Scalia twisted my words

Criminologist says his work was used to reach its opposite conclusion in "Hudson." By Samuel Walker

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A FRIEND OF mine e-mailed me last week with some exciting news — the Supreme Court had cited one of my criminal justice policy books in an important, late-term decision. My law professor friends tell me that being mentioned by the court is a huge deal. And my 93-year-old mother in Cleveland will certainly be impressed that her son has finally done something worthy of note.

Alas, as I surfed the Net for news about Hudson vs. Michigan, my excitement quickly turned to dismay, then horror. First, I learned that Justice Antonin Scalia cited me to support a terrible decision, holding that the exclusionary rule — which for decades prevented evidence obtained illegally by police from being used at trial — no longer applies when cops enter your home without knocking.

Even worse, he twisted my main argument to reach a conclusion the exact opposite of what I spelled out in this and other studies.

The misuse of evidence is a serious offense — in academia as well as in the courts. When it's your work being manipulated, it is a violation of your intellectual integrity. Since the issue at stake in the Hudson case is extremely important — what role the Supreme Court should play in policing the police — I feel obligated to set the record straight.

Scalia quotes my book, "Taming the System: The Control of Discretion in American Criminal Justice," on the point that there has been tremendous progress "in the education, training and supervision of police officers" since the 1961 Mapp decision, which imposed the exclusionary rule on local law enforcement.

My argument, based on the historical evidence of the last 40 years, is that the Warren court in the 1960s played a pivotal role in stimulating these reforms. For more than 100 years, police departments had failed to curb misuse of authority by officers on the street while the courts took a hands-off attitude. The Warren court's interventions (Mapp and Miranda being the most famous) set new standards for lawful conduct, forcing the police to reform and strengthening community demands for curbs on abuse.

Scalia's opinion suggests that the results I highlighted have sufficiently removed the need for an exclusionary rule to act as a judicial-branch watchdog over the police. I have never said or even suggested such a thing. To the contrary, I have argued that the results reinforce the Supreme Court's continuing importance in defining constitutional protections for individual rights and requiring the appropriate remedies for violations, including the exclusion of evidence.

The ideal approach is for the court to join the other branches of government in a multipronged mix of remedies for police misconduct: judicially mandated exclusionary rules, legislation to give citizens oversight of police and administrative reforms in training and supervision. No single remedy is sufficient to this very important task. Hudson marks a dangerous step backward in removing a crucial component of that mix.

Near the end of his opinion, Scalia speculated on the role of civilian review boards as a possible remedy for police misconduct. Do I wish that he had also cited one of my two books on this subject? Or am I glad that he didn't misinterpret them in the service of a bad decision? I don't know.