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Hudson v. Michigan: The Supreme Court Knocks and Announces the Demise of the Exclusionary Rule

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HUDSON V. MICHIGAN: THE SUPREME COURT KNOCKS AND ANNOUNCES THE DEMISE OF THE EXCLUSIONARY RULE

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I. INTRODUCTION

In *Wilson v. Arkansas*,[1] the Supreme Court held that the common law knock-and-announce principle "forms a part of reasonableness inquiry under the Fourth Amendment."[2] In *Hudson v. Michigan*,[3] however, the Court ruled that the exclusionary rule need not be applied to a knock-and-announce violation. Although the majority in *Hudson* claims to believe otherwise, the most immediate effect of the ruling in *Hudson* will be the likely evisceration of the constitutionally required knock-and-announce principle. The more long-range effect, however, may be the actual demise of the exclusionary rule itself.

The Court could have reached the same result in *Hudson* by basing its decision on the somewhat narrow grounds of the lack of but-for causation or the application of the inevitable discovery doctrine. In addition to those grounds, however, the majority chose to launch a wide-ranging assault on the exclusionary rule itself. The majority altered the attenuation limitation on the exclusionary rule in such a way that only a violation of those provisions of the Fourth Amendment that are meant to protect against the government "seeing or taking evidence"[4] will result in the suppression of any evidence. More importantly, the Court challenged the current primary justification for the exclusionary rule itself--that the suppression of evidence is necessary to deter the police from violating the Fourth Amendment. The Court claims that much has changed since *Mapp v. Ohio*[5] applied the exclusionary rule to the states and that other methods of deterrence—such as civil suits, "increasing professionalism of police forces,"[6] and "a new emphasis on internal police discipline"[7]—make "[r]esort to the massive remedy of

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1. 514 U.S. 927 (1995).
2. *Id.* at 929.
3. ___ U.S. ___, 126 S. Ct. 2159 (2006).
4. *Id.* at 2165.
5. 367 U.S. 643 (1961).
6. *Hudson*, 126 S. Ct. at 2168
7. *Id.*

suppressing evidence of guilt . . . unjustified."[8]

The decision in *Hudson* indicates a willingness on the part of the Court to reconsider whether the exclusionary rule is a justified deterrence for any Fourth Amendment violations. Although the majority opinion was written by Justice Scalia, it is significant that both Chief Justice Roberts and Justice Alito were willing to join in this not very subtle announcement of the demise of the exclusionary rule. Justice Kennedy made a rather feeble attempt to suggest otherwise, when he announced "the continued operation of the exclusionary rule, as settled and defined by our precedents, is not in doubt."[9]

II. *HUDSON* PROCEDURAL BACKGROUND

The police obtained a warrant to search for drugs and firearms at the home of Booker Hudson. When the police arrived at Hudson's house to execute the warrant, they announced their presence but waited only "three to five seconds" before they entered Hudson's home.[10] The police found large quantities of drugs, including cocaine rocks in Hudson's pocket. A loaded gun was found lodged between the cushion and armrest of the chair in which he was sitting. Hudson was charged in Michigan state court with unlawful drug and firearm possession.[11]

In the Michigan trial court Hudson moved to suppress all of the inculpatory evidence on the ground that the police had violated his Fourth Amendment rights when they failed to properly "knock and announce" before they entered his house to execute the warrant.[12] The trial court granted the motion. On an interlocutory appeal, the Michigan Court of Appeals reversed, relying on cases from the Michigan Supreme Court holding that the exclusionary rule should not be applied when "entry [to a home] is made pursuant to a warrant but without proper 'knock and announce.'"[13] The Michigan Supreme Court then denied leave to appeal.[14] At trial, Hudson was convicted of drug possession and renewed his Fourth Amendment claim on appeal. The Court of Appeals rejected that claim and affirmed Hudson's conviction. The Michigan Supreme Court again declined to review that decision.[15] The United States Supreme Court granted certiorari.[16]

Oral argument was originally held on January 9, 2006. After Justice Alito joined the Court on January 31, 2006, the case was re-argued on May 18, 2006. On June 15, 2006, the Court affirmed Hudson's conviction, holding in a five-to-four decision that the violation of the knock-and-announce rule did not require the application of the exclusionary rule to all of the evidence found in the search.

