Journal of Criminal Law and Criminology

Volume 86
Issue 4 *Summer*

Article 2

Summer 1996

Arizona v. Evans: Expanding Exclusionary Rule Exceptions and Contracting Fourth Amendment Protection

Heather A. Jackson

Follow this and additional works at: https://scholarlycommons.law.northwestern.edu/jclc

Part of the Criminal Law Commons, Criminology Commons, and the Criminology and Criminal Justice Commons

Recommended Citation

Heather A. Jackson, Arizona v. Evans: Expanding Exclusionary Rule Exceptions and Contracting Fourth Amendment Protection, 86 J. Crim. L. & Criminology 1201 (1995-1996)

This Supreme Court Review is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

0091-4169/96/8604-1201
THE JOURNAL OF CRIMINAL LAW & CRIMINOLOGY
Vol. 86, No. 4
Copyright © 1996 by Northwestern University, School of Law
Printed in U.S.A.

ARIZONA V. EVANS: EXPANDING EXCLUSIONARY RULE EXCEPTIONS AND CONTRACTING FOURTH AMENDMENT PROTECTION

Arizona v. Evans, 115 S. Ct. 1185 (1995)

I. INTRODUCTION

In *Arizona v. Evans*,[1] the United States Supreme Court held that the exclusionary rule does not apply where an unlawful search is the result of a clerical error by a court employee.[2] The Court reasoned that the exclusionary rule did not fulfill its requisite deterrent purposes in a case where a police officer acted in good faith in response to a non-existent misdemeanor warrant appearing on the police computer.[3] Thus, the Court ruled that evidence seized in violation of Isaac Evans' Fourth Amendment rights could be admitted and used against Evans in a criminal proceeding.[4] According to the Court, the exclusionary rule is a judicially created remedy designed to deter future Fourth Amendment violations by police officers.[5] Because the rule is not a specific remedy to cure Fourth Amendment violations, it is only applicable when the deterrent purposes are most efficaciously served.[6]

This Note argues that the illegally seized evidence should have been excluded even though the violation was caused by a court employee.[7] First, this Note asserts that the Court distorted the precedent of *United States v. Leon*,[8] the common law foundation for the good faith exception, by ignoring the centrality of the warrant process in that case. Second, this Note asserts that, contrary to the majority's indication, the role of the exclusionary rule is much greater than mere deterrence.[9] Finally, this Note argues that even if the main goal

---

[1] 115 S. Ct. 1185 (1995).
[2] *Id.* at 1194.
[3] *Id.* at 1191.
[4] *Id.* at 1194.
[5] *Id.* at 1191.
[6] *Id.*
[7] *See infra* note 123 and accompanying text.
[8] 468 U.S. 897 (1984).
[9] This assertion is consistent with Justice Stevens' dissenting opinion. *See Evans*, 115 S.

of the exclusionary rule is deterrence, that goal would be better served by applying the rule to all state law enforcement personnel, not only to arresting officers. Therefore, the Court incorrectly held that the introduction of evidence against a criminal defendant, seized without a warrant or probable cause due to clerical error, was constitutionally permissible.

II. BACKGROUND

1. *Basic Principles of the Fourth Amendment and the Exclusionary Rule*

The Fourth Amendment to the Constitution protects the right of the people to be free from unreasonable searches and seizures.[10] While the language of the Fourth Amendment forbids unreasonable searches and seizures, it does not provide a mechanism for prevention or a remedy, should they occur.[11] The exclusionary rule provides a means for enforcing the Fourth Amendment by "command[ing] that where evidence has been obtained in violation of the search and seizure protections guaranteed by the U.S. Constitution, the illegally obtained evidence can not be used at the trial of a defendant."[12]

The Supreme Court first announced the exclusionary rule in 1886, in *Boyd v. United States.*[13] *Boyd* involved a quasi-criminal forfeiture proceeding.[14] In *Boyd,* the Court concluded that compelling a defendant to produce private papers was equivalent to an unlawful search and seizure and therefore unconstitutional.[15] Justice Bradley authored the opinion which linked the Fourth and Fifth Amend-

---

Ct. at 1195-97 (Stevens, J., dissenting).

[10] U.S. CONST. amend. IV. The full Amendment states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

Id.

[11] For a discussion of whether the text of the Fourth Amendment mandates suppression of illegally seized evidence, compare STEPHEN SCHLESINGER, EXCLUSIONARY INJUSTICE (1977) and Malcolm Richard Wilkey, *The Exclusionary Rule: Why Suppress Valid Evidence?*, 62 JUDICATURE 215 (1978), with the words of Justice Brennan: "many of the Constitution's most vital imperatives are stated in general terms and the task of giving meaning to these precepts is therefore left to subsequent judicial decisionmaking in the context of concrete cases." United States v. Leon, 468 U.S. 897, 932 (1984) (Brennan, J., dissenting). For example, the Fifth, Sixth, Seventh, Eighth, and Thirteenth Amendments are stated in general terms, setting forth rights to be interpreted and given "meaning" through judicial interpretation.

[12] BLACK'S LAW DICTIONARY 563 (6th ed. 1990).

[13] 116 U.S. 616 (1886).

[14] *Id.* at 633-34.

[15] *Id.* at 634-35.

ments.[16] Compelling the production of private papers essentially required the defendant to provide self-incriminating testimony, a clear Fifth Amendment violation.[17] Thus, the Court noted that because police often engage in unreasonable searches or seizures in order to compel the defendant to give self-incriminating testimony, the admission of this evidence in court violates the Fourth and Fifth Amendments.[18]

In 1914, in *Weeks v. United States*,[19] the Supreme Court first applied the exclusionary rule to criminal proceedings in federal courts. In *Weeks*, the Court held that a trial court could not use private documents, such as letters, which were seized in violation of the Fourth Amendment, as evidence in criminal proceedings.[20] The Court reasoned that it could not admit illegally obtained evidence without effectively condoning unconstitutional behavior, thereby compromising the integrity of the judiciary.[21] The Court did not mention deterrence as a goal supporting the exclusionary rule, but rather noted privacy interests,[22] the limitation of governmental power,[23] and the import of judicial integrity.[24]

In 1961, in *Mapp v. Ohio*,[25] the Supreme Court held that the Constitution mandated the exclusionary rule as a remedy of a Fourth Amendment violation in state proceedings.[26] The *Mapp* Court examined the foundation of the precedent of *Wolf*, which came to the opposite conclusion,[27] and ultimately ruled that the exclusionary rule was an essential element of the guarantee of privacy embodied in the Fourth Amendment, and was therefore required by the Due Process Clause of the Fourteenth Amendment.[28]

---

16 *Id.* at 617, 633-35. The Fifth Amendment provides in part that "[n]o person shall . . . be compelled in any criminal case to be a witness against himself. . . ." U.S. CONST. amend. V.

17 *Id.* at 634-35.

18 *Id.* at 633.

19 232 U.S. 383 (1914).

20 *Id.* at 398.

21 *Id.* at 392.

22 *Id.* at 390-91.

23 *Id.* at 391-92 ("The effect of the Fourth Amendment is to put the courts of the United States and Federal officials, in the exercise of their power and authority, under limitations and restraints as to the exercise of such power and authority.").

24 *Id.* at 394.

25 367 U.S. 643 (1961). *Mapp* overruled Wolf v. Colorado, 338 U.S. 25 (1949), which dealt with the applicability of the exclusionary rule to the states. The *Wolf* Court rejected the idea that the Fourteenth Amendment forbid the admission of illegally obtained evidence in state court.

26 *Mapp*, 367 U.S. at 655-58.

27 *See supra* note 25.

28 *Mapp*, 367 U.S. at 655-56. The Due Process Clause of the Fourteenth Amendment provides in part that "[n]o State shall . . . deprive any person of life, liberty, or property,

The *Mapp* Court specified three purposes served by the exclusionary rule: constitutional privilege,[29] judicial integrity,[30] and deterrence.[31] First, the Court stated that the exclusionary rule was a constitutionally required privilege and that the Fourth Amendment barred the use of illegally obtained evidence.[32] Second, the Court acknowledged that by admitting illegally obtained evidence, judges would extend Fourth Amendment violations to the courtroom.[33] Such a judicially sanctioned admission of illegal evidence would undermine public regard for the integrity of the judiciary.[34] Finally, by eliminating any incentive for the police to violate the Fourth Amendment, the exclusionary rule would deter future police misconduct.[35]

2. *Exceptions to the Exclusionary Rule*

Since *Mapp*,[36] the Supreme Court has repeatedly carved out exceptions to the exclusionary rule, systematically ignoring all but the deterrence rationale for the rule.[37] Presently, there exist the following exceptions: the impeachment exception, the independent source exception, the inevitable discovery exception, the good faith exception, the harmless error exception, and the rule of attenuation.[38]

---

without due process of law. . . ." U.S. CONST. amend. XIV.

