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BLUNDERED**

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*The Exclusionary Rule,
Crime, and Corruption*

SECOND EDITION

Walter P. Signorelli

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Introduction

For more than four decades in my roles as a police officer and as a criminal defense attorney, I have encountered problems created by the exclusionary rule, and I believe that the insidious effects of the rule have significantly undermined trust in the law enforcement community and the criminal justice system. In 1967, when I joined the New York City Police Department as a rookie police officer, the nation was experiencing a tumultuous period with anti-Vietnam war protests, the civil rights movement, and the burgeoning of an anti-establishment counterculture. It was an interesting time to be a police officer, and I was proud to be part of the law enforcement community. This was before the surfacing of the worst police corruption scandals in New York City history, before the 1971–1972 Knapp Commission investigation into police corruption that was later depicted in such popular films as *Serpico*, with Al Pacino acting as Officer Frank Serpico, and *The Prince of the City*, with Treat Williams acting as Detective Robert Leuci.

Most of the public was surprised and outraged at the extent of police corruption that existed at that time; however, little was done to determine or cure the underlying causes that led to such corruption. The police department restructured its organizational chart to increase supervision, accountability, and discipline, but these measures dealt more with the symptoms of corruption rather than with the causes. At a time when academics, politicians, and administrators had been focusing on the need to address the root causes of crime, delinquency, drug abuse, poverty, and racism, it was odd that the root causes of police corruption seemed not to be of concern. It was as though everyone believed the police were inherently corrupt and would always be corrupt. The only thing to do was to put in controls and to keep the corruption to a minimum.

Greed, egoism, and the opportunity for illegitimate gains are obvious causes of corruption, but they are not reserved to police officers and police work. What is unique to police work is the constant exposure to unsatisfactory and unjust outcomes in the criminal justice system. Police officers see hypocrisy everywhere in the system, and believe they are the scapegoats for the system's failures. They find themselves under constant criticism, and they respond with the colloquial maxim, "Damned if you do; damned if you don't."

The exclusionary rule is the most direct and consequential means of second-guessing and criticizing the work of police officers. The rule requires that evidence obtained in violation of constitutional rights cannot be used in a criminal trial. Officers, who believe that they acted properly while making an arrest or searching for evidence, find themselves criticized for their efforts and see criminals set free because of what the officers believe are impractical and, sometimes, incomprehensible rules. The suppression of otherwise reliable evidence negatively affects police morale and causes the resentment, cynicism, and rebelliousness that often are the precursors to corruption.

My first exposure to the exclusionary rule occurred with my first arrest. It was a routine case, but it introduced me to the ambiguities and injustices of the exclusionary rule that I would face for the next thirty years as an officer and for another ten years as a criminal defense attorney.

The case began when my partner and I were assigned to a patrol car in the Bedford-Stuyvesant section of Brooklyn. It was a summer day at a time when crime was on the rise because of an epidemic of heroin addiction in New York and other cities. The police radio dispatcher directed us to investigate a 911 call about suspicious men loitering in the hallway of an apartment building. Since we were not far from the location, we arrived within two minutes. The building was a run-down, four-story tenement, and we immediately noticed that the glass pane of the unlocked front door was broken. Upon entering the lobby, we observed two young men hurrying down the staircase toward us. To the right of the stairs was a window to a courtyard; to the left, a bank of mailboxes. My partner stopped and questioned the first man who came down the stairs, taking him toward the mailboxes. I attempted to stop the second man, who was about twenty-five years old, six-feet tall, of medium build, and wearing a red bandana on his head. He kept moving from side to side trying to get around me, but I blocked his path. He turned his back to me and, while trying to block my view, put or dropped a red and white Marlboro cigarette box on the windowsill as he moved toward the stairs. I picked up the Marlboro box, opened the lid, and saw a batch of glassine envelopes containing a white powder that looked like heroin. I said, "You're under arrest," but as I reached for my handcuffs, he bolted and ran up the stairs.

My partner stayed with the first man, while I chased the man wearing the bandana up five flights of stairs to the roof, across several rooftops, then down the stairs of another building to the street. I chased him through the streets, and after two blocks of zigzagging in and out of traffic and almost being hit by several cars, I caught and handcuffed him. As we caught our breath and walked back to the patrol car, he said, "I'm sorry for running."

In court, I charged the defendant with unlawful possession of narcotics and resisting arrest. During the booking process, he told me that he was actually

glad to be arrested. He was strung out on heroin and needed help. He hoped that in prison he might get into a program.

At the arraignment, he was held in \$500 bail, but he did not have the money and no one from his family would put up the bail for him. Within two weeks, the police laboratory confirmed that the white powder was indeed heroin, and the defendant's legal aid attorney made a motion to suppress the heroin on the grounds that it was seized in violation of the defendant's constitutional rights.

A hearing was held, and on direct examination by the district attorney, I testified to exactly what had happened, or what I thought had happened, and I hoped the defendant would be convicted: first, because he could have caused me to be killed, running across the rooftops and dodging traffic, and, second, because he needed to be incarcerated in order to get help for his drug addiction.