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8. *Id.*
9. *Id.* at 2170 (Kennedy, J. Concurring).
10. *Id.* at 2162.
11. *Hudson*, 126 S. Ct. at 2162.
12. *Id*
13. *Id.* (citing *People v. Vasquez*, 602 N.W.2d 376 (Mich. 1999) and *People v. Stevens*, 597 N.W. 2d 53 (Mich. 1999)).
14. *People v. Hudson*, 639 N.W.2d 255 (Mich. 2001).
15. *People v. Hudson*, 692 N.W.2d 385 (Mich. 2005).
16. 125 S. Ct. 2964 (2005).

III. BACKGROUND ON KNOCK-AND-ANNOUNCE AND EXCLUSIONARY RULES

The majority opinion, written by Justice Scalia,[17] began with a brief discussion of the history of the knock-and-announce rule. The Court pointed out that the "common-law principle that law enforcement officers must announce their presence and provide residents an opportunity to open the door is an ancient one."[18] That common-law principle has also been a part of federal statutory law since 1917, and in the 1995 case of *Wilson v. Arkansas*[19] the Court finally held that "[the] common-law 'knock and announce' principle forms a part of the reasonableness inquiry under the Fourth Amendment"[20] and that "a search or seizure of a dwelling might be constitutionally defective if police officers enter without prior announcement."[21]

Although *Wilson* held that the knock-and-announce rule was "a command of the Fourth Amendment,"[22] the Court also recognized the following exceptions to that command: when the police have reasonable suspicion of a threat of physical violence or the destruction of evidence, or that knocking and announcing would be futile.[23] In *United States v. Banks*,[24] the Court addressed the issue of how long after the "knock and announcement" an officer must wait before entering the home, holding that the fifteen-to tewnty-second wait in that case was reasonable.[25]

None of these issues were raised in *Hudson*, however, because the prosecutor conceded at the trial level that the officer's entry into Hudson's home was a violation of the knock-and-announce rule in *Wilson*.[26] The Court in *Wilson* had specifically declined to decide whether the exclusionary sanction was an appropriate remedy for a knock-and-announce violation.[27] That issue was squarely presented in *Hudson*.[28]

In the 1914 case of *Weeks v. United States*,[29] the Court first adopted the

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17. Justices Roberts, Thomas, and Alito joined the opinion, and Justice Kennedy concurred in the judgment and in all but Part IV of Scalia's opinion. Justice Breyer filed a dissenting opinion in which Justices Stevens, Souter, and Ginsburg joined.

18. *Hudson*, 126 S. Ct. at 2162.

19. 514 U.S. 927.

20. *Id* at 929.

21. *Id* at 936.

22. *Hudson*, 126 S. Ct. at 2162.

23. *Richards v. Wis.*, 520 U.S. 385, 394 (1997), *Wilson*, 514 U.S. at 936.

24. 540 U.S. 31 (2003).

25. *Hudson*, 126 S. Ct. at 2163. *Banks* held that the:

> proper measure was not how long it would take the resident to reach the door, but how long it would take to dispose of the suspected drugs—but that such a time (15 to 20 seconds in that case) would necessarily be extended when, for instance, the suspected contraband was not easily concealed.

Id.

26. *Id.*

27. 514 U S. at 937 n. 4.

28. *Hudson*, 126 S. Ct. at 2163. The Court granted certiorari on the question:

> Does the inevitable discovery doctrine create a *per se* exception to the exclusionary rule for evidence seized after a Fourth Amendment "knock and announce" violation, as the Seventh Circuit and the Michigan Supreme Court have held, or is evidence subject to suppression after such violations, as the Sixth and Eighth Circuits, the Arkansas Supreme Court, and the Maryland Court of Appeals have held?