[29] *Id.* at 656 (stating that allowing illegally seized evidence to be admitted into court would be "to grant the right but in reality to withhold its privilege and enjoyment").

[30] *Id.* at 659-60.

[31] *Id.* at 656.

[32] *Id.* at 648.

[33] *Id.* at 660.

[34] *Id.* at 659.

[35] *Id.* at 656.

[36] For a discussion of basic Fourth Amendment principles, focusing primarily on *Mapp*, see 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 (1983).

[37] In addition to common law developments creating exceptions to the exclusionary rule, statutory proposals currently under Congressional consideration threaten the rule. The proposed Exclusionary Rule Reform Act would amend Title 18 of the United States Code by adding the following provision:

> Evidence obtained as a result of a search or seizure shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the Fourth Amendment to the Constitution of the United States, if the search or seizure was carried out in circumstances justifying an objectively reasonable belief that it was in conformity with the Fourth Amendment. The fact that evidence was obtained pursuant to and within the scope of a warrant constitutes *prima facie* evidence of the existence of such circumstances.

H.R. 666, 104th Cong., 1st Sess. (1995). For a discussion of the proposed statutory changes, see Stephen Chapman, *When the Police Violate Your Rights, But Oh-So Reasonably*, CHI. TRIB., Feb. 12, 1995, at 3; Kenneth Jost, *Exclusionary Rule Reforms Advance: Opponent Claim Proposals Unconstitutional, Encourage Police Misconduct*, 81 A.B.A. J. 18 (May 1995).

[38] In addition to the exceptions to the exclusionary rule, limitations on standing to assert a Fourth Amendment violation severely limit the rule. *See* Rakas v. Illinois, 439 U.S. 128 (1978).

1. *The Impeachment Exception*

In *Walder v. United States*,[39] the Court established the "impeachment exception," allowing the Government to offer illegally seized evidence on cross examination of a criminal defendant to impeach the defendant who has perjured herself on direct.[40] The trial judge in *Walder* admitted evidence procured in violation of the Fourth Amendment to prove that a defendant, who testified that she had never possessed, purchased, or sold any narcotic drugs, was lying.[41] The *Walder* Court held that to disallow evidence in such a case would be a "perversion of the Fourth Amendment."[42] In other decisions, the Court has held that a criminal defendant, while possessing a Constitutional right to testify in her own defense, does not have a right to commit perjury, and evidence procured in violation of the Constitution is nonetheless admissible for impeachment purposes.[43]

James v. Illinois[44] limited the impeachment exception to the testimony of the criminal defendant. When a defense witness other than the defendant perjures herself on the stand, the Government cannot impeach with evidence seized in violation of the Fourth Amendment.[45]

2. *The Independent Source Exception*

In *Wong Sun v. United States*,[46] the Court established the "independent source" exception to the exclusionary rule. This exception inquires whether the evidence was discovered through an exploitation of the Fourth Amendment violation or through an independent source "sufficiently distinguishable to be purged of the primary taint."[47] If the evidence is not obtained directly from the violation, it is freed from the initial taint of the violation.[48] Theoreti-

---

39 347 U.S. 62 (1954).

40 *Id.* at 65.

41 *Id.* at 64.

42 *Id.* at 65.

43 *See* Michigan v. Harvey, 494 U.S. 344, 346 (1990) (statement obtained through violation of Sixth Amendment rights admissible for the purposes of impeachment after defendant provides false testimony); Oregon v. Hass, 420 U.S. 714, 722-23 (1975) (statement given without *Miranda* warning admissible after defendant gave contradicting testimony); Harris v. New York, 401 U.S. 222, 224-26 (1971) (defendant's statement in violation of *Miranda* allowed for impeachment).

44 493 U.S. 307 (1990). For a discussion of this case, see Kathleen M. Ghreichi, Note, *James v. Illinois: An Unexpected Departure from the Steady Erosion of the Fourth Amendment Exclusionary Rule*, 22 U. TOL. L. REV. 839 (1991).

45 *James*, 493 U.S. at 320.

46 371 U.S. 471 (1963).

47 *Id.* at 488 (quoting JOHN MAGUIRE, EVIDENCE OF GUILT 221 (1959)).

48 *Id.*

cally, this exception prevents the government from benefitting from misconduct, but avoids forcing the government into a worse position than had no misconduct occurred.[49]

The Court extended the independent source exception in *United States v. Segura*,[50] which allowed the admission of evidence in violation of the Fourth Amendment. Police officers had requested a warrant to enter a home, but did not wait for the warrant.[51] The state argued that had the police waited, they would have received the warrant and seized the evidence legally.[52] The Court found that this "potential" warrant provided them with an "independent source" for admitting the evidence.[53]

3. The Inevitable Discovery Exception

In 1984, the Court established the "inevitable discovery" exception in *Nix v. Williams*.[54] The "inevitable discovery" rule permits the admission of illegally seized evidence that would have inevitably been discovered through lawful means.[55] In enunciating this exception, the Court used a balancing test, weighing the deterrence goals of the exclusionary rule against the judicial interest in having the maximum amount of probative evidence available.[56] The Court concluded that the exclusion of illegal evidence that was inevitably discovered undermined the deterrent rationale of the exclusionary rule.[57] In such a situation, societal interest in judicial truth-finding outweighs any potential deterrent effects.[58]

4. The Good Faith Exception[59]

The "good faith exception" to the exclusionary rule was estab-

---

49 *See* Murray v. United States, 487 U.S. 533 (1988).

50 468 U.S. 796 (1984).

51 *Id.* at 800-01.

52 *Id.* at 813-16.

53 *Id.* at 816. This extension of the "independent source" exception approaches the "inevitable discovery" exception described below.

54 467 U.S. 431 (1984).

55 *Id.* at 441-44.

56 *Id.* at 443-44.

57 *Id.*

58 *Id.*

59 Despite the name, subjective good faith on the part of the officers alone is not enough to invoke the exception. The good faith belief must be objectively reasonable. The *Leon* Court itself cited circumstances in which behavior would be objectively unreasonable, and therefore subjective good faith would be irrelevant:

> Suppression therefore remains an appropriate remedy if the magistrate or judge in issuing a warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard for the truth. The exception we recognize today will also not apply in cases where the issuing

lished in 1984 in *United States v. Leon.*[60] *Leon* held that the Fourth Amendment exclusionary rule should not bar use, in the prosecution's case in chief, of evidence obtained by officers acting in reasonable reliance on a search warrant later determined to be invalid.[61] In *Leon,* the police relied in good faith on a warrant and arrested the defendant.[62] Although issued by a detached and neutral magistrate, an appellate court ultimately invalidated the warrant.[63] Justice White, writing for the Court, stressed that the exclusionary rule should be applied flexibly in order to prevent public disrespect for the law.[64] Additionally, the purpose of the rule is to deter illegal acts specifically of the police; excluding evidence obtained by a police officer's good faith search which is illegal due to a judge's mistake would serve no such deterrent purposes.[65] Suppression would be appropriate, however, when the officer has no reasonable ground for believing that the warrant was legally issued.[66]

The *Leon* Court considered three factors. First, the Court noted that the historical purpose of the exclusionary rule was "to deter police misconduct rather than to punish the errors of judges and magistrates."[67] Second, the Court asserted that no evidence suggested that judges or magistrates tend to ignore the Fourth Amendment, or that their behavior requires deterrent sanctions.[68] Third, the Court contended that the exclusion of evidence seized pursuant to such a warrant would not have a deterrent effect on the issuing judge or

> magistrate wholly abandoned his judicial role. . . . Nor would an officer manifest objective good faith in relying on a warrant based on an affidavit 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.' Finally, depending on the circumstances of the particular case, a warrant may be so facially deficient—i.e., in failing to particularize the place to be searched or the things to be seized—that the executing officers cannot reasonably presume it to be valid.

United States v. Leon, 468 U.S. 897, 923 (1984) (citations omitted). *See also* People v. Machupa, 872 P.2d 114, 115 n.1 (Cal. 1994).

60 468 U.S. 897 (1984). *See also* Massachusetts v. Shepard, 468 U.S. 981 (1984) (companion case to *Leon*; holding that the exclusionary rule does not apply when a judge failed to make necessary clerical corrections to a defective warrant, resulting in an illegal search made by the police in good faith); Illinois v. Krull, 480 U.S. 340 (1987) (holding that police reliance on a statute is objectively reasonable, and therefore exempt from the exclusionary rule, although the statute was ultimately found to be unconstitutional).

