IOWA'S EXCLUSIONARY RULE: EXPANDING THE APPLICATION OF THE EXCLUSIONARY RULE DURING SENTENCING HEARININGS UNDER THE IOWA CONSTITUTION

ABSTRACT

Generally, defendants have not enjoyed the full protections provided by the exclusionary rule during sentencing proceedings. Since 1979, Iowa state courts have followed this trend and will exclude evidence during sentencing only under very limited circumstances. Recent decisions by the Iowa Supreme Court interpreting the search and seizure clause contained in the Iowa Constitution have drawn the original justification for this restricted application into question. This Note analyzes the history and justifications of the exclusionary rule within both federal and Iowa jurisprudence and concludes that the Iowa Supreme Court's current search and seizure jurisprudence requires application of the exclusionary rule during sentencing in the same manner and to the same extent as during a criminal trial.

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I. INTRODUCTION

The exclusionary rule prevents the use of certain evidence seized in violation of constitutional protections during criminal trials.[1] The rule applies only in situations where the exclusion of evidence will sufficiently deter law enforcement officers from engaging in unconstitutional behavior without exacting too high a cost on society.[2]

Generally, courts have not found sentencing proceedings an appropriate arena in which to apply the full power of the exclusionary rule.[3] Rather than excluding all evidence seized in violation of constitutional protections during sentencing, courts will exclude evidence only when law enforcement officers violated a defendant's constitutional rights with "the express purpose of improperly influencing the sentencing judge."[4]

Courts provide two reasons in support of restricting the rule's application. First, both state and federal judges have long utilized different

1. *See* Mapp v. Ohio, 367 U.S. 643, 655 (1961) (holding the federal exclusionary rule applies to the states through the Due Process Clause of the Fourteenth Amendment); Elkins v. United States, 364 U.S. 206, 223 (1960) ("[E]vidence obtained by state officers during a search which, if conducted by federal officers, would have violated the defendant's [Fourth Amendment rights] is inadmissible . . . in a federal criminal trial" (citing FED. R. CRIM. P. 41(e))); Weeks v. United States, 232 U.S. 383, 398 (1914) (establishing the exclusionary rule for evidence obtained by federal agents in violation of an individual's Fourth Amendment rights), *overruled in part by Elkins*, 364 U.S. at 208 (overruling the "silver platter" doctrine established in *Weeks* which permitted the use of evidence obtained in violation of the Fourth Amendment by state officers to be used in federal court); State v. Hagen, 137 N.W.2d 895, 900 (Iowa 1965).

2. *See* United States v. Calandra, 414 U.S. 338, 348–52 (1974) (declining to require application of the exclusionary rule in all proceedings); United States v. Schipani, 435 F.2d 26, 28 (2d Cir. 1970) (declining to exclude illegally seized evidence unless law enforcement officers gathered the evidence for the purpose of influencing the sentencing court); State v. Swartz, 278 N.W.2d 22, 23–26 (Iowa 1979) (adopting the federal interpretation and application of the exclusionary rule during sentencing).

3. *See, e.g.*, *Schipani*, 435 F.2d at 28; *Swartz*, 278 N.W.2d at 26.

4. *Schipani*, 435 F.2d at 28; *see also Swartz*, 278 N.W.2d at 26 (citing *Schipiani*, 435 F.2d at 28).

evidentiary rules during sentencing, which allow them discretion to consider illegally obtained evidence.[5] The application of these relaxed evidentiary rules facilitates the examination of the defendant's character and conduct, which in turn provides the court with information it can use to tailor the sentence to the defendant before it.[6] Second, most courts consider the deterrent effect of applying the exclusionary rule at sentencing to be insignificant.[7] Following this rationale, courts developed two tests to determine whether evidence should be excluded during sentencing. Some courts will exclude evidence only when the use of that evidence at sentencing would give law enforcement officers a "substantial incentive" to engage in unconstitutional searches.[8] Iowa follows a second group of courts that apply the exclusionary rule when law enforcement executes an illegal search with "the express purpose" of affecting a defendant's sentence.[9] This Note collectively refers to the application of the rule according to either of these two tests as the "limited exclusionary rule."

The adoption of the limited exclusionary rule by both the federal and Iowa judiciary is not a coincidence. Beginning in the 1930's, the Iowa Supreme Court's interpretation of the search and seizure clause in the Iowa constitution followed in "lockstep"[10] with the United States Supreme

5. *See Swartz*, 278 N.W.2d at 24–26 (examining federal case law and finding "less strict adherence to the exclusionary rule [is] required in a sentencing context than at the actual trial"); State v. Cole, 168 N.W.2d 37, 40 (Iowa 1968) (recognizing less rigid evidentiary rules apply to sentencing procedures); Clinton R. Pinyan, Comment, *Illegally Seized Evidence at Sentencing: How to Satisfy the Constitution and the Guidelines with an "Evidentiary" Limitation*, 1994 U. CHI. LEGAL F. 523, 523 (1994).

6. *See Cole*, 168 N.W.2d at 40 (justifying less stringent evidentiary rules at sentencing to allow the sentencing court to consider "the fullest information possible concerning the defendant's life and characteristics"); Note, *Application of the Exclusionary Rule at Sentencing*, 57 VA. L. REV. 1255, 1277 (1971) ("[I]t is plain that society has an interest in a sentencing process that produces informed sentencing decisions; and, obviously, the utilization of all the relevant information relating to the character and conduct of the defendant is desirable if informed decisions are to be made.").

7. *See, e.g.*, *Schipani*, 435 F.2d at 28; *cf.* United States v. Brimah, 214 F.3d 854, 858 (7th Cir. 2000) (listing federal circuits where the exclusionary rule does not apply at sentencing).

8. *See, e.g.*, Verdugo v. United States, 402 F.2d 599, 612–13 (9th Cir. 1968).

9. *Schipani*, 435 F.2d at 28; *Swartz*, 278 N.W.2d at 26; Pinyan, *supra* note 5.

10. The lockstep approach to interpreting state constitutional provisions refers to a practice among state courts characterized by the adoption of prevailing federal jurisprudence when interpreting portions of a state constitution that parallel the federal constitution. *See, e.g.*, Robert F. Williams, *A "Row of Shadows": Pennsylvania's*

Court's interpretation of the scope, import, and purpose of the Search and Seizure Clause contained in the United States Constitution.[11]

Iowa is not the only state to follow in lockstep with the federal judiciary when applying the exclusionary rule. Since the United States Supreme Court extended the exclusionary rule to the states in *Mapp v. Ohio*,[12] many other states have eschewed independent analysis of their own state constitution's search and seizure clause.[13] However, in recent decades, an increasing number of state courts are moving away from lockstep interpretation, allowing a more expansive application of the exclusionary rule.[14]

The Iowa Supreme Court's decision in *State v. Cline* was one of the first substantial breaks between the Iowa Supreme Court and the United States Supreme Court in construing the purpose, import, and application of the exclusionary rule in nearly half a century.[15] In *Cline*, the Iowa Supreme Court rejected the state's argument that a law enforcement officer's objective good faith does not trigger the exclusionary rule under the Iowa Constitution.[16] The *Cline* court held that the purpose of the exclusionary rule was not only to deter constitutional violations by law enforcement officers, but also to protect the integrity of the judiciary and provide a remedy to defendants whose constitutional rights have been violated.[17]

The exclusionary rule's renewed connection to the constitutional rights of defendants, combined with the Iowa Supreme Court's independent approach to interpreting state constitutional provisions, caused the Iowa Court of Appeals to question precedent that restricts the application of the

Misguided Lockstep Approach to Its State Constitutional Equality Doctrine, 3 WIDENER J. PUB. L. 343, 347–48 (1993).

11. State v. Cline, 617 N.W.2d 277, 287 (Iowa 2000), *abrogated on other grounds by* State v. Turner, 630 N.W.2d 601, 606 n.2 (Iowa 2001).

