

State v. Clarke: One year later

Practitioner Comment

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The *Clarke* decision was yet another refreshing return to Idaho roots. The Idaho Supreme Court may look for guidance in interpreting the Idaho Constitution, but “no longer adhere[s] to a policy of sheepishly following in the footsteps of the U.S. Supreme Court in the area of state constitutional analysis.”¹ In looking back to the territorial statutes in place when the Idaho Constitution was ratified, the Idaho Supreme Court embraced traditional Idaho law in a return to originalist interpretation. The result was a decision that shows the uniqueness of our state and a citizenry that jealously guards its privacy.

Clarke led to a flurry of litigation in the local courts and many decisions are yet forthcoming. Speaking as a criminal defense practitioner, *Clarke* is certainly a step in the right direction, but the long-term ramifications are yet to be determined. Trial attorneys love any chance to push the envelope and *Clarke* is just that, an opportunity to explore a new frontier of caselaw. It has added yet another tool in the belt of Constitutional protections that are so often eroded over time.

Clarke inherently forces the state and local police forces to rise to a higher level of accountability. It is an attempt to claw back Fourth Amendment rights that have been slowly subverted by the state over the last century. It gives us hope that rather than setting a new status quo, the Idaho Supreme Court is ready for a new radical era of protections consistent with those put in place by the founders: an era where fear does not trump individual rights.

¹ State v. Guzman, 122 Idaho 981, 998 (1992).