61 *Leon*, 468 U.S. at 900. The search warrant was later held to be invalid because the affidavit on which the warrant was based was insufficient to establish probable cause. *Id.* at 904.

62 *Id.* at 902.

63 *Id.* at 902-04.

64 *Id.* at 907.

65 *Id.* at 916-17.

66 *Id.* at 922-23.

67 *Id.* at 916.

68 *Id.*

magistrate due to judicial independence.[69] The Court concluded that suppression was inappropriate because the officers involved had no grounds for believing that the warrant was improperly issued.[70]

5. *The Harmless Error Exception*[71]

The Court established the harmless error exception in *Chapman v. California*.[72] The harmless error exception focuses on the factual determination of guilt rather than on peripheral and immaterial issues.[73] Thus, evidence admitted in violation of the Fourth Amendment is subject to the doctrine of "harmless error."[74] The doctrine states that if admission of the evidence obtained in violation of the Constitution was harmless beyond a reasonable doubt, the conviction will stand.[75]

Chapman dealt with murder convictions in a California court in which the defendants chose not to testify in their defense.[76] In closing argument, the prosecution commented at length on the defendants' failure to testify.[77] After the trials, but before the case reached the California Supreme Court, the United States Supreme Court held that Article I, section 13 of the California Constitution, which provided that the prosecutor could comment on a defendant's failure to testify, was in violation of the Fifth Amendment protection against compelled self-incrimination.[78] The California Supreme Court up-

---

69 *Id.*

70 *Id.* at 922-23.

71 This is not a true "exception" to the exclusionary rule. Rather, this rule governs reversal of convictions obtained through the use of illegally obtained evidence. Whenever illegally seized evidence is used in a trial, reversal is not automatic, but only upon a showing of prejudice. The harmless error doctrine as applied to federal constitutional provisions must be distinguished from non-constitutional error. Non-constitutional error is governed by the Federal Rules of Criminal Procedure which provide "[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregarded." FED. R. CRIM. P. 52(a).

72 386 U.S. 18 (1967).

73 Arizona v. Fulminante, 499 U.S. 279, 310 (1991). *See also* Harrington v. California, 395 U.S. 250 (1969).

74 *See* Milton v. Wainwright, 407 U.S. 371, 372 (1972). The harmless error doctrine also applies to Fifth and Sixth Amendment violations.

75 Chapman v. California, 386 U.S. 18, 21-24 (1967) ("[T]here may be some constitutional errors in a setting of a particular case [that] are so unimportant and insignificant that they may, consistent with the federal constitution, be deemed harmless.").

76 *Id.* at 19.

77 *Id.* At the time, Article I, section 13 of the California Constitution provided that "in any criminal case, whether the defendant testifies or not, his failure to explain or to deny by his testimony any evidence or facts in the case against him may be commented upon by the court and by counsel, and may be considered by the court or the jury." CAL. CONST. of 1967 art. I § 13.

78 Griffin v. California, 380 U.S. 609, 613 (1965).

held the conviction despite the *Griffin* decision, citing the California Constitution's harmless error provision.[79] In appealing to the United States Supreme Court, petitioners argued both that violations of the *Griffin* decision could never be considered harmless, and that, given the specific facts of this case, they were not harmless to petitioners.[80] The Supreme Court granted certiorari and held that (1) the Supreme Court had jurisdiction to create a harmless error rule;[81] (2) in order to hold a Constitutional error harmless, a court must find it harmless beyond a reasonable doubt;[82] and (3) given the specific facts of this case, the defendants prevailed by showing that the comments of the prosecutor reasonably could have contributed to the petitioners' convictions.[83] The harmless error doctrine effectively eliminates any potential remedy in the exclusionary rule to a Fourth Amendment violation when the prosecutor proves that admission of the illegally seized evidence is harmless beyond a reasonable doubt.

6. *The Rule of Attenuation*

Finally, the Court established the "rule of attenuation," in *Nardone v. United States.*[84] The rule of attenuation allows a court to admit illegally seized evidence when the Fourth Amendment violation is sufficiently far from the discovery of the evidence as to "dissipate the taint."[85] Either time or some intervening event can sufficiently separate the taint of a Fourth Amendment violation from the illegal procurement of evidence.[86] *Brown v. Illinois*[87] enumerated three factors relevant to the determination of whether the rule of attenuation applies: "(1) the length of time between the illegality and the seizure of evidence; (2) the presence of additional intervening factors; and (3) the degree and purpose of the official misconduct."[88] The *Brown* Court found that the rule of attenuation did not go so far as to dissipate the taint for the facts in this particular case because less than two hours separated the violation from the evidence, there was no intervening event of any insignificance whatsoever[89] and "the impropriety of the arrest was obvious."[90]

---

[79] *See* People v. Teale, 404 P.2d 209 (Cal. 1965).
[80] *Chapman*, 386 U.S. at 24-26.
[81] *Id.* at 20-21.
[82] *Id.* at 21-24.
[83] *Id.* at 24-26.
[84] 308 U.S. 338 (1939).
[85] *Id.* at 341.
[86] *Id.*
[87] 422 U.S. 590 (1975).
[88] *Id.* at 603-04.
[89] *Id.* at 604.
[90] *Id.* at 605.

III. Facts and Procedural History

On January 5, 1991, Isaac Evans took a wrong turn onto a one-way street.[91] The wrong turn occurred in front of a Phoenix police station.[92] Officer Bryan Sargent and his partner were in front of the station and observed Evans' illegal activity.[93] Officer Sargent pulled Evans over and asked for his license.[94] Evans informed Sargent that his license had been suspended.[95] Officer Sargent entered Evans' name into a computer data terminal in his patrol car, which revealed an outstanding misdemeanor warrant for Evans' arrest.[96] Based on this warrant, Officer Sargent arrested Evans.[97] While being handcuffed, Evans dropped a cigarette which the officers determined smelled of marijuana.[98] Sargent searched Evans' car and found a bag of marijuana under the front passenger's seat.[99]

Evans was charged with possession of marijuana, a class six felony.[100] When police notified the justice court of Evans' arrest, a court employee discovered that the arrest warrant had previously been quashed and so advised the police.[101]

Evans filed a motion to suppress all evidence seized in conjunction with the January 5th arrest, claiming that he was a victim of an illegal search.[102] The state responded that the arresting officer acted on a good faith belief that a warrant existed, and that use of the evidence should be permitted pursuant to Arizona's good faith statute.[103]

---

91 Arizona v. Evans, 115 S. Ct. 1185, 1188 (1995).

92 *Id.*

93 *Id.*

94 *Id.*

95 *Id.*

96 *Id.*

97 *Id.*

98 *Id.*

99 *Id.*

100 State v. Evans, 836 P.2d 1024, 1025 (Ariz. Ct. App. 1992), *rev'd*, 866 P.2d 869 (Ariz. 1994), *rev'd*, 115 S. Ct. 1185 (1995).

101 Brief for the Respondent, Arizona v. Evans, 115 S. Ct. 1185 (1995) (No. 93-1660).

102 *Evans*, 836 P.2d at 1025.

103 *Id.* at 1026. The Arizona good faith exception provides:

> A. If a party in a criminal proceeding seeks to exclude evidence from the trier of fact because of the conduct of a peace officer in obtaining the evidence, the proponent of the evidence may urge that the peace officer's conduct was taken in a reasonable, good faith belief that the conduct was proper and that the evidence discovered should not be kept from the trier of fact if otherwise admissible.
> B. The trial court shall not suppress evidence which is otherwise admissible in a criminal proceeding if the court determines that the evidence was seized by a peace officer as a result of a good faith mistake or technical violation.
> C. In this section:
> 1. "Good faith mistake" means a reasonable judgmental error concerning the existence of facts which if true would be sufficient to constitute probable cause.