12. Mapp v. Ohio, 367 U.S. 643, 655 (1961).

13. *See* Thomas K. Clancy, *The Fourth Amendment's Exclusionary Rule as a Constitutional Right*, 10 OHIO ST. J. CRIM. L. 357, 384 (2013) (noting state courts which have followed in lockstep with the United States Supreme Court regarding exclusionary rule jurisprudence).

14. *See, e.g.*, Commonwealth v. Edmunds, 586 A.2d 887, 900–01 (Pa. 1991) (listing state courts that have declined to adopt the "good faith" exception to the exclusionary rule).

15. *See Cline*, 617 N.W.2d at 287.

16. *Id.* at 293.

17. *Id.* at 289.

exclusionary rule during some post-trial criminal proceedings.[18] While some courts and scholars argue that any system applying the exclusionary rule to sentencing is overbroad,[19] this Note argues that the reasoning of the *Cline* court requires the application of the exclusionary rule to its full extent.

Part II of this Note outlines the history of the exclusionary rule in federal jurisprudence. Part III outlines the history of the rule in Iowa jurisprudence. Part IV explores arguments for and against replacing the limited exclusionary rule during sentencing and determines that the exclusionary rule should not be limited.

II. EXCLUSIONARY RULE IN FEDERAL CRIMINAL PROCEEDINGS

A. *Establishment and Evolution of the Federal Exclusionary Rule*

A complete discussion of the exclusionary rule under the Iowa constitution requires a thorough discussion of the rule's development within federal jurisprudence.[20] The obvious place to begin such a discussion is with the United States Constitution. The federal exclusionary rule stems from the prohibition against "unreasonable searches and seizures" contained within the Fourth Amendment.[21] Although the Fourth Amendment prohibits unreasonable searches and seizures, there is no remedy contained within the text of the Constitution itself.[22] Therefore, if the Fourth Amendment was to

18. *See* State v. Shoemaker, No. 10-1294, 2011 WL 1817844, at *3–4 (Iowa Ct. App. May 11, 2011).

19. *See* Pinyan, *supra* note 5, at 525.

20. Existing Iowa jurisprudence regarding application of the exclusionary rule at sentencing is based almost entirely upon federal case law. *See* State v. Swartz, 278 N.W.2d 22, 24–26 (Iowa 1979). However, while the Iowa Supreme Court will give federal court opinions "respectful consideration" when construing similar Iowa state constitutional provisions, the court will engage in its own independent analysis. *See, e.g.*, State v. Ochoa, 792 N.W.2d 260, 267 (Iowa 2010). Thus, if the decisions of the federal courts are not based upon a "convincing rationale," they have no value as precedent. *Cline*, 617 N.W.2d at 285 (quoting State v. James, 393 N.W.2d 465, 472 (Iowa 1986) (Lavorato, J., dissenting)).

21. U.S. CONST. amend. IV; Weeks v. United States, 232 U.S. 383, 398 (1914) (noting seizure of evidence in violation of the right to be secure from unreasonable searches and seizures warrants exclusion of evidence at trial); *accord* Wolf v. Colorado, 338 U.S. 25, 28 (1949) ("In *Weeks v. United States*, . . . this Court held that in a federal prosecution the Fourth Amendment bar[s] the use of evidence secured through an illegal search and seizure." (citation omitted)).

22. *See* U.S. CONST. amend IV; United States v. Leon, 468 U.S. 897, 906 (1984) ("The Fourth Amendment contains no provision expressly precluding the use of

have any effect, some remedy had to be created and enforced.[23]

Although the Fourth Amendment was ratified in 1791,[24] for much of the United States' early history it did not matter to federal courts how law enforcement officers gathered evidence.[25] Scholars have suggested this is because the framers of the Constitution intended civil remedies to both deter illegal conduct by law enforcement and provide relief to a victim aggrieved by an unconstitutional search. Regardless of the framers' intent, in the early twentieth century the United States Supreme Court created a remedy that gave real effect to the Fourth Amendment.[26]

In 1914, the Supreme Court held that illegally obtained evidence could not be used in a federal criminal proceeding.[27] The Court reasoned that fashioning an effective remedy for constitutional violations required the exclusion of illegally obtained evidence.[28] Additionally, the Court warned of the dangers of tacitly condoning the unconstitutional conduct of law enforcement officers.[29] These two goals of the exclusionary rule—providing a remedy to aggrieved defendants and refusing to condone unconstitutional

evidence obtained in violation of its commands . . . ."). The lack of a remedy set out in the text of the Fourth Amendment makes it very different from the Fifth Amendment, which outlines both a right and a remedy. *See* U.S. CONST. amend. V; Laurence Naughton, Note, *Taking Back Our Streets: Attempts in the 104th Congress to Reform the Exclusionary Rule*, 38 B.C. L. REV. 205, 209 (1996).

23. *See Weeks*, 232 U.S. at 393 ("If letters and private documents can thus be seized and held [in violation of the Constitution] and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment declaring his right to be secure against such searches and seizures, is of no value . . . .").

24. Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 MICH. L. REV. 547, 557 (1999).

25. *See Weeks*, 232 U.S. at 394 (noting the lower court likely proceeded under a rule of law where "it would not inquire into the manner in which [the evidence was] obtained, but if competent would keep [the evidence] and permit [its] use"); Paul G. Cassell, *The Mysterious Creation of Search and Seizure Exclusionary Rules Under State Constitutions: The Utah Example*, 1993 UTAH L. REV. 751, 758 (1993).

26. *Weeks*, 232 U.S. at 394.

27. *Id.*

28. *See id.* at 393.

29. *See id.* at 394. The lack of a constitutional grounding for the exclusionary rule in *Weeks* allowed the Court to refuse to extend the rule's application to the states. *See id.* at 398. This created an unfortunate situation where state law enforcement officers could obtain evidence through unconstitutional means and then pass that evidence on to federal officers. *See* Naughton, *supra* note 22, at 211. This practice became known as the "Silver Platter" doctrine as state officials would provide evidence to the federal officials on a silver platter. *See id.*; *see also supra* note 1.

conduct—are meant to protect judicial integrity.[30] Later decisions cemented the protection of judicial integrity as the original justification for application of the exclusionary rule.[31]

While the Supreme Court reasoned the exclusionary rule gave effect to the Fourth Amendment, the Court did not find that it was mandated by the Constitution.[32] This lack of a constitutional basis requiring the application of the rule meant that even after the Fourth Amendment was extended to the states in *Wolf v. Colorado*, the Court did not require the states to apply the exclusionary rule.[33] The *Wolf* court felt that other remedies would sufficiently protect defendants in state level proceedings.[34] Thus, the exclusionary rule began to separate from the protection against unreasonable searches and seizures.

The next major development within the Court's exclusionary rule jurisprudence occurred in *Elkins v. United States*.[35] In *Elkins*, the Court put an end to the use of the "Silver Platter" doctrine.[36] Additionally, the *Elkins* court added a new justification for the exclusionary rule that would eventually become the "sole" justification for the application of the rule.[37] The *Elkins* court reasoned that, in addition to protecting judicial integrity, the exclusionary rule could act as a deterrent to unconstitutional behavior by law enforcement officials.[38]

In 1961, the Court extended the exclusionary rule to the states in *Mapp v. Ohio*.[39] The Court noted that a trend among the states toward adoption of

30. Richard M. Bloom & David H. Fentin, *"A More Majestic Conception": The Importance of Judicial Integrity in Preserving the Exclusionary Rule*, 13 U. PA. J. CONST. L. 47, 50–51 (2010).

31. *Id.*

32. *See* Wolf v. Colorado, 338 U.S. 25, 28 (1949) (stating the federal exclusionary rule created in *Weeks* "was a matter of judicial implication").

33. *Id*. at 33. After *Wolf*, the states had to enforce the Fourth Amendment, but they were left to design their own methods for enforcement. *See* Naughton, *supra* note 22, at 211–12.