2005 WL 856040 at *i (2005).

29. 232 U.S. 383 (1914).

"exclusionary rule" which generally requires the exclusion at trial of evidence obtained in violation of the Fourth Amendment. The rule was applied to the States, through the Fourteenth Amendment, in 1961 in *Mapp v. Ohio*.[30] Over the years, the Court has recognized a number of qualifications of and exceptions to the exclusionary rule. For example, the Court has not applied the exclusionary rule to situations in which an officer executes a defective search warrant in "good faith",[31] parole revocation proceedings,[32] civil tax proceedings,[33] grand jury proceedings,[34] federal habeas proceedings,[35] clerical errors by court employees,[36] impeachment,[37] evidence obtained through an independent source,"[38] or evidence which would have been inevitably discovered.[39]

IV. *HUDSON* HAS ALTERED THE EXCLUSIONARY RULE ANALYSIS

The majority in *Hudson* clearly held that the exclusionary rule is inapplicable to a knock-and-announce violation.[40] The initial basis of the Court's decision was the rather simple principle that the knock-and-announce violation did not satisfy the basic but-for causation requirement for the application of the exclusionary rule. As the Court stated, "[i]n this case, of course, the constitutional violation of an illegal *manner* of entry was *not* a but-for cause of obtaining the evidence."[41] The Court also seemed to suggest that the exclusionary rule would not apply because the evidence would have inevitably been discovered. As the Court explained, "[w]hether the preliminary misstep had occurred *or not*, the police would have executed the warrant they had obtained, and would have discovered the gun and drugs inside the house."[42] Although the dissenters disagreed with these conclusions,[43] the five-Justice majority did in fact make these statements and

30. 367 U.S. 643. *Mapp* overruled an earlier Supreme Court decision, *Wolf v. Colo.*, 338 U.S. 25 (1949), which held that although the Fourth Amendment was enforceable against the states through the Due Process Clause of the Fourteenth Amendment, the exclusionary rule was not.

31. *U.S. v. Leon*, 468 U.S. 897 (1984).

32. *Penn. Bd. of Probation & Parole v. Scott*, 524 U S. 357 (1998).

33. *U.S. v. Janis*, 428 U.S. 433 (1976).

34. *U.S. v Calandra*, 414 U.S. 338 (1974).

35. *Stone v. Powell*, 428 U.S. 465 (1976).

36. *Ariz. v. Evans*, 514 U.S. 1 (1995).

37. *U.S. v. Havens*, 446 U.S. 620 (1980).

38. *Wong Sun v. U S.*, 371 U.S. 471 (1963); *Silverthorne Lumber Co. v. U.S*, 251 U.S. 385 (1920)*Wong Sun v. U.S.*, 371 U.S. 471 (1963).

39. *Nix v. Williams*, 467 U.S. 431 (1984).

40. 126 S. Ct. at 2165.

41. *Id.* at 2164.

42. *Id.*

43. In response to the claim that "the illegal *manner* of entry was *not* a but-for cause of obtaining the evidence," Justice Breyer stated in dissent,

> I do not see how that can be so. Although the police might have entered Hudson's home lawfully, they did not in fact do so. Their unlawful behavior inseparably characterizes their actual entry; that entry was a necessary condition of their presence in Hudson's home; and their presence in Hudson's home was a necessary condition of their finding and seizing the evidence.

126 S. Ct. at 2177 (Breyer, Stevens, Souter & Ginsburg, JJ., dissenting) (internal citation omitted). Justice Breyer also disagreed with the majority's application of the inevitable discovery doctrine:

> The question is not what the police might have done had they not behaved unlawfully. The question is what they did do Was there set in motion an independent chain of events that would have inevitably led to the discovery and seizure of the evidence despite, and independent of, that

could have simply rested their decision on them. The majority, however, chose to depart from the sole issue on which it had granted certiorari—inevitable discovery[44]—and expand its rationale to include a broad-ranging discussion of the exclusionary rule in which they fundamentally altered the traditional application of the exclusionary rule.