At the suppression hearing, the chief clerk of the justice court testified that on December 13, 1990, a justice of the peace in Phoenix issued a warrant for Evans' arrest because he failed to appear on the previous day to respond to several traffic violations.[104] However, on December 19, Evans appeared before a judge *pro tempore* who quashed the warrant.[105] Evans asserted that because his arrest and subsequent search were based on a warrant that had been quashed prior to the arrest, the court should exclude all seized evidence as a product of an illegal search and seizure.[106]

After testifying at the suppression hearing that Evans' outstanding warrant had been quashed prior to his arrest, the justice court clerk described the usual procedures for quashing a warrant.[107] First, a clerk at the justice court informs the warrant section of the sheriff's office that the warrant has been quashed.[108] Then, a sheriff's office employee removes the warrant from the computer records.[109] Finally, the justice court clerk makes a notation in the file indicating that he or she made such a phone call, and notes the name of the sheriff's office employee who received the information.[110] The chief clerk testified that Evans' file contained no indication that a clerk had called and notified the sheriff's office that Evans' arrest warrant had been quashed.[111] The records clerk from the sheriff's office also testified that her office had no record of a phone call informing them that the warrant had been quashed.[112]

After hearing the clerks' testimonies, the trial court granted Evans' motion to suppress, concluding that the State had been at fault for failing to properly quash the warrant.[113] The court did not make a determination as to who was ultimately responsible for the continued presence of the quashed warrant in the police computer,[114] noting that there was no "distinction between State action, whether it hap-

2. "Technical violation" means a reasonable good faith reliance upon:
(a) A statute which is subsequently ruled unconstitutional.
(b) A warrant which is later invalidated due to a good faith mistake.
(c) A controlling court precedent which is later overruled, unless the court overruling the precedent orders the new precedent to be applied retroactively.

ARIZ. REV. STAT. ANN. § 13-3925 (1993).

104 Arizona v. Evans, 115 S. Ct. 1185, 1188 (1995).

105 *Id.*

106 *Id.*

107 *Id.*

108 *Id.*

109 *Id.*

110 *Id.*

111 *Id.*

112 *Id.*

113 *Id.*

114 *Id.*

pens to be the police department or not."[115]

The state appealed the trial court's ruling to the Arizona Court of Appeals.[116] A divided panel of the Arizona Court of Appeals held that the trial court abused its discretion in granting Evans' motion to suppress.[117] The court reasoned that excluding evidence in such a case would not serve the exclusionary rule's primary purpose of deterrence: "the exclusionary rule [was] not intended to deter justice court employees or Sheriff's Office employees who are not directly associated with the arresting officers or the arresting officers' police department."[118]

Evans then appealed to the Arizona Supreme Court, which reversed the decision of the court of appeals and reinstated the suppression the evidence.[119] The court found no "distinction drawn . . . between clerical errors committed by law enforcement personnel and similar mistakes by court employees."[120] A broad application of the exclusionary rule, the court stated, would "hopefully serve to improve the efficiency of those who keep records in [the] criminal justice system."[121] Finally, the court focused on the broader implications for the exclusionary rule for individual freedom from government intrusion, stating that "it is repugnant to the principles of a free society that a person should ever be taken into police custody because of a computer error precipitated by government carelessness; . . . under those circumstances, the exclusionary rule is a 'cost' we cannot afford to be without."[122]

The Supreme Court granted certiorari to determine whether the exclusionary rule requires suppression of evidence seized incident to an arrest warrant resulting from an inaccurate computer record, regardless of whether police or court personnel were responsible for the record's continued presence in the police computer.[123]

---

[115] *Id.*

[116] State v. Evans, 836 P.2d 1024 (Ariz. Ct. App. 1992), *rev'd*, 866 P.2d 869 (Ariz. 1994), *rev'd*, 115 S. Ct. 1185 (1995).

[117] *Id.* at 1024.

[118] *Id.* at 1027.

[119] State v. Evans, 866 P.2d 869 (Ariz. 1994), *rev'd*, 115 S. Ct. 1185 (1995).

[120] *Id.* at 871.

[121] *Id.* at 872.

[122] *Id.*

[123] 114 S. Ct. 2131 (1994). This is how Chief Justice Rehnquist framed the issue involved, *Evans*, 115 S. Ct. at 1189, although at most times during the opinions, the courts seemed to assume that the error was caused by the court clerk rather than the sheriff's office. *See, e.g.*, *id.* at 1193 ("If it were indeed a court clerk who was responsible . . . .").

IV. THE SUPREME COURT OPINIONS

A. THE MAJORITY OPINION

Writing for the majority,[124] Chief Justice Rehnquist reversed the decision of the Arizona Supreme Court. First, Chief Justice Rehnquist reaffirmed the United States Supreme Court's jurisdiction to review all decisions of the highest state court where it is unclear whether the grounds for the decision are state or federal law and no "plain statement" disavowing interpretation of federal law exists.[125] Second, Chief Justice Rehnquist determined that the exclusionary rule does not require suppression of evidence seized during an unlawful arrest that resulted from a clerical error of either a court employee or a sheriff's office employee.[126]

1. *Jurisdiction*[127]

As a threshold matter, Chief Justice Rehnquist rejected Evans' argument that the Court lacked jurisdiction[128] because the Arizona

---

124 Justices O'Connor, Scalia, Kennedy, Souter, Thomas and Breyer joined in Chief Justice Rehnquist's opinion.

125 *Evans*, 115 S. Ct. at 1190.

126 *Id.* at 1194.

127 The focus of this Note is the exclusionary rule, although a different resolution of the jurisdictional issue, namely that proposed by Justice Ginsburg, would dispose of the substantive Fourth Amendment discussion. For information on the jurisdictional issue, see MARTIN REDISH, FEDERAL JURISDICTION: TENSIONS IN THE ALLOCATION OF JUDICIAL POWER 260-79 (1991); CHARLES A. WRIGHT, THE LAW OF THE FEDERAL COURTS § 107, at 745 (4th ed. 1983); Thomas E. Baker, *The Ambiguous Independent and Adequate State Ground in Criminal Cases: Federalism Along a Mobius Strip*, 19 GA. L. R. 799 (1985); Scott H. Bice, *Anderson and the Adequate State Ground*, 45 S. CAL. L. REV. 750 (1972); Larry M. Elison & Dennis NettikSimmons, *Federal and State Constitutions: The New Doctrine of Independent and Adequate State Grounds*, 45 MONT. L. REV. 177 (1984); Alfred Hill, *The Inadequate State Ground*, 65 COLUM. L. REV. 943 (1965); Richard A. Matasar & Gregory S. Bruch, *Procedural Common Law, Federal Jurisdictional Policy, and the Abandonment of the Adequate and Independent State Grounds Doctrine*, 86 COLUM. L. REV. 1291 (1986); David A. Schlueter, *Judicial Federalism and Supreme Court Review of State Court Decisions: A Sensible Balance Emerges*, 59 NOTRE DAME L. REV. 1079 (1984); Eric B. Schnurer, *The Inadequate and Dependent "Adequate and Independent State Grounds" Doctrine*, 18 HASTINGS CONST. L. Q. 371 (1991); Richard A. Seid, *Schizoid Federalism, Supreme Court Power, and Inadequate State Ground Theory:* Michigan v. Long, 18 CREIGHTON L. REV. 1 (1984); Robert C. Welsh, *Reconsidering the Constitutional Relationship Between State and Federal Courts: A Critique of* Michigan v. Long, 59 NOTRE DAME L. REV. 1118 (1984); Comment, Michigan v. Long: *Presumptive Federal Appellate Jurisdiction over State Cases Containing Ambiguous Grounds of Decisions*, 69 IOWA L. REV. 1081 (1984); Note, *The Untenable Nonfederal Ground in the Supreme Court*, 74 HARV. L. REV. 1375 (1961).

128 The statute regarding Supreme Court jurisdiction, 28 U.S.C. § 1257 (1994), provides as follows:

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where

Supreme Court based its decision on the Arizona good faith exception statute[129] rather than federal law.[130] Chief Justice Rehnquist cited *Michigan v. Long*,[131] which adopted the following standard for determining whether a state court decision is based on sufficient state law grounds to preclude Supreme Court review:

> [when] a state court decision fairly appears to rest primarily on federal law, or to be interwoven with federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so.[132]

According to Chief Justice Rehnquist, the *Long* standard was adopted for two reasons. First, it prevents the Supreme Court from requiring state courts to clarify the foundation for their decisions on remand.[133] Second, this standard protects the integrity of federal law, while allowing states to develop independent jurisprudence free from federal involvement.[134] Responding to Justice Ginsburg's criticism that the *Long* standard limits the states' ability to create and implement unique jurisprudence,[135] Chief Justice Rehnquist asserted that state courts are free to afford greater protection to individual rights under state constitutions than are provided by their federal counterpart, but when interpreting federal law, state courts must be subject to the Supreme Court's authority.[136]

Chief Justice Rehnquist concluded that the Arizona Supreme Court's discussion of the exclusionary rule, absent a disclaimer that the Court was using federal law for guidance only, clearly subjected the decision to the Supreme Court's jurisdiction.[137]

2. *Substantive Analysis of the Exclusionary Rule*

After determining that the Court had jurisdiction, Chief Justice Rehnquist concluded that suppression of evidence under the exclusionary rule is inappropriate when the Fourth Amendment violation results from a clerical error by a court employee, a sheriff's office em-

---

any title, right, privilege, or immunity is specifically set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

129 ARIZ. REV. STAT. ANN. § 13-3925 (1993).

130 Arizona v. Evans, 115 S. Ct. 1185, 1189 (1995).

131 463 U.S. 1032 (1983).