34. Bloom & Fentin, *supra* note 30, at 51 (quoting *Wolf*, 338 U.S. at 31).

35. Elkins v. United States, 364 U.S. 206 (1960).

36. *See id.* at 208. For a discussion of the "Silver Platter" doctrine, see *supra* notes 1 and 30.

37. *See* Bloom & Fentin, *supra* note 30, at 53; *Elkins*, 364 U.S. at 216–23.

38. *Elkins*, 364 U.S. at 217 ("The rule is calculated to prevent, not to repair. Its purpose is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it.").

39. Mapp v. Ohio, 367 U.S. 643, 655 (1961).

the rule, and that other remedies were not sufficient.[40] But in extending the rule to the states, the Court was reluctant to recognize the exclusionary rule as a constitutional requirement. While Justice Clark, writing for a plurality, expressed the opinion that the exclusionary rule was an "essential part of the right to privacy," a majority of the Court did not join in that specific assertion.[41]

B. *The Curtailment of the Exclusionary Rule*

For a short time after *Mapp*, the exclusionary rule enjoyed its broadest and most potent application within the federal court system.[42] However, the post-*Mapp* line of cases evidences the Court's desire to reign in the exclusionary rule.[43] This was accomplished by narrowing the justification of the rule while establishing a number of exceptions to the rule itself.[44]

The justifications that formed the foundation of the exclusionary rule shifted again during the 1970's in *United States v. Calandra*.[45] The *Calandra*

40. *See id.* at 651–53; Cassell, *supra* note 25, at 760.

41. *Mapp*, 367 U.S. at 655–56. Two justices concurred for reasons not based on a constitutional right to privacy. *See id.* at 661–66 (Black, J., concurring) (stating the interplay between the bans provided by the Fourth and Fifth Amendments required the Court adopt a liberal construction of these constitutional provisions and mandated the exclusionary rule be applied to the states); *id.* at 670 (Douglas, J., concurring) (stating the Court cannot permit the "'shabby business' of unlawful entry into a home" to undercut federal policy and "rob the Fourth Amendment of much meaningful force" (quoting Wolf v. Colorado, 338 U.S. 25, 46 (1949) (Murphy, J., dissenting)). Three justices dissented. *See id.* at 672–86 (Harlan, J., dissenting) ("I would not impose upon the states this federal exclusionary remedy.").

42. Bloom & Fentin, *supra* note 30, at 53.

43. *See* Commonwealth v. Edmunds, 586 A.2d 887, 898 (Pa. 1991) (recognizing the Supreme Court's adoption of a limited "metamorphosed view" of the justifications for the exclusionary rule) (citing United States v. Calandra, 414 U.S. 338, 347 (1974); United States v. Peltier, 422 U.S. 531, 536 (1975)); Bloom & Fentin, *supra* note 30, at 53 ("As the Court's disenchantment with the exclusionary rule became more apparent, its desire to maintain judicial integrity began to recede into footnotes.").

44. *See, e.g.*, Herring v. United States, 555 U.S. 135, 144 (2009) (stating application of the exclusionary rule is required only "to deter deliberate, reckless, or grossly negligent conduct, or . . . recurring or systemic negligence"); United States v. Leon, 468 U.S. 897, 913 (1984) (establishing a good faith exception to the exclusionary rule).

45. United States v. Calandra, 414 U.S. 338, 348 (1974); *see also* Jeremy S. Simon, Note, *Privacy vs. Practicality: Should Alaska Adopt the* Leon *Good Faith Exception?*, 10 ALASKA L. REV. 143, 151 (1993) (discussing the Pennsylvania Supreme Court's opinion in *Commonwealth v. Edmunds*, which stated the United States Supreme Court's view of the exclusionary rule and its justifications had "metamorphosed" in *Calandra* (quoting

Court used a deterrence-focused analysis to determine that the exclusionary rule did not apply in grand jury proceedings.[46] Thus, the decision in *Calandra* further disconnected the exclusionary rule from any "personal constitutional right," in favor of the view that the rule is only a "judicially created remedy."[47]

The *Calandra* court shifted away from judicial integrity as a justification for the exclusionary rule.[48] The *Calandra* majority dealt with judicial integrity—one of the first justifications of the rule—in a footnote that swept the justification aside.[49] Justice Brennan recognized the opinion as a "downgrading" of the rule that rejected its "historical objective and purpose."[50]

The same argument used in *Calandra* is seen in the federal circuit courts dealing with the exclusionary rule. Prior to *Calandra*, the Second Circuit determined that a lack of deterrent effect meant the exclusionary rule should be applied during sentencing only under limited circumstances.[51] The Ninth Circuit also applied a deterrence-focused balancing test in adopting a limited exclusionary rule, both before and after *Calandra*.[52]

The importance of judicial integrity as a justification for the application

Edmunds, 586 A.2d at 898)).

46. *Calandra*, 414 U.S. at 351 (stating the application of the exclusionary rule during grand jury proceedings would not significantly further the goal of deterrence). In addition to shifting the Court's justification for the exclusionary rule toward deterrence, the *Calandra* Court also established the balancing test currently used by many federal courts in determining whether application of the rule is appropriate. *Id.* at 348. Federal courts now apply the exclusionary rule only in circumstances where the potential deterrent effect of the rule outweighs the cost to society caused by excluding the evidence. *See, e.g.*, *Herring*, 555 U.S. at 141 ("[T]he exclusionary rule is not an individual right and applies only where it 'result[s] in appreciable deterrence.'" (quoting *Leon*, 468 U.S. at 909) (second alteration in original)).

47. *Calandra*, 414 U.S. at 348.

48. *See id.*

49. *Id.* at 355 n.11. The footnote addressed the dissent's concern with the judicial integrity justification simply by saying that extending the exclusionary rule to grand jury proceedings would be unprecedented. *See id.*

50. *Id.* at 356 (Brennan, J., dissenting).

51. *See* United States v. Schipani, 435 F.2d 26, 28 (2d Cir. 1970).

52. *See* United States v. Vandermark, 522 F.2d 1019, 1022–23 (9th Cir. 1975) (citing Verdugo v. United States, 402 F.2d 599, 613 (9th Cir. 1968)) (holding that evidence should be excluded during sentencing only when there is a "substantial incentive for illegal searches").

of the exclusionary rule continued to shrink in *Stone v. Powell*.[53] The *Stone* Court utilized a simplified version of the balancing test established in *Calandra*.[54] After applying this simplified test, the Court determined that the costs of applying the exclusionary rule in habeas corpus proceedings were too high when balanced against any minimal deterrent effect the rule may have.[55] Additionally, the Court shored up its use of the balancing test established in *Calandra* by declaring the test was implicit in previous decisions.[56]

The shift in the Court's conception of judicial integrity and its deterrent-focused analysis continued in *United States v. Leon*.[57] First, the Court further solidified the *Calandra* balancing test.[58] The balancing test again provided "strong support" for establishing an exception to the exclusionary rule.[59] In this case, the Court established what is now known as the "good faith" exception.[60] The majority reasoned that the integrity of the courts would not be affected by allowing evidence obtained through the reasonable, good faith actions of law enforcement officers.[61] Quoting *United States v. Janis*, the Court suggested that the inquiry into judicial integrity was "essentially the same as the inquiry into whether exclusion would serve a deterrent purpose."[62]

Two recent decisions by the Supreme Court limited the exclusionary

53. Stone v. Powell, 428 U.S. 465, 486 (1976). The Court shifted the focus of judicial integrity from a court's legitimization of illegal police conduct toward the disrespect a court may generate by acquitting a guilty defendant. *See id.* at 490.

54. *See id.* at 489–93; Bloom & Fentin, *supra* note 30, at 56.

55. *Powell*, 428 U.S. at 493. State courts were still required to apply the rule during trials. *See id.* Because the states were still required to apply the exclusionary rule in state-level proceedings, the Court reasoned that law enforcement officers would have little fear of the possibility of a federal court discovering a Fourth Amendment violation that was unnoticed by the state court. *Id.*

56. *Id.* at 489 n.26.

