by establishing that suppression of some evidence represents no retribution on the part of the officer. Critics also charge that the rule impedes effective law enforcement by placing an unreasonable burden on law enforcement officers to master the intricacies of the Fourth Amendment, and promotes disrespect for law and order by releasing criminals on technicalities (Schlag 1982; Brubaker 1985; Marcus 1990). The current study, similarly, finds the provisions of the Fourth Amendment intricate for law enforcement officers given the split-second nature of the decisions they have to make routinely in dealing with street crime.

Although discontentment regarding the exclusionary rule has existed as long as the rule has been in existence, the debate on the merit of its continued application was perhaps sparked off in 1928 when Justice Brandeis averred in a dissenting ruling that

existence of the government will be imperiled if it fails to observe the laws scrupulously [and that] to declare that the government may commit crimes in order to secure the conviction of a private criminal would bring terrible retribution. (*Olmstead v. United States* 1928)

But in a rejoinder to this view, Chief Justice Burger cautioned that the public has accepted the distasteful results of the exclusionary rule only on the faith in the judiciary, and that the society is increasingly hurt by the insistence that exclusion is the only solution to the quagmire (see Sunderland 1978).

We can well ponder whether any community is entitled to call itself an 'organized society' if it can find no way to solve this problem except by suppression of truth in the search for truth. (Sunderland 1978)

Indeed, when U.S. Supreme Court Justice Benjamin Cardozo remarked that, "the criminal is to go free because the constable has blundered" (Washington 2005 773), he summed up the gist of the problem of relying solely on the exclusionary rule to tame the wayward law enforcement officer.

It should, however, be recognized that those who fear that the police and prosecuting officers' behavior cannot be contained unless there is a strong reliance on the exclusionary rule are not without merit. The fear is real and could not have been articulated better than in the words of a former U.S. Attorney General Robert Jackson, who lamented that,

the most dangerous power of the prosecutor is the power to pick people that he thinks he should get, rather than pick cases that need to be prosecuted. (Goldstein 2006 643)

With the broadened scope of substantive criminal law and the subsequent little force of procedural protections, a determined prosecutor can generally locate some charge that will stick (Klein 2006). This necessitates checks and balances on law enforcement excesses such as torture, entrapment, forced testimony, planting of incriminating evidence on otherwise innocent citizens, and other illegal activities by the police.

Without a doubt, the exclusionary rule has a noble role to play in the justice system, especially if the existing exceptions to the rule are broadened and buttressed. But in their current form, the exceptions to exclusionary rule only revolve around school students, prison inmates, plain view evidence, and honest mistakes, all of which have no direct relationship to street crime where the rule reigns supreme. Since it has been shown that simple inadmission of evidence does not redress such illegal activities, it is imperative that the exceptions be expanded to reflect the nature of police work and the conditions under which they make the decisions that later form the subject of elongated litigations.

A partial solution to the predicaments of the rule is to be found in the stipulation of Section 1983 of Title 42, which provides for federal relief when state officials, acting under the color of law, violate the citizens' rights as enshrined in the Fourth Amendment. As argued by Goldstein (2006), a prosecution

that is unwarranted and malicious is in itself a violation of the Fourth Amendment. Failing to admit evidence by citing violation of individual rights and dismissing the case altogether while letting the offending officers go free will only represent a double tragedy; crime has been committed, on the one hand, and the officer has violated the law, on the other. In this situation, the way forward is to delink the original violation by the suspect from the officer's misdeeds and to treat the two offenses separately but contemporaneously. In sum, given the inherent failure of the exclusionary rule to address police misconduct during the process of law enforcement, there is need to continue to seek tangible solutions to the structure that itself handcuffs the very agents of the law while providing an otherwise undue reprieve to criminal suspects.

CONCLUSION

This study has exposed some of the main inadequacies of the exclusionary rule as a tool of containing the waywardness of police officers in collecting evidence. In this process, it was shown that although the original intention of the exclusionary rule was astute, the rule errs in its unilateral focus on technicalities. The zeal with which the justice system absolves criminal suspects as a result of police misconduct was cited as the single most important factor in the witnessed loss of criminal convictions among successfully solved cases. The reprieve granted to criminal suspect by the rule has given rise to a scathing, yet still unattended criticism, as

one of the chief technical loopholes through which walk the guilty on their way out of the courthouse to continue their depredations. (Crocker 1993)

To make a distinction between the illegal act of invasion of privacy by law enforcement officers, on the one hand, and the illegality of the offense an accused person is charged of, on the other, would be a decisive step towards averting further loss of obvious convictions on technicalities. It is not until this separation is achieved that it will be possible to proceed with trials without being unduly interrupted by any blunders the constables might have committed.