132 *Evans*, 115 S. Ct. at 1188 (quoting *Long*, 463 U.S. at 1040-41).

133 *Id.* at 1189 (quoting *Long*, 463 U.S. at 1041).

134 *Id.*

135 *Id.* at 1198 (Ginsburg, J., dissenting).

136 *Id.* at 1190.

137 *Id.*

ployee, or a police department employee.[138]

First, Chief Justice Rehnquist argued that the exclusionary rule is a judicially created remedy, whose purpose is to prevent future Fourth Amendment violations, rather than to provide an individual remedy.[139] Because the language of the Fourth Amendment does not mandate the exclusionary rule, Chief Justice Rehnquist argued that no connection exists between a Fourth Amendment violation and an individual's right to the suppression of evidence.[140]

Second, citing *United States v. Leon*,[141] Chief Justice Rehnquist asserted that the exclusionary rule should only be applied when its deterrent purpose is advanced.[142] Applying the *Leon* reasoning to the facts in *Evans*, Chief Justice Rehnquist argued that excluding evidence improperly obtained due to a court clerk's departure from established office practices would serve no deterrent purposes.[143] Chief Justice Rehnquist maintained that, unlike police officers, court employees are not directly involved in law enforcement and have no personal or professional stake in the outcome of prosecutions.[144] Because the application of the exclusionary rule in the circumstances particular to *Evans* does not deter misconduct, Chief Justice Rehnquist concluded that suppression of evidence was an inappropriate remedy.[145]

B. JUSTICE O'CONNOR'S CONCURRENCE

Justice O'Connor[146] wrote separately to underline her interpretation of the decision's limited scope. Justice O'Connor balanced the burden on law enforcement capabilities imposed by the exclusionary rule against the necessity for deterrence of Fourth Amendment violations.[147] Justice O'Connor emphasized the reasonable reliance standard as the basis for determining whether the exclusionary rule is applicable.[148] Concluding that "with the benefits of more efficient law enforcement mechanisms comes the burden of corresponding constitutional responsibilities," Justice O'Connor left open the question as to whether the police officers' reliance on the record-keeping system

---

138 *Id.* at 1193.
139 *Id.* at 1191.
140 *Id.*
141 468 U.S. 897 (1984).
142 *Evans*, 115 S. Ct. at 1191.
143 *Id.* at 1193.
144 *Id.*; *see also Leon*, 486 U.S. at 916.
145 *Evans*, 115 S. Ct. at 1194.
146 Justices Souter and Breyer joined Justice O'Connor's concurrence.
147 *Evans*, 115 S. Ct. at 1194 (O'Connor, J., concurring).
148 *Id.* (O'Connor, J., concurring).

itself was reasonable.[149]

C. JUSTICE SOUTER'S CONCURRENCE

Justice Souter[150] embraced Justice O'Connor's focus on the limited scope of the majority's holding in a one paragraph concurrence.[151] Justice Souter suggested that the following important question was left unanswered by the majority:

> how far, in dealing with the fruits of computerized error, [should] our very concept of deterrence by exclusion of evidence . . . extend to the government as a whole, not merely the police, on the ground that there would otherwise be no reasonable expectation of keeping the number of resulting false arrests within an acceptable minimum limit[?][152]

D. JUSTICE STEVENS' DISSENT

Joining Justice Ginsburg in her rejection of *Michigan v. Long*, Justice Stevens wrote separately to discuss the substantive Fourth Amendment issues presented by the exclusionary rule.[153] His analysis consisted of four main points.

First, Justice Stevens rejected the majority's assertion that the limited objective of the exclusionary rule is deterrence of police misconduct.[154] Throughout his opinion, Justice Stevens offered an alternative focus on the individual's freedom from unreasonable and arbitrary intrusion by any governmental entity, arguing that the suppression of illegally obtained evidence is the price "the sovereign" must pay for Fourth Amendment violations.[155]

Second, Justice Stevens concluded that even if deterrence were the sole rationale behind the exclusionary rule, the majority's holding was incorrect on the merits.[156] Justice Stevens rejected the Court's reliance on *Leon*, distinguishing a quashed warrant, one that no longer exists, from a presumptively valid warrant that is later overturned on appeal.[157]

Third, Justice Stevens maintained that the *Leon* exclusionary rule would, in fact, effectively deter police misconduct under the present circumstances because "law enforcement officials . . . stand in the best position to monitor such errors as occurred here [and] can influence

---

149 *Id.* (O'Connor, J., concurring).
150 Justice Breyer joined Justice Souter's concurrence.
151 *Evans*, 115 S. Ct. at 1195 (Souter, J., concurring).
152 *Id.* (Souter, J., concurring).
153 *Id.* (Stevens, J., dissenting).
154 *Id.* (Stevens, J., dissenting).
155 *Id.* at 1195-97 (Stevens, J., dissenting).
156 *Id.* at 1196 (Stevens, J., dissenting).
157 *Id.* (Stevens, J., dissenting).

mundane communication procedures in order to prevent those errors."[158]

Finally, Justice Stevens turned to the practical aspects of advanced technology and its invasive impact on the autonomy of innocent citizens, concluding that "the cost [of lower rates of criminal prosecutions] is amply offset by an appropriately 'jealous regard for maintaining the integrity of individual rights.'"[159]

E. JUSTICE GINSBURG'S DISSENT

Writing in dissent, Justice Ginsburg[160] rejected the *Long* standard for determining whether the Supreme Court has jurisdiction over state court decisions.[161] Justice Ginsburg proposed the adoption of the opposite presumption, namely that "absent a plain statement to the contrary, . . . a state court's decision of the kind here at issue rests on an independent state law ground."[162] Justice Ginsburg maintained that this rule would free the states to act as "laboratories" in response to novel legal problems.[163] Therefore, Justice Ginsburg concluded that the writ of certiorari should be dismissed.[164]

Justice Ginsburg responded peripherally to the substantive issues by identifying the problems associated with increasingly invasive technology, discussing the artificiality of the distinction between court personnel and police officers, and recognizing that deterrence is an empirical question rather than a purely logical exercise.[165] Justice Ginsburg proposed that the federal judiciary should allow state courts a freer rein to explore new ground and to protect individual rights against state infringement.[166]

V. ANALYSIS

This Note argues that the Court erred in its substantive conclusion that courts should not apply the exclusionary rule when a court employee makes a clerical error resulting in a Fourth Amendment violation. The Fourth Amendment to the Constitution protects the rights of all citizens against illegal searches and seizures by the govern-

---

158 *Id.* (Stevens, J., dissenting).

159 *Id.* at 1197 (Stevens, J., dissenting) (quoting Mapp v. Ohio, 367 U.S. 643, 647 (1961)).

160 Justice Stevens joined Justice Ginsburg in her dissent.

161 *Evans*, 115 S. Ct. at 1198 (Ginsburg, J., dissenting).

162 *Id.* at 1199 (Ginsburg, J., dissenting).

163 *Id.* at 1198 (Ginsburg, J., dissenting).

164 *Id.* (Ginsburg, J., dissenting).

165 *Id.* at 1197-1203 (Ginsburg, J., dissenting).

166 *Id.* at 1201 (Ginsburg, J., dissenting).

ment.[167] However, through the ever-increasing number of exceptions to the exclusionary rule,[168] the Court has narrowed Constitutional protections in privacy expectations, while expanding the authority of the sovereign to intrude into an individual's life.

In *Evans*, the Court furthered this erosion by expanding the good faith exception created in *United States v. Leon.* This Note asserts that the Court's decision in *Evans* is wrong for three reasons. First, by ignoring the factual underpinnings of the precedent in *Leon*, the Court disregarded the historical importance of judicial independence provided by the warrant process. Second, the Court focused on deterrence as the sole purpose advanced by the exclusionary rule, thereby underestimating the value of the rule for other non-deterrent purposes. Finally, the Court drew an illogical "bright line" by effectively limiting the deterrence possibilities of the exclusionary rule to arresting police officers. Therefore, the Court should have upheld the decision of the trial court to suppress the illegally seized evidence, as affirmed by the Arizona Supreme Court.