57. United States v. Leon, 468 U.S. 897, 909 (1984) (quoting United States v. Janis, 428 U.S. 433, 454 (1976)) (applying the rule only when "appreciable deterrence" results).

58. *Id.* (quoting *Calandra*, 414 U.S. at 348).

59. *Id.* at 913.

60. *Id.* The good faith exception allows the use of evidence obtained in violation of the Fourth Amendment as long as the law enforcement officers were acting under an objectively reasonable, good faith belief they were not committing a violation. *See id.* at 918, 920.

61. *Id.* at 921 n.22.

62. *Id.* (quoting *Janis*, 428 U.S. at 459 n.35) (internal quotation mark omitted).

rule further by diminishing the value of deterrence within the *Calandra* balancing test.[63] In *Hudson v. Michigan*, the Court asserted that the exclusionary rule's "costly toll upon truth-seeking" created a "high obstacle for those urging [its] application."[64] This obstacle was made even higher during the application of the *Calandra* test as the majority added a number of costs to the equation that previous decisions had not included.[65] The Court considered not only the costs of letting guilty defendants go free, but also the administrative burden of additional suppression motions and the potential risk to the safety of police officers who, to ensure compliance with the Fourth Amendment, waited longer than the law required before entering a building.[66] These additional costs within the *Calandra* test shift the balance in favor of admission and against application of the exclusionary rule.[67]

In *Herring v. United States*, the Court continued stacking the *Calandra* balancing test against the exclusionary rule by stating that only "deliberate, reckless, or grossly negligent conduct" or "recurring or systemic negligence" could be deterred; thus, the deterrence justification would only require application of the exclusionary rule in severely limited situations.[68]

Over the past few decades, the Supreme Court has slowly adopted a "metamorphosed view" of the purpose of the exclusionary rule.[69] Deterrence was gradually emphasized by the Court, and the original goal of protecting judicial integrity was diminished and subsumed in this justification.[70] Yet, as deterrence became the only benefit to applying the rule, application of the rule was found "to have only 'marginal' or

63. *See* Herring v. United States, 555 U.S. 135, 141 (2009); Hudson v. Michigan, 547 U.S. 586, 591 (2006).

64. *See Hudson*, 547 U.S. at 591 (alteration in original) (quoting Pa. Bd. of Prob. & Parole v. Scott, 524 U.S. 357, 364–65 (1998)) (internal quotation marks omitted).

65. *See id.* at 595; Bloom & Fentin, *supra* note 30, at 61. Previously, the only costs associated with the application of the exclusionary rule were interference with convictions and the exclusion of highly probative evidence. *Id.*

66. *See Hudson*, 547 U.S. at 595.

67. Bloom & Fentin, *supra* note 30, at 64. The Court's disdain for the exclusionary rule was evidenced in *Hudson* by the reintroduction of alternative remedies as a means of guaranteeing Fourth Amendment rights. *Id.* at 64–67; *see Hudson*, 547 U.S. at 596–99.

68. *Herring*, 555 U.S. at 144 ("To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system.").

69. *See* Commonwealth v. Edmunds, 586 A.2d 887, 898 (Pa. 1991).

70. Bloom & Fentin, *supra* note 30, at 58.

'incremental' deterrent value."[71] Further, the social costs of the exclusionary rule seemed only to increase each time the Court considered its application.[72] This has led to the numerous limitations on the exclusionary rule—including limited application during sentencing.

III. THE EVOLUTION OF THE EXCLUSIONARY RULE WITHIN IOWA JURISPRUDENCE

Iowa was one of the first states to adopt the exclusionary rule.[73] The foundation for the rule was laid out in *Reifsnyder v. Lee*.[74] Lee was arrested for fraud committed in a cattle sale.[75] A watch and some money were taken from him at the time of his arrest and Lee petitioned the court for their return, claiming they were unlawfully seized.[76] Although the *Reifsnyder* court held Lee's property was lawfully taken, it further stated that "fraudulent or unlawful use of process" would not be sanctioned by the courts, and that where illegal seizure has occurred the parties must be restored to the positions they held prior to any "fraud, violence, or abuse of legal process."[77] These justifications reflect the two goals of judicial integrity that formed the original justification of the exclusionary rule in *Weeks*.[78]

Iowa courts first applied the exclusionary rule in criminal trials more than a decade before *Weeks*.[79] Early cases applying the exclusionary rule under the Iowa constitution justified it as a remedy for the violation of constitutional rights.[80] In *State v. Height*, the Iowa Supreme Court found that unlawful searches violated the Iowa constitution's due process clause and search and seizure clause.[81] The *Height* court heavily depended on the United States Supreme Court's opinion in *Boyd v. United States* to find that

71. *Id.* at 58–59.

72. *See id.* at 59.

73. State v. Cline, 617 N.W.2d 277, 285–86 (Iowa 2000) (citing Reifsnyder v. Lee, 44 Iowa 101, 102 (1876)).

74. *See Reifsnyder*, 44 Iowa at 102.

75. *Id.*

76. *Id.*

77. *Id.* at 102–03.

78. *Compare id.* at 102, *with* Weeks v. United States, 232 U.S. 383, 393–94 (1914).

79. *See* State v. Height, 91 N.W. 935, 940 (1902).

80. *See id.*; *see also* State v. Sheridan, 96 N.W. 730, 731 (1903) (allowing the use of illegally obtained evidence would "emasculate the constitutional guaranty" against unreasonable searches).

81. *Height*, 91 N.W. at 938, 940.

the search and seizure clause in the Iowa constitution prohibited the admission of evidence obtained through means that violated Article I section 8 of the Iowa constitution.[82] After establishing the importance of the search and seizure clause as a means of "preserving the spirit of constitutional liberty," the Iowa Supreme Court utilized principals set forth in existing state case law to fashion a rule that required the exclusion of evidence during a criminal trial.[83]

After two decades of application, the Iowa Supreme Court abandoned the exclusionary rule in *State v. Tonn*.[84] The remedy that once prevented officials from "emasculat[ing] the constitutional guaranty"[85] was derided as the "federal rule" that many state courts had rejected and that even some lower federal courts were "loathe to follow."[86] Although the *Tonn* court claimed that it "would not detract one iota from the full protection" provided by constitutional provisions, it determined that the exclusionary rule was too costly relative to other remedies.[87]

Iowa courts did not apply the rule again until the United States Supreme Court extended the exclusionary rule under the United States Constitution to the states in *Mapp*.[88] The Iowa Supreme Court reintroduced the exclusionary rule in *State v. Hagen*.[89] However, in addition to applying the exclusionary rule, the *Hagen* court established a principle that would influence the court's interpretation of the state search and seizure clause for decades to come: the *Hagen* court based the application of the exclusionary rule exclusively upon the United States Constitution and federal case law.[90] For much of the next few decades, the Iowa Supreme Court would not

82. *Id.* at 938–39 (citing Boyd v. United States, 116 U.S. 616, 622 (1886)).

83. *Id.* at 938–40.

84. State v. Tonn, 191 N.W. 530, 536 (Iowa 1923).

85. *See Sheridan*, 96 N.W. at 731.

86. *Tonn*, 191 N.W. at 535.

87. *Id.* at 535–36. The court pointed to other remedies, such as trespass actions against a law enforcement officer, that it felt would sufficiently protect a citizen's constitutional rights. *See id.* at 535. Additionally, the court noted the overwhelming majority of state courts chose not to apply the exclusionary rule. *Id.* at 534–35.

88. *See* State v. Hagen, 137 N.W.2d 895, 899 (Iowa 1965) (citing Mapp v. Ohio, 367 U.S. 643 (1961)).

89. *Id.* (quoting Ker v. California, 374 U.S. 23, 30 (1963)).