V. ATTENUATION

Even though the majority held that there was no but-for causation upon which to base the exclusionary rule, it proceeded to discuss the "attenuation" doctrine that was first articulated in *Nardone v. United States*[45] and expanded upon in *Wong Sun v. United States*.[46] In *Wong Sun*, the Court held that the exclusionary rule would not be applied to all evidence that was causally related to a Fourth Amendment violation because

> not . . . all evidence is "fruit of the poisonous tree" simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint."[47]

Some evidence might be so attenuated from the primary illegality because the causal connection is remote in time.[48] The Court has also recognized that attenuation might occur when "the interest protected by the constitutional guarantee that has been violated would not be served by suppression of the evidence obtained."[49] In applying this aspect of the attenuation doctrine, the *Hudson* majority described the interests protected by the knock-and-announce rule as: (1) "the protection of life and limb, because an unannounced entry may provoke violence in supposed self-defense by the surprised resident,"[50] (2) the protection of property because the knock-and-announce rule gives individuals "the opportunity to comply with the law and to avoid the destruction of property occasioned by a forcible entry,"[51] and (3) "those elements of privacy and dignity that can be destroyed by a sudden entrance" or "[i]n other words, it assures the opportunity to collect oneself before answering the door."[52] The Court concluded, "[w]hat the knock-announce-rule has never protected, however, is one's interest in preventing the government from seeing or taking evidence described in a warrant. [Because] the interests that *were* violated in this case have nothing to do with the seizure of the evidence, the exclusionary rule is inapplicable."[53]

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behavior? The answer here is 'no.'

Id. at 2179.

44. Review *supra* n. 28.

45. 308 U.S. 338 (1939).

46. 371 U.S. 471.

47. *Id.* at 487–88 (quoting John MacArthur Maguire, *Evidence of Guilt: Restrictions upon Its Discovery or Compulsory Disclosure* 221 (Little, Brown & Co. 1959).

48. *See e.g. Nardone*, 308 U S. at 341; *Wong Sun*, 371 U.S. at 484–87.

49. *Hudson*, 126 S. Ct. at 2164.

50. *Id.* at 2165.

51. *Id.* (quoting *Richards*, 520 U.S. at 393 n. 5).

52. *Id.*

53. *Id.*(emphasis in original).

While there is ample precedent for the basic premise that attenuation may be affected by the interest protected by the constitutional provision in question, the Court's attempt to narrowly define those interests with reference to the various subparts of the constitutional provisions "departs from prior law."[54] The only case that the Court cited in support of its attenuated interest theory was *New York v. Harris*,[55] in which the Court refused to suppress Harris' statement made outside his house following Harris's illegal in-house arrest. Although the Court did say that such suppression "would not serve the purpose of the rule that made Harris' in-house arrest illegal,"[56] the Court did not attempt to parse the interests served by various parts of the Fourth Amendment. Rather, it spoke of the broader purpose of the warrant requirement being "to protect the home."[57] The *Harris* Court was concerned with the broader differences in purpose between the Fourth Amendment and the Fifth Amendment privilege against self-incrimination, not alleged differences in purpose between various provisions of the Fourth Amendment itself.

This new attenuated interest approach to the exclusionary rule has the potential for application far beyond the rather narrow knock-and-announce situation in *Hudson*. The current interpretation is that the Fourth Amendment generally requires a warrant based on probable cause to search a home be issued *before* the home is searched. But under the Court's new attenuated interest approach, a future decision might choose to separately delineate the purposes served by the warrant and probable cause requirements. The Court might say that the purpose served by the probable cause requirement is related to protecting one's interest in privacy in the home or, as characterized in *Hudson*, "one's interest in preventing the government from seeing or taking evidence."[58] Furthermore, under the Court's new approach, a future Court might decide to characterize the interest protected by the warrant requirement itself as simply ensuring that the probable cause determination is made by a "neutral and detached"[59] magistrate and not otherwise specifically related to "seeing or taking evidence."[60] Under such an approach, the lack of probable cause to search a home might warrant the application of the exclusionary rule, but the failure to have that determination made by a neutral and detached magistrate *prior* to the search would not, turning current Fourth Amendment law on its head. As Justice Breyer wrote, in a very understated manner, "such efforts to trace causal connections at retail could well complicate Fourth Amendment suppression law, threatening its workability."[61]