A. EXTENDING THE *LEON* REASONING TO THE *EVANS* FACTS IGNORES ESSENTIAL FACTUAL DIFFERENCES BETWEEN THE TWO CASES

The exceptions to the exclusionary rule are of two general types: (1) those which recognize that evidence could have or did come from a source other than the Fourth Amendment violation;[169] and (2) those which recognize independent legal reasons for allowing the evidence.[170] The so-called "good faith exception" recognized in *Leon* is *sui generis,* a unique exception, based upon the independence of the judicial warrant.[171] Because no warrant existed at the time of the arrest in *Evans*, the Court misapplied the *Leon* holding. Although the facts of *Leon* and *Evans* appear similar, the difference in the bases for the illegal arrest in the two cases are fatal to the application of *Leon*'s reasoning to *Evans.*

---

167 U.S. CONST. amend. IV.

168 Current exceptions to the exclusionary rule are the following: the impeachment exception, the independent source exception, the inevitable discovery exception, the "good faith" exception, the harmless error exception, and the rule of attenuation. *See supra* notes 39-90 and accompanying text.

169 The independent source exception, the inevitable discovery exception, and the rule of attenuation all admit evidence because it either did or could have come from a source other than the violation.

170 The impeachment exception allows the illegally seized evidence to be admitted for independent legal significance, namely to impeach a witness. The harmless error exception simply refuses to overturn a lower court decision when a reviewing court determines that the enforcement of constitutionally protected rights and attendant exclusion of evidence would not have made a difference.

171 United States v. Leon, 468 U.S. 897, 913-18 (1984).

In *Leon*, police officers conducted a legal search, acting in objectively reasonable reliance on a search warrant issued by a detached and neutral magistrate.[172] The warrant was later determined to be invalid.[173] In stark contrast, Evans' search and arrest was warrantless and without probable cause. The basis for Evans' arrest, the "phantom warrant," existed only in the police computer at the time of the illegal search and subsequent arrest.[174] The warrant had clearly been quashed days earlier.[175]

In *Leon*, there was a clear and legal authorization for the search.[176] When issued by a judge or magistrate, a warrant is presumptively valid until found to be invalid.[177] After the judicial decision issuing Leon's warrant, all judicial and law enforcement personnel fulfilled their respective responsibilities in effectuating the arrest.[178] In contrast, the search in *Evans* occurred because accountable non-judicial government employees failed to complete their required tasks.[179] The warrantless search and seizure were not the result of judicial error, but rather of a failure to effectuate a judicial mandate.[180]

Although the factual difference between *Leon* and *Evans* may appear somewhat technical,[181] the distinction is crucial. As Justice O'Connor stated in her dissent in *Illinois v. Krull*,[182] "*Leon* simply instructs courts that police officers may rely upon a facially valid search warrant."[183] What they may not do—at least prior to *Evans*—is make a warrantless arrest or conduct a warrantless search without probable cause in reliance on a mere report that a warrant exists.[184]

Chief Justice Rehnquist's analysis ignores the focus of *Leon*,

---

172 *Id.* at 900.

173 *Id.* at 903-04.

174 Arizona v. Evans, 115 S. Ct. 1185, 1188 (1995).

175 *Id.*

176 *Leon*, 468 U.S. at 902.

177 *Id.* at 926.

178 *Id.* at 902.

179 *Evans*, 115 S. Ct. at 1188.

180 *Id.*

181 Both situations involve the arresting officers doing their jobs, acting in reasonable reliance on what appears to be an arrest warrant.

182 480 U.S. 340 (1987).

183 *Id.* at 367 (O'Connor, J., dissenting).

184 *See infra* note 223. Consequences of the *Evans* decision are potentially far-reaching. *Evans* would seem to validate searches or seizures in violation of the Fourth Amendment: where a clerk, either a judicial employee or in a police office, pulls an incorrect file; when a clerk types an incorrect license plate number into a computer; when one individual is mistakenly searched and arrested due to mistaken identity based on a shared name. What becomes clear through a consequentialist approach to *Evans* is that, after this case, only an arresting officer, a small piece of a much larger puzzle, has a clear incentive to be careful when it comes to the Fourth Amendment.

namely, judicial independence in the context of the court's warrant-issuing function.[185] Traditionally, courts prefer that arrests be made pursuant to warrants issued by independent and unbiased magistrates, rather than police officers' determination of probable cause.[186] Congress established a procedure whereby police officers seek a neutral judge's or magistrate's determination as to whether probable cause for a search or seizure exists.[187] The clear purpose served by this procedure for obtaining a warrant, as described in *United States v. Chadwick*,[188] is that it "provides the detached scrutiny of a neutral magistrate, which is a more reliable safeguard against improper searches than the hurried judgment of a law enforcement officer 'engaged in the often competitive process of ferreting out crime.'"[189] The neutrality and reliability inherent in the warrant process, when compared to the police officer's determination of probable cause, create the presumption of validity of judicial warrants.[190]

The *Leon* exception recognizes the importance of an independent determination of probable cause.[191] In this vein, the good faith exception promotes the use of the warrant process, as the exception provides police officers with an incentive for seeking a warrant through a judge. The police disfavor the warrant process due to the attendant time and energy requirements associated with going into court and presenting evidence to a judge, who may or may not find probable cause to exist.[192] However, the *Leon* exception provides that

---

185 *See* United States v. Leon, 468 U.S. 897, 913-15 (1984); 1 WAYNE F. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT §§ 1.3(f)-(g) (3d ed. 1996):

> The reasoning which was critical to the decisions in those two cases [*Leon* and *Sheppard*]—especially that in with-warrant cases there is no need to deter the magistrate and usually no need to discourage the executing officer from relying upon the magistrate's judgment and actions—does not carry over to the without warrant situation. Moreover, to extend *Leon* and *Sheppard* to such situations would deprive those decisions of their one clear incidental benefit: if good faith suffices only when the police had a warrant, then the exception would 'give law enforcement officers some solid encouragement to employ the warrant process for all searches and arrests which are not made on an emergency basis.'

Id. § 1.3(g), at 94 (citation omitted).

186 The Supreme Court has noted the preference for warrants on many occasions. *See, e.g.*, United States v. Leon, 468 U.S. 897, 913-14 (1984); Illinois v. Gates, 462 U.S. 213, 236 (1983); Mincey v. Arizona, 437 U.S. 385, 390 (1977); Katz v. United States, 389 U.S. 347, 357 (1967); United States v. Ventresca, 380 U.S. 102, 106 (1965).

187 "A warrant shall issue [i]f the . . . judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist." FED. R. CRIM. P. 41(c)(1).

188 433 U.S. 1 (1977).

189 *Id.* at 9 (quoting Johnson v. United States, 333 U.S. 10, 14 (1948)).

190 *Leon*, 468 U.S. at 914. Despite the fact that warrants are presumptively valid, circumstances exist in which it is unreasonable for a police officer to rely upon a warrant, and therefore the exclusionary rule applies. *See supra* note 59.

191 *Leon*, 468 U.S. at 914.

192 *See* Chapman, *supra* note 37.

a trial court will not exclude evidence on the basis of judicial error when a judge's error results in a Fourth Amendment violation. Police are thereby "rewarded" if they follow the warrant procedure; even if an appellate court reviewing the probable cause determination finds that probable cause did not, in fact, exist, police efforts are not wasted as evidence is nonetheless admitted in the trial court.[193] In contrast, when a police officer errs in determining that probable cause exists, the exclusionary rule prohibits any evidence seized in connection therewith from being admitted in court.

Chief Justice Rehnquist ignores the obvious analogy of the quashing of *Evans*' warrant to the initial issuance of *Leon*'s warrant—both are presumptively valid because undertaken by a detached and neutral judicial official. Under *Leon*, the importance of judicial independence requires officers to accept on face value the validity of judicial determinations and rewards them for doing so by refusing to second-guess the reliance thereon. The *Evans* actors fail to carry out the judicial directive quashing the warrant. Contrary to *Leon*, however, they are subsequently "rewarded" through the admission of the illegally seized evidence, which ultimately resulted in a conviction. Chief Justice Rehnquist ignores the obvious distinction: the *Evans* problem occurs due to post-judicial error, while the *Leon* problem is due to judicial error. This distinction is essential to the legal application of *Leon* to the *Evans* facts, as well as to a common sense understanding of the cases, after *Leon*'s focus on judicial independence.