90. *See id.* In fact, after noting the federal and state constitutional provisions governing searches and seizures were "identical in form," the *Hagen* court never analyzed this issue under the Iowa Constitution anywhere in its opinion. *See id.* at 899–900.

engage in independent interpretation of the search and seizure clause under the Iowa Constitution.[91]

It was during this time that the Iowa Supreme Court decided *State v. Swartz*, in which the court—relying on precedent from federal courts and without citing the state constitution or state cases—utilized the limited exclusionary rule during state sentencing proceedings.[92] However, even though *Swartz* followed established federal interpretations, there is some indication the court continued to hold a lingering desire to provide stronger protections against unreasonable searches and seizures than those provided by the United States Supreme Court.

On a few occasions, the Iowa Supreme Court had the opportunity to rule on a Fourth Amendment issue of first impression.[93] When deciding these issues, the Iowa Supreme Court would often choose a broader application of the exclusionary rule than the United States Supreme Court would eventually require.[94] This led to unfortunate situations where the Iowa Supreme Court had to reverse itself to conform to the United States Supreme Court's decisions.

One such reversal occurred in *State v. Groff*.[95] The defendants in *Groff* were charged with manufacturing a controlled substance with intent to deliver.[96] Prior to trial the defendants moved to suppress all evidence obtained during a search of their property because the warrant affidavit contained false statements.[97] The defendants argued that "in the absence of [the false statements] no probable cause existed."[98] The court in *State v. Boyd* had already determined that:

91. *See* State v. Cline, 617 N.W.2d 277, 287 (Iowa 2000) (collecting cases).

92. State v. Swartz, 278 N.W.2d 22, 24–26 (1979).

93. *See, e.g.*, State v. Boyd, 224 N.W.2d 609, 612 (Iowa 1974) (good faith mistakes in affidavits supporting warrants); State v. Baych, 169 N.W.2d 578, 583 (Iowa 1969) (burden of proof and persuasion for suppression hearings).

94. *Compare Boyd*, 224 N.W.2d at 612 (allowing challenges based on good faith mistakes in warrant affidavits), *and Baych*, 169 N.W.2d at 583 (requiring the government to prove consent to search by clear and convincing evidence), *with* Franks v. Delaware, 438 U.S. 154, 164 (1978) (protecting good faith mistakes in warrant affidavits), *and* United States v. Matlock, 415 U.S. 164, 178 n.14 (1974) (permitting proof of consent to search by a preponderance of the evidence).

95. State v. Groff, 323 N.W.2d 204, 208 (Iowa 1982).

96. *See id.* at 206.

97. *Id.*

98. *Id.*

> a search warrant could be invalidated when a defendant proves that "an agent or representative of the state ha[d]: (1) intentionally made false or untrue statements or otherwise practiced fraud upon the magistrate; or (2) that a material statement made by such agent or representative is false, *whether intentional or not.*"[99]

However, a mere four years after *Boyd*, the United States Supreme Court outlined a much more stringent standard in *Franks v. Delaware*.[100] Under *Franks*, "a defendant could challenge the veracity of an affidavit by showing that the affiant: (1) intentionally and knowingly made a false statement, or (2) made a false statement with reckless disregard for the truth."[101] The *Groff* court could have premised its decision in *Groff*, however, the Iowa Supreme Court justified its modifying of the grounds that the *Boyd* test did not further the exclusionary rule's purpose of deterring illegal conduct by law enforcement.

Bettuo v. Pelton provides another instance where the Iowa Supreme Court had to reverse itself to follow federal search and seizure jurisprudence.[102] In *State v. Baych*, the court held the State had to prove that a defendant consented to an illegal search by clear and convincing evidence.[103] However, the court overruled this decision *sub silentio* in *Bettuo* because of a footnote contained in *United States v. Matlock*.[104]

These cases suggest that, even during the heyday of the lockstep era, some nascent desire remained within the Iowa Supreme Court to provide stronger protections through the search and seizure clause. In fact, even in

99. *Id.* (quoting 224 N.W.2d at 616). The *Boyd* court did not detail its rationale for selecting the test. *See Boyd*, 224 N.W.2d at 615–16. However, the two prongs reflect a desire to support judicial integrity. Prohibiting intentional misstatements by law enforcement will prevent the court from indirectly legitimizing illegal behavior, and prohibiting false material misstatements will ensure that the parties placed in the positions they would have been in had the illegal conduct never occur. Moreover, the *Boyd* court never mentioned deterrence as a justification. *See id.*

100. *See* Franks v. Delaware, 438 U.S. 154, 155–56 (1978) (outlining the federal two-prong test used to challenge a warrant affidavit).

101. *Groff*, 323 N.W.2d at 207 (citing *Franks*, 438 U.S. at 155). "The two standards differ . . . as to the effect of a false statement included in an affidavit as a result of a good faith or innocent mistake by the affiant." *Id.*

102. Bettuo v. Pelton, 260 N.W.2d 423, 425 (Iowa 1977).

103. State v. Baych, 169 N.W.2d 578, 583 (Iowa 1969).

104. *Bettuo*, 260 N.W.2d at 425 (citing United States v. Matlock, 415 U.S. 164, 177 n.14 (1974)) (stating that consent, like all other exceptions to the rule against warrantless searches, "must be established by a preponderance of the evidence").

the face of shifting justifications for the exclusionary rule on the federal level, the Iowa Supreme Court continued to hold the opinion that one important justification of the exclusionary rule is that it protects judicial integrity.[105] However, it was not until nearly two decades later that the court would drop the practice of lockstep interpretation in favor of a more robust form of judicial federalism.

State v. Cline was the first case that dealt with the exclusionary rule that demonstrated the influences of judicial federalism.[106] The issue in *Cline* was whether evidence from a constitutionally invalid search was admissible if law enforcement executed the search in good faith.[107] The *Cline* court parted ways with the United State Supreme Court and found that the good faith exception to the exclusionary rule did not apply under the search and seizure clause of the Iowa constitution.[108]

The *Cline* court based its decision not to establish a good faith exception under the Iowa constitution on a stark divergence in opinion regarding the purpose and application of the rule.[109] The court did not agree that the only purpose of the exclusionary rule is the deterrence of unconstitutional police behavior.[110] The court recognized the rule serves as "a remedy for the constitutional violation"; even though it could not completely cure a violation caused by an illegal search, the exclusionary rule was still "clearly the best remedy available."[111] Moreover, the court opined that allowing the use of illegally seized evidence would make courts "accomplices to the unconstitutional conduct executive branch."[112] Finally, the court held that the exclusionary rule promotes "institutional compliance" and that applying a good faith exception "would only encourage lax practices by government officials in all three branches of

105. *See, e.g.*, State v. Hamilton, 335 N.W.2d 154, 158 (Iowa 1983) ("The purpose in excluding such evidence is twofold: to deter lawless police conduct and to protect the integrity of the judiciary." (citing Brown v. Illinois, 422 U.S. 590, 599–600 (1975))).

106. *See* State v. Cline, 617 N.W.2d 277, 288–93 (Iowa 2000).

107. *Id.* at 280.

108. *Id.* at 293.

109. *Id.* at 289 (disagreeing with the view of the United States Supreme Court that "the exclusionary rule's only purpose is to deter police misconduct").

110. *See id.* ("[W]e think the rule serves a purpose greater than simply deterring police misconduct.").