VI. DETERRENCE RATIONALE

The application of the exclusionary rule has long been guided by an analysis of whether "its deterrence benefits outweigh its 'substantial social costs.'"[62] In *Hudson*, the

54. *Hudson*, 126 S. Ct. at 2181 (Breyer, Stevens, Souter & Ginsburg, JJ., dissenting).
55. 495 U.S. 14 (1990).
56. *Id.* at 20.
57. *Id.*
58. 126 S. Ct. at 2165.
59. *Lo-Ji Sales, Inc v. N.Y.*, 442 U.S. 319, 326 (1979).
60. *Hudson*, 126 S. Ct. at 2165.
61. *Id.* at 2181 (Breyer, Stevens, Souter & Ginsburg, JJ., dissenting).
62. *Id.* at 2165 (majority).

Court pointed out the usual social costs attributed to the application of the exclusionary rule—"the suppression of all evidence"[63] and "extensive litigation to determine whether particular evidence must be excluded."[64] The Court also added the rather unique concept that the application of the exclusionary rule to a knock-and-announce violation might actually deter the police from entering a home before they have knocked and announced to the cost side of the analysis.[65] Although the Court purports to be concerned that the exclusionary rule would result in officers waiting too long to enter—resulting in preventable violence and the destruction of evidence—it is hard to imagine that this is a realistic problem given the very low threshold for knock-and-announce exceptions[66] or the very short wait time when the knock-and-announce rule actually applies.[67]

The most troubling aspect of the Court's decision, however, is its discussion of the "deterrence" side of the analysis. By abandoning the deterrence rationale that has been applied for over forty years, the Court has signaled the demise of the exclusionary rule as it has been applied since 1914. Deterrence of unlawful police conduct has long been the primary rationale for the exclusionary rule. In *Mapp v. Ohio*,[68] in which the Supreme Court overruled *Wolf v. Colorado*[69] and applied the exclusionary rule to the states, the Court based its decision, in part, on its determination that other sanctions against the police for violating the Constitution were simply ineffective. One of the reasons given in Wolf for not applying the exclusionary rule to the states was that "other means of protection"[70] had been afforded. However, the *Mapp* Court concluded that "such other remedies have been worthless and futile"[71] and referred to "[t]he obvious futility of relegating the Fourth Amendment to the protection of other remedies."[72] The majority in *Hudson* has challenged this premise and, in the process, has set the stage for the demise of the exclusionary rule.

Booker Hudson, of course, argued that "without suppression there will be no deterrence of knock-and-announce violations at all."[73] The Court, however, emphatically disagreed and challenged the very foundation of the *Mapp* Court's deterrence rationale by stating that "[w]e cannot assume that exclusion in this context is necessary deterrence simply because we found it was necessary deterrence in different contexts and long ago."[74] The Court then cited the changes in the legal system that had

63. *Id.* at 2166.

64. *Id.*

65. *Hudson*, 126 S. Ct. at 2166.

66. The Court has recognized exceptions to the knock-and-announce requirement when the police have reasonable suspicion of the threat of physical violence, that evidence would likely be destroyed if advance notice were given, or if knocking and announcing would be futile. *Id.* at 2162–63. The Court has acknowledged that "[t]his showing is not high." *Id.* at 2163 (quoting *Richards*, 520 U.S. at 394).

67. In *Banks*, the Court approved a wait of fifteen-to-twenty seconds as reasonable. 540 U.S. at 38–40.

68. 367 U.S. 643.

69. 338 U.S. 25; *see also supra* n. 30.

70. *Id.* at 30.

71. *Mapp*, 367 U.S. at 652.

72. *Id.*

73. *Hudson*, 126 S. Ct. at 2166.