B. *EVANS* IGNORES HISTORIC FOURTH AMENDMENT PRINCIPLES AND PURPOSES TO BE SERVED BY THE EXCLUSIONARY RULE, INCLUDING LIMITATION OF GOVERNMENTAL POWER, PROTECTION OF INDIVIDUAL PRIVACY, AND PRESERVATION OF JUDICIAL INTEGRITY

Despite the contentions of the majority, the exclusionary rule's purposes reach beyond deterrence.[194] Other rationales, specifically the constraint on the sovereign, protection of individual privacy, and preservation of judicial integrity, were first introduced by *Weeks* and remain vital and relevant[195] despite the fact that deterrence appears

---

193 *Id.; see also* United States v. Leon, 468 U.S. at 914.

194 If deterrence is cited as the sole rationale for the exclusionary rule, the *Leon* "good faith exception" becomes problematic. Professor Steven Schlesinger, an opponent of the exclusionary rule, proposes that the good faith exception fosters "a careless attitude toward detail on the part of law enforcement officials," encouraging "police to see what can be gotten away with." Steven Schlesinger, *It Is Time to Abolish the Exclusionary Rule*, WALL ST. J., Sept. 10, 1981, at A24.

195 It may appear paradoxical to say that interests are "vital and relevant" today when recently the Court has consistently ignored these interests in the context of the Fourth Amendment. *See, e.g.,* Arizona v. Evans, 115 S. Ct. 1185 (1995) and United States v. Leon,

to be the sole rationale cited in support of the exclusionary rule today.[196]

First, the Fourth Amendment is "a constraint on the power of the sovereign, not merely on some of its agents. The remedy for its violation imposes costs on that sovereign, motivating it to train all of its personnel to avoid future violations."[197] To give such a constraint some "teeth," and to provide this motivation, the Fourth Amendment must have a practical everyday meaning.[198] The state must have some incentive to control itself, particularly because individual actors often have personal motivations in conflict with Fourth Amendment compliance.[199]

Second, the exclusionary rule embodies the intertwined values of privacy[200] and protection from government intervention which are fundamental to a democracy. The majority's claim that the exclusionary rule is not a specific or guaranteed remedy to a Fourth Amendment violation is rebutted by the fact that individual privacy and protection from government intervention remains fundamental on an individual basis. Adversaries of the exclusionary rule argue for the limitation of the rule because it protects criminals;[201] however, the

---

468 U.S. 897 (1984). However, privacy, the limitation of big government, individualized justice, and government within (as opposed to above) the law remain at the forefront of the concerns of many Americans.

196 For a discussion of the contrast between the purposes and goals of the exclusionary rule cited by the *Weeks* Court and those cited in later decisions, see LAFAVE, *supra* note 185, § 1.3(b).

197 *Evans*, 115 S. Ct. at 1195 (Stevens, J., dissenting) (citations omitted).

198 *See, e.g.*, Weeks v. United States, 232 U.S. 383, 391-92 (1914) ("The effect of the Fourth Amendment is to put the courts of the United States and Federal officials, in the exercise of their power and authority, under limitations and restraints as to the exercise of such power and authority.")

199 Court and sheriff's office employees whose jobs are the result of political patronage have a clear conflict between personal motivations to convict and compliance with the Fourth Amendment. Such an individual would have a vested interest in the outcome of criminal prosecutions when the elected official who appointed the employee is responsible to her electorate on issues of crime. In such a case, if the public feels that the elected official and her staff are not doing an adequate job prosecuting criminals, and the public does not reelect the official, the appointed employee loses her job.

200 *See, e.g. Weeks*, 232 U.S. at 390 ("Resistance to these practices [illegal searches and seizures] had established the principle which was enacted into the fundamental law in the Fourth Amendment, that a man's house was his castle and not to be invaded by any general authority to search and seize his goods and papers.").

201 Studies show that the actual societal cost of the exclusionary rule is relatively small. The cumulative loss in felony cases attributable to Fourth Amendment violations and the subsequent exclusion of evidence is between .6% and 2.35%. Thomas Y. Davies, *A Hard Look at What We Know (and Still Need to Learn) About the "Costs" of the Exclusionary Rule: The NIJ Study and Other Studies of "Lost" Arrests*, 1983 AM. B. FOUND. RES. J. 611, 622 (1983). *See also* KATHLEEN B. BROSI, A CROSS-CITY COMPARISON OF FELONY CASE PROCESSING (1979); FLOYD FEENEY ET AL., ARRESTS WITHOUT CONVICTION: HOW OFTEN THEY OCCUR AND WHY (National Institute of Justice 1983); NATIONAL INSTITUTE OF JUSTICE, THE EFFECTS OF THE EXCLUSION-

only means of providing protection from unlawful searches and seizures is to do so for all people, including criminals.[202] There is "nothing new in the realization that the Constitution sometimes insulates the criminality of a few to protect the privacy of us all."[203] The Arizona Supreme Court acknowledged the individual nature of the Fourth Amendment violation, implicitly emphasizing that the remedy should aim to preserve the core personal value of privacy: "[i]t is repugnant to the principles of a free society that a person should ever be taken into police custody because of a computer error precipitated by government carelessness."[204] Justice Stevens similarly focused on the indignity to the *individual*: "[t]he offense to the dignity of the citizen who is arrested, handcuffed, and searched on a public street simply because some bureaucrat has failed to maintain an accurate computer data base strikes me as . . . outrageous."[205]

The third purpose of the exclusionary rule is to prevent the judiciary from engaging in behavior violative of the Constitution.[206] As discussed in *Mapp*, the admission of evidence seized pursuant to a constitutional violation implicates the judiciary in the illicit conduct of both the initial unlawful police activity and the secondary act of condoning such illegality through its admission in the trial court.[207] The

ARY RULE: A STUDY IN CALIFORNIA (1983); Chapman, *supra* note 37; Peter F. Nardulli, *The Societal Cost of the Exclusionary Rule: An Empirical Assessment*, 1983 AM. B. FOUND. RES. J. 585 (1983); Myron W. Orfield, Jr., Comment, *The Exclusionary Rule and Deterrence: An Empirical Study of Chicago Narcotics Officers*, 54 U. CHI. L. REV. 1016 (1987); Schlesinger, *supra* note 194.

202 The obvious difficulty inherent in this argument is the fact that most individuals tangibly "harmed" by an illegal search or seizure are engaging in illegal behavior. Criminals benefit most directly from the exclusionary rule. In creating the rule, the judiciary weighed public policy interests in keeping criminals off the street against protecting innocent citizens from privacy violations. The clear effect of the exclusionary rule was known to all judges, and the response was clear: "[i]t is better, so the Fourth Amendment teaches, that the guilty sometimes go free than that citizens be subject to easy arrest." Henry v. United States, 361 U.S. 98, 104 (1959). If, however, the purpose of the line of exclusionary rule decisions ending with *Evans* is to alter this calculus, placing greater weight on catching criminals, assuming we believe that the exclusionary rule is not constitutionally mandated, a more appropriate route would be to rethink the exclusionary rule as a remedy altogether, rather than chipping away at it through an ever-increasing number of exclusions. For a discussion of the benefits of eliminating the exclusionary rule, see Christine M. D'Elia, Comment, *The Exclusionary Rule: Who Does It Punish?*, 5 SETON HALL CONST. L.J. 563 (1995).

203 Arizona v. Hicks, 480 U.S. 321, 329 (1987).

204 State v. Evans, 866 P.2d 869, 872 (Ariz. 1994), *rev'd*, 115 S. Ct. 1185 (1995).

205 Arizona v. Evans, 115 S. Ct. 1185, 1197 (1995) (Stevens, J., dissenting).

206 The judicial integrity argument can, of course, cut the other way. The public often perceives such a "technicality" as the exclusionary rule as hampering the search for justice and truth, rather than enhancing it, because truthful information is excluded on the basis of the means of its receipt. *See* Stone v. Powell, 428 U.S. 465, 491 (1975) (citation omitted).