111. *Id.*

112. *Id.* at 290.

government."[113]

The *Cline* court also took issue with the "grave consequences" that the United States Supreme Court ignored in adopting a good faith exception.[114] The Iowa Supreme Court felt that not only would a good faith exception "effectively defeat the purpose of the search and seizure clause," but it would also leave victims of unconstitutional searches without a remedy, and remove an opportunity for reviewing courts to provide guidance to the coordinate branches of government "with respect to the parameters of reasonable searches and seizures."[115] Finally, the Iowa Supreme Court asserted that the costs that have been linked to the exclusionary rule are more appropriately attached to the Fourth Amendment itself, rather than to the rule giving it effect.[116]

By 2011, Iowa's lower appellate courts began to question the foundation of the decision in *State v. Swartz* that the exclusionary rule did not apply at sentencing.[117] Most importantly, the Iowa Court of Appeals in *State v. Shoemaker* opined that *Swartz* in no way interpreted the Iowa constitution with regard to the exclusionary rule's use at sentencing.[118] Moreover, in the opinion of the *Shoemaker* court, *Swartz* articulated no

113. *Id.* (citing State v. Marsala, 579 A.2d 58, 67 (Conn. 1990); People v. Sundling, 395 N.W.2d 308, 314 (Mich. Ct. App. 1986); State v. Novembrino, 519 A.2d 820, 854 (N.J. 1987); People v. Bigelow, 488 N.E.2d 451, 458 (N.Y. 1985); State v. Oakes, 598 A.2d 119, 125 (Vt. 1991)). In this context, institutional compliance differs from deterrence in that it has a broader focus. *See id.* (noting the effect of the court's decision on "the judicial officers issuing the warrant"). The United States Supreme Court has focused its analysis of deterrence on the conduct of law enforcement officers. *See, e.g.*, United States v. Leon, 468 U.S. 897, 921 n.22 (1976). However, in *Cline*, the Iowa Supreme Court pointed out that not allowing an unconstitutional statute to protect the actions of law enforcement "will certainly tend to encourage lawmakers to take care to ensure that any law they enact passes constitutional muster." *Cline*, 617 N.W.2d at 290 (citing State v. White, 640 P.2d 1061, 1070 (1982)).

114. *Id.*

115. *Id.* at 290–91 (citing State v. Guzman, 842 P.2d 660, 677 (Idaho 1992); Oakes, 598 A.2d at 126). "[I]n the absence of possible suppression, the court will avoid deciding the legality of the search itself." *Id.* at 291–92 (citing State v. Smith, 73 N.W.2d 189, 190 (Iowa 1955); State *ex rel.* Kuble v. Bisignano, 28 N.W.2d 504, 508 (Iowa 1947)).

116. *Cline*, 617 N.W.2d at 292 (quoting Potter Stewart, *The Road to* Mapp v. Ohio *and Beyond: The Origins, Development and Future of the Exclusionary Rule in Search-and-Seizure Cases*, 83 COLUM. L. REV. 1365, 1392–93 (1983)).

117. *See, e.g.*, State v. Shoemaker, No. 10-1294, 2011 WL 1817844, at *3 (Iowa Ct. App. May 11, 2011). *Swartz* is discussed *supra* notes 2–9, 20, and 92.

118. *See Shoemaker*, 2011 WL 1817844, at *3–4.

independent state constitutional basis to reject the extension of the state exclusionary rule to sentencing hearings.[119]

As illustrated by the preceding historical review, Iowa courts have not taken a consistent approach when interpreting or applying the exclusionary rule. Current Iowa case law controlling the application of the exclusionary rule during sentencing is based on prevailing federal case law.[120] The justifications presented in that case law, as demonstrated in Part II, no longer match the justifications adopted in *Cline*. Thus, Iowa courts should reexamine the extent to which the exclusionary rule applies during sentencing proceedings under the Constitution of the State of Iowa.

IV. SHOULD IOWA REPLACE THE LIMITED EXCLUSIONARY RULE DURING SENTENCING?

As shown in Part III of this article, recent decisions by the Iowa Supreme Court have drawn into question the rationale supporting Iowa's application of the limited exclusionary rule during sentencing hearings.[121] The question remains: Is there sufficient support for an application of the exclusionary rule at sentencing that mirrors its application in criminal trials? Answering this requires consideration of the arguments for and against replacement of the limited exclusionary rule.

This Part will consider two of the most prominent reasons for applying the limited exclusionary rule during sentencing. First, this Part will evaluate whether the exclusionary rule's deterrent effect sufficiently balances against the alleged costs on society. Then, this Part will address whether a sentencing judge's interest in fashioning an individualized sentence supports the application of the limited exclusionary rule over a full application.

After responding to these arguments against applying the exclusionary rule during sentencing, this Part will present three arguments supporting its application. First, a robust application of the exclusionary rule during sentencing best comports with the justifications for the Iowa exclusionary rule as set forth in *Cline*. Second, replacing the existing rule will unify the exclusionary rule and its exceptions under a single purpose. Finally,

119. *See id.*

120. *See* State v. Swartz, 278 N.W.2d 22, 24–26 (Iowa 1979) (citing United States v. Schipani, 435 F.2d 26, 28 (2d Cir. 1970)). Iowa courts will only apply the exclusionary rule during sentencing if law enforcement officers violated a defendant's Fourth Amendment rights with the express purpose of influencing the sentencing court. *See id.* at 26.

121. *See supra* Part III.

application of the exclusionary rule will ensure that the judiciary has the power to fulfill its role in protecting the state constitution.

A. *Arguments Against Expanding the Exclusionary Rule During Sentencing Proceedings*

1. *Application of the Exclusionary Rule During Sentencing Hearings Exacts Too High a Cost upon Society*

Those opposing the application of the exclusionary rule during sentencing assert its application would not deter unconstitutional searches in any significant way.[122] While this argument appears to have merit on a superficial level, a closer inspection reveals two fatal flaws. First, it fails to take into account the rule's deterrent effect in any situation other than a second application of the rule after a criminal trial.[123] Second, the Iowa Supreme Court recognizes that the rule serves as more than a mechanism to deter unconstitutional conduct by law enforcement.[124] When these justifications are considered, any cost to society is outweighed by the positive effects of the rule's application during sentencing.

The United States Supreme Court recognizes that the exclusionary rule deters unconstitutional conduct by law enforcement officers when it is applied during a criminal trial.[125] However, courts generally hold that a second application of the rule during sentencing supplies only minimal additional deterrence.[126] This is founded on the belief that law enforcement would not risk their investigative work to influence the sentencing.[127] Moreover, even if the officers did find out, the first application of the rule

122. *See, e.g.*, United States v. Vandemark, 522 F.2d 1019, 1022 (9th Cir. 1975) (holding the exclusionary rule to have minimal deterrent effect in a sentencing hearing after a probation violation); United States v. Schipani, 435 F.2d 26, 28 (2d Cir. 1970); *but see* Verdugo v. United States, 402 F.2d 599, 612 (9th Cir. 1968) (finding a significant deterrent effect in applying the exclusionary rule during sentencing proceedings when the criminal conviction stems from investigations by highly specialized law enforcement units that investigate specific offenses).

123. *See Schipani*, 435 F.2d at 28.

124. *See* State v. Cline, 617 N.W.2d 277, 289 (Iowa 2000).

125. *See* Herring v. United States, 555 U.S. 135, 139–40 (2009).

126. *See, e.g.*, People v. Rose, 894 N.E.2d 156, 163 (Ill. App. Ct. 2008).

127. *See id.* ("[I]t is doubtful 'that there are many police officers who would risk the fruits of prior legitimate law enforcement activities in so cynical a fashion.'" (quoting United States v. Tauil-Hernandez, 88 F.3d 576, 581 (8th Cir. 1996))).

during trial effectively expends the deterrent power of the rule.[128] Courts have similarly reasoned that the application of the rule is not supported in a variety of non-trial proceedings.[129]

The major flaw with this rationale is it fails to consider that plea bargains resolve the vast majority of criminal cases.[130] In fact, 97 percent and 94 percent of federal and state convictions, respectively, are the result of guilty pleas.[131] This means that in each of those cases a sentencing hearing would likely be the first time—perhaps the only time—the exclusionary rule would be applied. Thus, even if a second application of the exclusionary rule has minimal additional deterrent effect, in the vast majority of cases applying the exclusionary rule during a sentencing hearing would provide undiminished deterrent force. Prohibiting the application of the exclusionary rule at sentencing because of its lack of deterrent effect greatly reduces the rule's aggregate deterrent impact by restricting it to a small number of cases.