74. *Id.* at 2167.

occurred since 1961:

> Dollree Mapp could not turn to 42 U.S.C. § 1983 for meaningful relief; which began the slow but steady expansion of that remedy, was decided the same Term as Mapp. It would be another 17 years before the § 1983 remedy was extended to reach the deep pockets of municipalities. Citizens whose Fourth Amendment rights were violated by federal officers could not bring suit until 10 years after Mapp.75

The Court pointed out the availability of attorney's fees for civil rights plaintiffs and the expansion of "[t]he number of public-interest law firms and lawyers who specialize in civil-rights grievances."[76] The Court also cited to a few cases in which lower courts have allowed "colorable knock-and-announce suits to go forward, unimpeded by assertions of qualified immunity."[77] In a conclusion that the dissenters characterized as "support free,"[78] the Court simply declared: "*As far as we know*, civil liability is an effective deterrent here, as we have assumed it is in other contexts."[79]

The Court then turned its attention to "[a]nother development over the past half-century that deters civil-rights violations[,] the increasing professionalism of police forces, including a new emphasis on internal police discipline."[80] In 1980, the Court felt it proper to "assume" that unlawful police behavior would "be dealt with appropriately" by the authorities.[81] The Court then stated that "we now have increasing evidence that police forces across the United States take the constitutional rights of citizens seriously"[82] such that "it is not credible to assert that internal discipline, which can limit successful careers, will not have a deterrent effect."[83] The Court then concluded by pointing out that the deterrences against constitutional violations are "incomparably greater than the factors deterring warrantless entries when *Mapp* was decided. Resort to the massive remedy of suppressing evidence of guilt is unjustified."[84]

Yale Kamisar has provided some interesting insight into the "professionalism of police forces" and the efficacy of alternative methods of deterrence at the time of the *Mapp* decision. In an article titled *In Defense of the Search and Seizure Exclusionary Rule*,[85] Kamisar describes the reaction of various law enforcement officials to the *Mapp* decision. Michael Murphy, the police commissioner of New York City at the time, described *Mapp* as having "a dramatic and traumatic effect"[86] and creating "tidal waves and earthquakes which require rebuilding of our institutions sometimes from their very foundations upward."[87] In a similar vein, former Philadelphia assistant district attorney (and future U.S. Senator) Arlen Specter reported that "[p]olice practices and prosecution

75. *Id.* (internal citations omitted).
76. *Id.*
77. *Id.*
78. *Hudson*, 126 S. Ct. at 2175(Breyer, Stevens, Souter & Ginsburg, JJ., dissenting).
79. *Id.* at 2167–68 (majority) (emphasis added).
80. *Id.* at 2168.
81. *Id.* (quoting *U.S. v. Payner*, 447 U.S. 727, 733–34 & n. 5 (1980)).
82. *Hudson*, 126 S. Ct. at 2168.
83. *Id.*
84. *Id.*
85. 26 Harv. J.L. & Pub. Policy 119 (2003).
86. *Id.* at 123.
87. *Id.* at 124 (italics omitted).

procedures were revolutionized in many states by the holding"[88] in *Mapp*. Of course, *Wolf* had already imposed the substantive requirements of the Fourth Amendment on the States in 1949.[89] The only reason that *Mapp* created "tidal waves and earthquakes" and "revolutionized" police practices is because, without a suppression sanction, the police and prosecutors had simply been ignoring the requirements of the Fourth Amendment.

The *Hudson* majority contends that the world has changed since 1961 and that the "increasing professionalism of police forces including a new emphasis on internal police discipline" now lets us "assume" that improper police conduct would now be deterred even in the absence of an exclusionary sanction. Police response to the absence of a suppression sanction with regard to some *Miranda* violations, however, might shed some light on that assumption.