On cross-examination, the defense attorney asked me a series of questions. I testified that I saw the defendant put the Marlboro box on the windowsill. He asked me how he put it there. I said, "I don't know, he just put it there." He asked me how far he was from the windowsill. I said one or two feet. He asked whether he could reach the windowsill by extending his arm. I said yes. He asked whether he threw it to the windowsill. I said, "Not really, he let it go, then ran up the stairs." He asked how many inches were there between his hand when he let the Marlboro box go and the windowsill. I said, "I'm not sure."

The defense attorney did not ask me anything about the chase across the roofs or through the streets to apprehend the defendant, and on redirect testimony the district attorney was precluded from asking anything about the chase.

At the conclusion of the hearing, the judge ruled that the envelopes containing heroin must be suppressed and could not be used as evidence against the defendant. The judge explained that when the defendant put the cigarette box on the windowsill, it did not mean that he had abandoned the box. Legally, it was still in his possession, and I had violated his Fourth Amendment rights against unreasonable search and seizure by picking up the box and looking into it. According to the exclusionary rule, evidence obtained in violation of the Fourth Amendment could not be used in court against a defendant.

At first, I did not understand the ruling. However, when the assistant district attorney explained it, I realized my testimony was responsible for the judge's ruling. Had I testified that the defendant discarded the Marlboro box by throwing it or flipping it three or four inches to the windowsill, his intent to abandon the box would have been clear. In that case, seizing the box would have been constitutional, and the ruling would have been different.

The charges of possession of narcotics and resisting arrest were dismissed and the defendant was released, but I saw his reaction and he did not look

overjoyed. Apparently, he had resigned himself to going into the correctional system and hoped someone there would help him.

Over the next few days, I grew angry with myself because, while reconstructing the events in my mind as impartially and as accurately as I could, I realized that clearer testimony would have shown that the defendant had in fact tossed the box several inches. He had not placed it on the windowsill, but had let it fall to the windowsill. He had not placed it on the windowsill in the sense of someone being careful with his possession, but he had let it fall about four or five inches while he turned his head away and moved toward the stairs. Unfortunately, I had not realized the importance of those inches and the physical and spatial movements. I had not realized what the defense attorney had been trying to prove, and I had provided him with the exact answers he needed.

What made me angrier still, and what I was confused about, was the dismissal of the resisting arrest charge. The judge had ruled that since there was no basis or probable cause to seize the heroin, the arrest of the defendant was invalid, and, consequently, the arrest was unauthorized and the defendant could not be convicted of resisting an unauthorized arrest. On the basis of that logic, it would seem that had I fallen off the roof or been hit by a car during the chase, my death or injury would not have been a basis for any charges against the defendant. The ruling seemed wrong to me then, and forty years later, it still seems wrong.

Later, during my police career, as a higher ranking officer in the New York City Police Department Patrol Bureau, Detective Bureau, Organized Crime Control Bureau, and Narcotics Division, I encountered the exclusionary rule in all its forms. I saw its demoralizing effect on young idealistic officers when clearly dangerous and guilty criminals got off because of the rule.

After I retired from the police and began practicing as a criminal defense attorney, I had to invoke the exclusionary rule even when I doubted that it was applicable to the circumstances of the case, otherwise I would have been subject to allegations of malpractice for not zealously representing my client. I saw criminal defendants, refusing to accept blame themselves, shift blame for their crimes to the police for not "getting them right," then switch the blame to their defense attorneys for failing to convince the court to suppress the evidence. In one case, a woman, who was arrested immediately after she bought heroin on a street corner, related that as the police approached her, she dropped the envelope of heroin on the ground and stepped on it to cover it. She complained that when the police made her move from the spot on which she was standing, they saw the envelope of heroin. She believed that they violated her constitutional rights by making her move and she wanted the heroin to be suppressed. Not once did she mention her own guilt, her own debilitating addic-

tion, or the three young children she had left alone at home while she went out to get high.

Our greatest legal minds have debated and disagreed about the exclusionary rule for decades. They have debated fine legal points of whether it is a mandated right inherent in the Fourth Amendment or whether it is an optional remedy that can be modified on a case-by-case basis. They have debated whether Congress can overrule or modify judicial interpretations or whether only the judiciary can do so because of the Constitution's supremacy over legislation. They have debated whether the general deterrence the rule may provide outweighs the costs of the specific injustices it causes.

Simpler, ordinary people, victimized by crime, are not as conflicted. Those involved in cases in which dangerous criminals are freed because of technicalities complain that the system is broken, the cops and the district attorneys do not know what they are doing, and either a fix is in or a bias in the system works against true justice.

Questions need to be answered: After decades of expansion, does the exclusionary rule serve the cause of justice? Does it really deter police from committing constitutional violations? Does it cause corruption? Is it a detriment even to the criminals it releases? How does it affect the war on terrorism? Is it the best means of protecting privacy?

The purpose of this book is to examine the exclusionary rule and its consequences, including the historical development of the rule, its relation to crime rates, police performance, and the loss of confidence in the justice system. Specific cases are examined to illustrate the practical effects of the rule. Assumptions about the rule's deterrent value are scrutinized, and alternative methods of protecting individual rights are proposed.