In addition to the aggregate deterrent effect of applying the exclusionary rule during sentencing hearings, the additional justifications for the exclusionary rule recognized by the Iowa Supreme Court shift the balance in favor of applying the rule during sentencing. The *Cline* court recognized deterrence as a justification for the exclusionary rule, but also recognized additional meaningful justifications: the protection of judicial integrity and the provision of a remedy for those aggrieved by unreasonable searches.[132] The integrity of the judiciary is affected in equal measure when it admits illegally obtained evidence at sentencing as it is at trial. Moreover, the only way to completely remedy the constitutional violation created by an illegal search is to place the parties in the same position they would have been had the search never occurred.[133]

Opening sentencing hearings to the full power of the exclusionary rule

128. *See Schipani*, 435 F.2d at 28 ("[A]pplying the exclusionary rule for a second time at sentencing after having already applied it once at the trial itself would not add in any significant way to the deterrent effect of the rule.").

129. *See* United States v. Calandra, 414 U.S. 338, 351–52 (1974) (holding the exclusionary rule does not apply during grand jury proceedings); State v. Turner, 891 P.2d 317, 323 (Kan. 1995) (holding the exclusionary rule does not generally apply during probation revocation hearings).

130. *See* Missouri v. Frye, 132 S. Ct. 1399, 1408 (2012).

131. *Id.* at 1407.

132. State v. Cline, 617 N.W.2d 277, 289–90 (Iowa 2000).

133. *See id.* at 289–93.

would also provide the Iowa judiciary with many additional opportunities to educate the coordinate branches on search and seizure issues, while at the same time, encouraging institutional compliance with those lessons.[134] When considered together, these additional benefits of applying the exclusionary rule during sentencing tip the scales in favor of a full application of the rule rather than a limited application.

2. *The Sentencing Judge Needs Access to All Pertinent Information During Sentencing*

During the nineteenth century, sentencing courts began seeking to impose sentences tailored to the specific individuals upon whom they were imposed.[135] It was argued that in such a system any restriction on a sentencing judge's access to information harmed society by increasing the possibility an inappropriate sentence would be imposed upon a defendant.[136] This argument formed part of the rationale found in *United States v. Schipani* for restricting the exclusionary rule's application at sentencing.[137]

In *Schipani*, the Second Circuit Court of Appeals stated, "A sentencing judge's access to information should be almost completely unfettered in order that he may 'acquire a thorough acquaintance with the character and history of the man before [him].'"[138] In support of this, the Second Circuit quoted the following language from the Supreme Court's decision in *Williams v. New York*:

> "His task within fixed statutory or constitutional limits is to determine the type and extent of punishment after the issue of guilt has been determined. Highly relevant—if not essential—to his selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics. And modern concepts individualizing punishment have made it all the more necessary that a sentencing judge not be denied an opportunity to obtain

134. *See id.* at 290–92 (citing the need to provide guidance on search and seizure issues as a factor militating against exceptions to the exclusionary rule).

135. Williams v. New York, 337 U.S. 241, 244–45 (1949); *see also* Note, *supra* note 6, at 1257.

136. *See id.* at 247 ("Highly relevant—if not essential—to [the sentencing judge's] selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics.").

137. United States v. Schipani, 435 F.2d 26, 27 (2d Cir. 1970).

138. *Id.* (alteration in original) (quoting United States v. Doyle, 348 F.2d 715, 721 (2d Cir. 1965).

> pertinent information by a requirement of rigid adherence to restrictive rules of evidence properly applicable to the trial."[139]

As noted by the *Williams* Court, society has an interest in courts making informed sentencing decisions.[140] However, the pertinent question is not whether such an interest exists, but rather whether that interest is different than society's interest in criminal tribunals making informed decisions with regard to guilt.[141] In terms of the societal interests at stake, there is no principled distinction between criminal trials and sentencing proceedings sufficient to support a different rule for sentencing.[142]

The application of the exclusionary rule during trial and sentencing serves the same policies. Iowa courts apply the exclusionary rule to give effect to the Iowa constitution.[143] A constitutional violation that begins with an illegal search will not be completely remedied if the evidence is allowed at sentencing. In fact, consideration of excluded evidence during sentencing may erode any remedial effect its exclusion during trial may have had.[144] If the exclusionary rule was a mere rule of evidence, it might be good policy to push it aside to further the policy of giving a judge the best information possible. However, giving effect to the Iowa constitution should never take a back seat to evidentiary rules or policy.

B. *Arguments in Favor of Applying the Full Exclusionary Rule During Sentencing*

As discussed in Part III, *Cline* established a broader purpose for the Iowa exclusionary rule than the federal rule.[145] In that case, the Iowa Supreme Court recognized the protection of judicial integrity, the provision of a remedy for the violation of a right, and promotion of institutional compliance as vital parts of the purpose of Iowa's exclusionary rule.[146] The current limited exclusionary rule applied by Iowa sentencing courts does not comport with these purposes as well as a more robust exclusionary rule does.

139. *Id.* (footnote omitted in original) (quoting *Williams*, 337 U.S. at 247).

140. *Id.*

141. *See* Note, *supra* note 6.

142. *Id.*

143. *See, e.g.*, State v. Cline, 617 N.W.2d 277, 290–91 (Iowa 2000) (stating that limiting the exclusionary rule with "a good faith exception would effectively defeat the purpose of the search and seizure clause").

144. *See* Note, *supra* note 6.

145. *See Cline*, 617 N.W.2d at 289–90.

146. *Id.* at 289–92.

The *Swartz* court justified its decision to apply a limited exclusionary rule at sentencing on pure deterrence grounds.[147] Under *Swartz*, evidence is excluded only when an officer violates a defendant's constitutional rights with "the express purpose of influencing the sentencing court."[148] This application leaves open a number of potential circumstances where the court may be forced to compromise judicial integrity by allowing the use of illegally seized evidence during sentencing. Thus, the current application of the exclusionary rule in Iowa allows a trial judge to avoid being an accomplice to illegal conduct, but does not provide the same protection to a sentencing judge.[149]

A limited form of exclusion will not promote additional care on the part of law enforcement officials to the same extent simply applying the rule consistently at trial and sentencing would.[150] It is rational to believe that law enforcement officers are aware of what evidence may be considered at trial and during sentencing. Knowledge that all evidence may be considered at sentencing may motivate law enforcement to engage in unconstitutional searches.[151] Moreover, knowledge that illegally seized evidence will be excluded in every criminal proceeding, not just the small percentage that actually go to trial, will provide additional motivation to comply with constitutional mandates.

The limited exclusionary rule does not provide a complete remedy to defendants whose constitutional rights are violated. *Cline* specifically noted the provision of a remedy was one of the purposes of the exclusionary rule.[152] Under the limited rule, any situation where an unconstitutional search occurred due to negligence would leave a defendant without a remedy.[153] Practically speaking, the difficulty of demonstrating that a law enforcement officer's express purpose in executing a search was to influence the

147. *See* State v. Swartz, 278 N.W.2d 22, 25–26 (Iowa 1979).

148. *Id.* at 26 (citing United States v. Schipani, 435 F.2d 26, 28 (2d Cir. 1970)).

149. *See Cline*, 617 N.W.2d at 290.

150. *See id.* The Iowa Supreme Court noted that a good faith exception would "encourage lax practices by government officials in all three branches of government." *Id.* (citing State v. Marsala, 579 A.2d 58, 67 (Conn. 1990); People v. Sundling, 395 N.W.2d 308, 314 (Mich. Ct. App. 1986); State v. Novembrino, 519 A.2d 820, 854 (N.J. 1987); People v. Bigelow, 488 N.E.2d 451, 458 (N.Y. 1985); State v. Oakes, 598 A.2d 119, 125 (Vt. 1991)). Arguably, any exception to the exclusionary rule would have a similar effect.

151. *See* Verdugo v. United States, 402 F.2d 599, 613 (9th Cir. 1968); Note, *supra* note 6.

152. *See Cline*, 617 N.W.2d at 289.

153. *See id.* at 291; State v. Swartz, 278 N.W.2d 22, 26 (Iowa 1979).

sentencing court leaves defendants without a remedy in virtually every sentencing hearing.[154] Applying the exclusionary rule without regard to an officer's subjective intent will provide a more complete remedy and better serve the purposes outlined in *Cline*.