In *Miranda v. Arizona*,[90] the Supreme Court held that in order for a statement that was the product of custodial interrogation to be admissible in the government's case-in-chief, certain warnings and procedures needed to be followed in order to protect the suspect's privilege against self-incrimination. In *Oregon v. Elstad*,[91] however, the Court effectively held that the traditional fruit of the poisonous tree provision of the exclusionary rule would not be applied to a statement obtained in violation of *Miranda*. Consequently, a statement obtained subsequent to a *Miranda* violative statement would not be subject to suppression. As a result, police departments across the country developed an interrogation protocol that would allow them to obtain an admissible statement by intentionally taking advantage of the absence of an exclusionary sanction. This protocol--which the Court has referred to as "question-first,"—"calls for giving no warnings of the rights to silence and counsel until interrogation has produced a confession."[92] Although such a statement would generally be inadmissible under *Miranda*, "the interrogating officer follows it with *Miranda* warnings and then leads the suspect to cover the same a second time"[93] in the hope of obtaining a statement that would not be suppressed because of the holding in *Elstad*. The Supreme Court, however, in the plurality opinion of *Missouri v. Seibert*[94] held "because this midstream recitation of warnings after interrogation and unwarned confession could not effectively comply with *Miranda*'s constitutional requirement, . . . a statement repeated after a warning in such circumstances is inadmissible."[95]

Rather than acting as a deterrence, the "increasing professionalism of police forces" is, in part, responsible for the question-first interrogation protocol struck down in *Seibert*. An officer in the police department involved in *Seibert* testified that that

88. *Id* at 125.
89. Review *supra* note 30.
90. 384 U.S. 436 (1966).
91. 470 U.S. 298 (1985).
92. *Mo. v. Seibert*, 542 U.S. 600, 604, 611 (2004) (plurality).
93. *Id.* at 604.
94. 542 U.S. 600.
95. Justice Stevens, Ginsburg, and Breyer joined in the opinion written by Justice Souter. Justice Kennedy concurred in the judgment that the statement was inadmissible, writing that "[t]he interrogation technique used in this case is designed to circumvent *Miranda v. Arizona*" and that "it undermines the *Miranda* warning and obscures its meaning." *Id.* at 618 (Kennedy, J., concurring).. Justice Kennedy further characterized the two-step interrogation technique as a "deliberate violation of *Miranda*." *Id.* at 620.

protocol "was promoted not only by his own department, but by a national police training organization and other departments in which he had worked."[96] The Court also cited to a police law manual that promoted the same practice[97] and to numerous reported cases that question-first practice had been followed in "obedience to departmental policy."[98]

One legitimate difference between the *Miranda* violation in *Seibert* and the knock-and-announce violation in *Hudson* is that while the knock-and-announce violation is complete upon entry of someone's home, *Miranda* may not be violated until the statement is admitted in court.[99] One might argue that question-first interrogation scheme in *Seibert* situation the did not amount to a constitutional violation, at least so long as the statement was not introduced into evidence. While that may be accurate, *Seibert* still illustrates the lengths to which the police "profession" will go to skirt constitutional protections when encouraged to do so by the absence of the exclusionary rule. And *Seibert* certainly does not support the proposition that "police forces across the United States take the constitutional rights of citizens seriously."

VII. CONCLUSION

In *Hudson v. Michigan*, the Supreme Court granted certiorari on the narrow question of whether the inevitable discovery doctrine should be applied to a knock-and-announce violation. Instead of confining its decision to that question, however, the Court, with new Justices Roberts and Alito, chose instead to create the framework for the demise of the Fourth Amendment exclusionary rule. The decision in *Hudson* has now made it possible to so finely delineate the interests protected by various parts of the Fourth Amendment that the exclusionary sanction will not be an appropriate remedy for some constitutional violations. In fact, the exclusionary rule may not be a remedy for *any* Fourth Amendment violations becausr the Court has now assumed, without any support, that civil liability and police professionalism have created a sufficiently effective deterrent for such violations. *Hudson v. Michigan* will be the primary case cited when the Court eventually overrules *Mapp v. Ohio*.

96. *Id.* at 609.
97. *Id.* at 609–10.
98. *Id.* at 611.
99. *See Chavez v. Martinez*, 538 U.S 760 (2003).