ENDNOTE

¹ The statement "(t)he criminal is to go free because the constable has blundered" is attributed to the U.S. Supreme Court Justice Benjamin Cardozo, as cited and referenced further on in this article.

REFERENCES

- Becket K., K. Nyrop, & L. Pfingst. 2006. Race, drugs, and policing: Understanding Disparities in drug delivery arrests. *Criminology* 44 1 105-137.
- Boyd v. United States*, 116 U.S. 618 (1886).
- Brubaker S.C. 1985. An extravagance of righteousness: reconsidering integrity and dignity as the bases of exclusionary rule. *Polity* 17 4 715-735.
- Calabresi G. 2003. The exclusionary rule. *Harvard J Law & Public Policy* 26 1 111-118.
- Caldwell M.H. 2006. Fixing the constable's blunder: can one trial judge in one county in one state nudge a nation beyond the exclusionary rule? *Brigham Young U Law Rev* 1 1-66.
- Crocker L. 1993. Can the exclusionary rule be saved? *J Criminal Law Criminology* 84 2 310-351.
- D'Alessio S.J. & L. Stolzenberg. 2003. Race and the probability of arrest. *Social Forces* 81 4 1381-1397.
- Goldstein P. 2006. From the exclusionary rule to a constitutional tort for malicious prosecutions. *Columbia Law Rev* 106 3 643-678.
- Irvin v. California*, 347 U.S. 128 (1954).
- Jackson H.A. 1996. Arizona v. Evans: expanding exclusionary rule exceptions and contracting Fourth Amendment protection. *J Criminal Law Criminology* 86 4 1201-1227.
- Kaplan J. 1974. The limits of the exclusionary rule. *Stanford Law Rev* 26 5 1027-1055.
- Klein S. 2006. Enhancing the judicial role in criminal plea and sentence bargaining. *Texas Law Rev* 84 7 2023-2053.
- Lynch T. 2000. In defense of the exclusionary rule. *Harvard J Law & Public Policy* 23 3 711-751.
- Mapp v. Ohio*, 367 U.S. 634 (1961).
- Marcus P. 1990. The exclusion of evidence in the United States. *Amer J Comparative Law. Vol. 38, Supplement. U.S. Law in an Era of Democratization*. Pp. 595-610.
- Mbuba J.M. 2004. Etiological foundations of crime: evaluation of classical and contemporary theories. *Egerton J: Humanities, Soc Sci Education Series. V 2* 120-136.
- Olmstead v. United States*, 1928.
- Packer H.L. 1966. The courts, the police, and the rest of us. *J Criminal Law, Criminology Police Science*. 57 238-239.
- Paulsen M.G. 1961. The exclusionary rule and misconduct by the police. *J Criminal Law, Criminology, Police Science*. 52 3 255-265.
- Reitzel J. & A.R. Piquero. 2006. Does it exist? Studying citizen's attitudes of racial profiling. *Police Qtrly* 9 2 161-183.
- Rind B., M. Jaeger, & D.B. Strohmets. 1995. Effect of crime seriousness on simulated jurors' use of inadmissible evidence. *J Social Psychol* 135 4 417-424.
- Roach K. 1999. Four models of the criminal process. *J Criminal Law Criminology*. 89 2 671-716.
- Schlag P.J. 1982. Assaults on the exclusionary rule: good faith limitations and damage remedies. *J Criminal Law Criminology*. 73 3 875-915.
- Sunderland L.V. 1978. The exclusionary rule: a requirement of constitutional principle. *J Criminal Law Criminology*. 69 2 141-159.
- Title 42 Section 1983, U.S. Code.
- Trant C.E. 1981. OSHA and the exclusionary rule: should the employer go free because the compliance officer has blundered? *Duke Law J* 4 667-716.
- Washington E. 2005. Excluding the exclusionary rule: natural laws vs. judicial personal policy preferences. *Deakin Law Rev* 10 2 772-794.
- Weeks v. U.S.*, 232 U.S. 383 (1914).

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