207 *Mapp*, 367 U.S. at 659 ("Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence.").

importance of Government abstention from illegal activity, whether by police officers or by the judiciary, cannot be overestimated. As stated by Justice Brandeis in his dissent in *Olmstead v. United States*,[208]

> In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that the Government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face.[209]

By limiting the exclusionary rule to deterrent purposes, the majority renders constitutional mandates regarding search and seizure effectively meaningless. Only the judiciary is in the position to enforce constitutional dictates. By engaging in behavior which extends Fourth Amendment violations into the courtroom, i.e., the admission of evidence obtained from illegal police conduct, while simultaneously purporting to uphold the letter and spirit of the Constitution, courts compromise their integrity. Although this paradoxical position is somewhat inevitable given the numerous exceptions to the exclusionary rule, the rule's existence should act as a limiting mechanism, forcing courts to exclude illegally seized evidence except in a narrow range of cases, namely for independent legal significance, because the evidence could have or did come from a source other than the Fourth Amendment violation, or to encourage the use of the warrant process.[210]

See also Terry v. Ohio, 392 U.S. 1, 13 (1968) ("Courts which sit under our Constitution can not and will not be made party to lawless invasions of the constitutional rights of citizens by permitting unhindered governmental use of the fruits of such invasions."); Weeks v. United States, 232 U.S. 383, 392 (1914) ("The tendency . . . to obtain conviction by means of unlawful seizures . . . should find no sanction in the judgments of the courts which are charged at all times with the support of the Constitution and to which people of all conditions have a right to appeal for the maintenance of such fundamental rights."); United States v. Leon, 468 U.S. 923, 933 (1984) (Brennan, J., dissenting):

> Because seizures are executed principally to secure evidence, and because such evidence generally has utility in our legal system only in the context of a trial supervised by a judge, it is apparent that the admission of illegally obtained evidence implicates the same constitutional concerns as the initial seizure of that evidence. Indeed, by admitting unlawfully seized evidence, the judiciary becomes a part of what is in fact a single governmental action prohibited by the terms of the Amendment.

208 277 U.S. 438 (1928).

209 *Id.* at 485 (Brandeis, J., dissenting).

210 *See supra* notes 39-90 and accompanying text.

C. EVEN IF DETERRENCE IS THE MAIN GOAL OF THE EXCLUSIONARY RULE, ADMITTING EVIDENCE IN *EVANS* ARTIFICIALLY DISTINGUISHES ARRESTING POLICE OFFICERS FROM ALL OTHER GOVERNMENT EMPLOYEES, THEREBY LIMITING THE DETERRENT POSSIBILITIES OF THE EXCLUSIONARY RULE

In his concurrence, Justice Souter asked the essential question: "how far [should] . . . our very concept of deterrence by exclusion of evidence . . . extend to the government as a whole, not merely the police . . . [?]"[211] Even if deterrence is the primary goal of the exclusionary rule, limiting the application of the rule to arresting officers ignores the realities of governmental interaction, and constrains the rule's possible effects.

The *Evans* state courts made no factual finding of responsibility for the clerical error which resulted in the Fourth Amendment violation.[212] The source of error made very little difference to Chief Justice Rehnquist because he limits the targets of the rule to the arresting officers. He concludes, *a priori,* that no deterrent purposes can be served with respect to other officials involved in the transmission of information regarding Evans' quashed warrant.[213] By thus limiting the availability of the exclusionary rule, Chief Justice Rehnquist constrains its other effective uses.

There are individuals involved in law enforcement other than the arresting officers who have an investment, albeit somewhat more limited, in the outcome of criminal trials. Such interested individuals may be non-arresting police officers, including those in charge of record-keeping, and court officials involved in criminal matters, to name only a few. A broader application of the exclusionary rule could affect the behavior of these individuals.[214]

In a world of ever-proliferating technology, limiting the exclusionary rule to arresting police officers exposes citizens to greater and more numerous Fourth Amendment violations.[215] Additionally, it ignores the reality of how information is provided and shared by agencies other than the police.[216] For example, the National Crime

---

211 Arizona v. Evans, 115 S. Ct. 1185, 1195 (1995) (Souter, J., concurring).

212 Transcript, Evidentiary Hearing: Motion to Suppress, Joint Appendix, Arizona v. Evans, 115 S. Ct. 1185 (1995) (No. 93-1660).

213 *Evans,* 115 S. Ct. at 1191.

214 *See supra* note 199.

215 This Note discusses but a few Fourth Amendment issues raised by new computer technology. Application of traditional definitions of search and seizure to data kept and shared by the computer is another such issue. For a discussion of some of these issues, see Randolph S. Sergent, *A Fourth Amendment Model for Computer Networks and Data Privacy,* 81 VA. L. REV. 1181 (1995).

216 As Justice Ginsburg states, "Court personnel and police officers are not compartmen-

Information Center provides information regarding individuals wanted for crimes to states and federal agencies.[217] Over 16,000 agencies utilize this system to check for warrants.[218] The individuals engaged in updating such a computer system have a stake in the outcome of criminal trials, albeit on a different level than police officers, as do the thousands of agencies providing information to the Center.[219]

Had the *Evans* Court held that a non-judicial error is subject to the exclusionary rule when the error results in a Fourth Amendment violation, then local police stations would have greater incentive to review their files; similarly, court employees would have motivation to be accurate in recordkeeping. The outcome of criminal prosecutions would be contingent on compliance with the proscriptions of the Fourth Amendment.[220] Consequently, fewer lives would be disrupted because of human error of government employees. The application of the exclusionary rule to the state's agents would provide this practical incentive.

The *Evans* problem arose because the arresting officer in *Evans* did not possess a physical warrant.[221] Rather, he relied on his computer.[222] While police officers are free to utilize this convenient technology, doing so risks reliance upon invalid information.[223] This risk should be born by the sovereign.[224]

---

talized actors. Instead, they serve to carry out the State's information-gathering objectives." Arizona v. Evans, 115 S. Ct. 1185, 1200 (1995) (Ginsburg, J., dissenting).

217 The Department of Justice runs the National Crime Information Center through the Federal Bureau of Investigation; Congress has called the National Crime Information Center the "single most important avenue of cooperation among law enforcement agencies." National Law Enforcement Cooperation Act of 1990, Pub. L. No. 101-647, § 612(a), 104 Stat. 4823 (1990).

218 *Id.*

219 *See* William J. Mertens & Silas Wasserstrom, *The Good Faith Exception to the Exclusionary Rule: Deregulating the Police and Derailing the Law,* 70 GEO. L. J. 365 (1981).

220 The deterrence rationale approaches the theoretical border of the rationale of constraining the sovereign. *See supra* part V.B.

221 Had the officer not relied on his computer, he would need a physical warrant, which did not exist.

222 Arizona v. Evans, 115 S. Ct. 1185, 1188 (1995).

223 The fact pattern of *Evans* is closer to others involving arrests as a result of invalid information. *See* Whiteley v. Warden, 401 U.S. 560, 568-69 (1971) (arresting officer relied on radio bulletin issued by another department; the Court held that "an otherwise illegal arrest cannot be insulated from challenge by the decision of the instigating officer to rely on fellow officers to make the arrest"); *see also* United States v. Hensley, 469 U.S. 221, 232 (1985) (in dicta, the Court stated that reliance on another police department's "wanted" flier was unreasonable when that flier was based on an absence of reasonable suspicion).

224 The sovereign should not only bear the cost in the interest of justice, but also because the government is the best cost avoider. The government is in the best position to avoid illegal searches and seizures, as it can remedy the problem through due diligence, proper record-keeping, and responsible training of government personnel. The individ-

In the final analysis, it makes no difference to the individual whose rights have been violated if the error resulting in the violation occurred at a police station or a state agency.[225] The maintenance of accurate and current information in government computers fundamentally preserves the Fourth Amendment rights of citizens. Even if the exclusionary rule aims primarily at deterring future police misconduct, courts could pursue this goal by extending the exclusionary rule beyond arresting police officers to include all police and non-judicial personnel engaged in law enforcement.

VI. CONCLUSION

In *Arizona v. Evans*, the Court concluded that admission of evidence seized incident to the execution of a non-existent arrest warrant as a result of a computer error was constitutional.

Evans was wrongly decided. The Court should have embraced a broad interpretation of the Fourth Amendment. First, the Court should have factually distinguished *United States v. Leon* due to its focus on the warrant process in concert with the fact that no warrant existed in *Evans*. Second, the Court failed to acknowledge motivations for the exclusionary rule other than deterrence, such as limiting governmental power, protecting individual privacy, and preserving the integrity of the judiciary. Finally, even if the exclusionary rule serves only deterrence purposes, the Court limited the rule's potential deterrence benefits by refusing to apply it to all governmental employees. Instead, the Court continues to chip away at the substance of essential Fourth Amendment protections against illegal searches and seizures. As a consequence of this decision, not only criminals, but also innocent citizens, will lose their Constitutionally guaranteed protections from unreasonable searches and seizures.

HEATHER A. JACKSON

---

ual, on the other hand, regardless of any and all attempts to avoid illegal searches and seizures, has no control whatsoever over the mistakes of government, be they mistakes of court employees or police officers.

[225] The fact that one's Fourth Amendment rights were violated is not the dispositive issue, as judicial authorization "excuses" a violation by eliminating the exclusionary rule as a remedy. Unlike the judicial authorization context, however, there is no legal reason for distinguishing between the mistakes of an arresting officer and a clerical employee.