C. *Replacing the Limited Exclusionary Rule Will Give the Rule a Unified Purpose that Better Serves the Interests of Sentencing and Due Process*

The application of the limited exclusionary rule runs counter to the purpose of the other exceptions to the exclusionary rule. Other exceptions to the exclusionary rule do not put the state or the defendant into different positions than they were in before a constitutional violation occurred,[155] but the limited exclusionary rule, on the other hand, allows the state to benefit from a constitutional violation. This result harms the due process interests and frustrates defendants' rehabilitative prospects.[156] Applying the full exclusionary rule during sentencing proceedings will prevent the state from benefitting from constitutional violations, protect due process, and increase a defendant's chances at rehabilitation.

While Iowa case law has not fully explored the contours of a defendant's due process rights during sentencing proceedings, the Iowa Supreme Court has recognized that due process requires sentencing procedures to be fair.[157] Moreover, ordered liberty requires complete fairness whenever citizens are is deprived of their liberty.[158] By allowing the state to benefit from the violation of a defendant's constitutional rights, the limited exclusionary rule reduces fairness of such hearings in violation of the defendant's due process rights.

154. *See* United States v. Jewel, 947 F.2d 224, 238 (7th Cir. 1991) (Easterbrook, J., concurring) (noting no defendant has made a showing of express purpose required under *Verdugo* in more than two decades).

155. State v. Seager, 571 N.W.2d 204, 211 (Iowa 1997) (holding that the attenuation, independent source, and inevitable discovery exceptions to the exclusionary rule are "based on the belief 'the interest of society in deterring unlawful police conduct and the public interest in having juries receive all probative evidence of a crime are properly balanced by putting the police in the same, not a *worse*, position [than] they would have been in if no police error or misconduct had occurred'" (quoting Nix v. Williams, 467 U.S. 431, 443 (1984)) (alteration in original)).

156. *See* Note, *supra* note 6, at 1259–60.

157. *See* State v. Delano, 161 N.W.2d 66, 72 (Iowa 1968) ("[T]he hearing must measure up to the essentials of due process and fair treatment." (quoting Kent v. United States, 383 U.S. 541, 562 (1966)) (internal quotation marks omitted)).

158. *See* Note, *supra* note 6, at 1260.

In addition to due process, fair sentencing procedures serve the goals of criminal punishment.[159] Iowa's legislative branch has specifically noted that the rehabilitation of the defendant is one of the purposes of criminal punishment.[160] A defendant has the greatest chance at successful rehabilitation when that person believes the system is fair.[161] If the purpose of punishing a criminal defendant is rehabilitation, and unfairness frustrates rehabilitation, then why does the judiciary frustrate this purpose by perpetuating unfair procedures?

Moreover, why utilize a rule that requires the consideration of the subjective intent of law enforcement officers? The application of the exclusionary rule in any other circumstance is categorical and objective.[162] How does the officer's intent make an unreasonable search less abhorrent to the constitution or reduce the importance of deterrence? Elimination of the limited exclusionary rule would make application of the rule completely categorical, and the determination of whether it should apply would be based upon objective criteria regardless of when it is applied.

D. *Full Application of the Exclusionary Rule During Sentencing Hearings is an Obligation that Iowa Courts Must Adopt*

It is the responsibility of the Iowa Supreme Court "to protect constitutional rights of individuals from legislative enactments."[163] This responsibility forms part of the foundation that the Iowa Supreme Court has used to support its judicial review of legislative acts.[164] The exclusionary rule itself easily fits within the same framework that supports judicial review and therefore courts should be obligated to apply it.[165]

At first blush, it may seem inappropriate to compare judicial review to the exclusionary rule. However, a closer examination reveals some

159. *See id.* at 1259–60.

160. *See* IOWA CODE § 907.5 (2015).

161. *See* Note, *supra* note 6, at 1259–60.

162. *See* United States. v. Jewel, 947 F.2d 224, 239 (7th Cir. 1991) (Easterbrook, J., concurring) ("Not one of the Supreme Court's opinions implies that the rule may apply when the police have one motive and dissolve when the police have a different one.").

163. *See* Varnum v. Brien, 763 N.W.2d 862, 876 (Iowa 2009).

164. *See id.*

165. *See generally* Thomas S. Schrock & Robert C. Welsh, *Up from* Calandra: *The Exclusionary Rule as a Constitutional Requirement*, 59 MINN. L. REV. 251, 300–02 (1974); Rohith V. Srinivas, *The Exclusionary Rule as Fourth Amendment Judicial Review*, 49 AM. CRIM. L. REV. 179, 213–14 (2012).

interesting similarities. First, neither judicial review nor the exclusionary rule finds express support within the text of the constitution.[166] Second, if the court does nothing to stop the unconstitutional behavior of a coordinate branch, the court may view itself as aiding and abetting that conduct.[167]

If the judiciary allows unconstitutional laws to be enforced or allows illegally seized evidence to be used, then the violated portions of the Constitution are effectively non-existent.[168] Courts should not, as Justice Marshall opined, be instruments for violating the very constitution they swore an oath to support; nor should they, as Justice Day warned, sanction illegal seizures committed by those who execute criminal laws.[169]

Finally, judges, who are sworn to support the constitution, must act to stop the coordinate branches' unconstitutional behavior by ruling on the cases and controversies they preside over.[170] Viewed from this perspective, the rationale used to support judicial review necessarily leads to the obligation to apply the exclusionary rule.[171]

Not only is the supporting rationale of these two judicial powers similar, but so is the end result. The decision not to apply an unconstitutional statute places the state and the person the state wishes to regulate in the same positions they would have been had the unconstitutional government action never taken place.[172] The exclusionary rule aims to attain the same result with regards to an unconstitutional search.[173]

If the exclusionary rule is understood as a form of judicial review, its full application will be mandatory in every case.[174] If judicial review is constitutionally required, so too will the exclusionary rule be a constitutional requirement.[175] If judicial review was not originally required by the constitution itself, its consistent application has made it part of the modern understanding of the judicial power of the courts.[176] Thus, if the exclusionary

166. *See* Srinivas, *supra* note 165, at 180–82.

167. *See* State v. Cline, 617 N.W.2d 277, 290 (Iowa 2000); Srinivas, *supra* note 165, at 202.

168. *See Cline*, 617 N.W.2d at 290; Srinvas, *supra* note 165, at 199.

169. Srinivas, *supra* note 165, at 198–202 (citations omitted).

170. *Id.* at 203.

171. *Id.* at 209–10.

172. *Id.* at 211.

173. *Cline*, 617 N.W.2d at 289.

174. Srinivas, *supra* note 165.

175. *Id.* at 213.

176. *Id.*

rule is mandatory in all cases there is no room for an exception to its application during sentencing hearings—a per se application of the rule is the only way for the courts to fulfill their role as defenders of the constitutional rights of individuals.

V. CONCLUSION

When the only rationale for the application of the exclusionary rule during sentencing is its deterrence value, it is difficult to justify its application during sentencing. However, when the exclusionary rule has a broader justification—like that of Iowa's exclusionary rule—the argument for its full application during sentencing becomes much more convincing.

As this Note has argued, the current application of the exclusionary rule in Iowa does not provide a complete remedy for the violation of a constitutional right. Under the current rule, any constitutional violation caused by an officer's negligence or mistake will be left un-remedied during sentencing. Additionally, the limited exclusionary rule violates a defendant's due process interests and frustrates the purposes of the criminal punishment. Moreover, the limited exclusionary rule runs contrary to the purpose of the other exceptions to the exclusionary rule by allowing the state to benefit from a constitutional violation. Finally, the current rule prevents the Iowa Judiciary from fulfilling its duty to protect the rights of individuals. In combination, these three arguments provide a compelling reason for the Iowa Supreme Court to overturn *State v. Swartz* and extend the application of the exclusionary rule during sentencing proceedings to the same extent that it would be applied at trial under the Iowa Constitution.

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