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Note

ARIZONA v. EVANS: NARROWING THE SCOPE OF THE EXCLUSIONARY RULE

In *Arizona v. Evans*, the Supreme Court further narrowed the scope of the exclusionary rule.[1] The Court held that evidence seized in violation of the Fourth Amendment is admissible in a criminal trial if an officer conducted an unlawful search and seizure in good faith reliance on erroneous computer information generated by court employees.[2] The Court broadened the good faith exception to the exclusionary rule established in *United States v. Leon*,[3] reasoning that application of the rule in *Evans* would not deter future Fourth Amendment violations and would impose too high a cost on society's law enforcement interests.[4] In so ruling, the Court overestimated costs to law enforcement and underestimated the deterrent effect of the exclusionary rule. Furthermore, the Court's ruling may severely impact individual civil liberties by failing to adequately consider the costs imposed on individual liberty and privacy that result from a narrowed exclusionary rule.

I. THE CASE

On January 5, 1991, a Phoenix, Arizona, police officer stopped Isaac Evans for a minor traffic violation.[5] After Evans admitted to driving with a suspended license, the officer returned to his patrol car and conducted a routine computer check on Evans.[6] The check not only confirmed the suspended license, but also showed an outstanding misdemeanor warrant for Evans's arrest.[7] Based on the warrant, the officer arrested Evans.[8] After placing him in restraints, the officer discovered marijuana on Evans's person and a bag of marijuana in his car.[9]

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1. 115 S. Ct. 1185 (1995), *rev'g* 866 P.2d 869 (Ariz. 1994).
2. *Id.* at 1193-94.
3. 468 U.S. 897 (1984).
4. *Evans*, 115 S. Ct. at 1200-03.
5. *Id.* at 1188.
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*

The State subsequently charged Evans with possession of marijuana.[10] When the police reported Evans's arrest to the appropriate court, however, court personnel discovered an error in the computer record relied upon by the arresting officer.[11] Although a justice of the peace had issued the warrant, court records showed that the warrant had been quashed several weeks prior to Evans's arrest.[12]

Arguing that he was the victim of an unlawful search and seizure, Evans filed a motion to suppress all evidence seized during his arrest.[13] Evans relied on Arizona precedent, *State v. Greene*,[14] which upheld application of the exclusionary rule where a defendant's arrest resulted from inaccurate police computer records.[15] At Evans's suppression hearing, the trial court heard conflicting evidence suggesting that either court employees or law enforcement employees could have been responsible for the computer error.[16] Distinguishing *Greene*, the State argued that in Evans's case court employees, not police, caused the error, and thus *Greene* was inapposite.[17] Furthermore, the State urged that the arresting officer acted on his good faith belief that a valid warrant existed, and that use of the evidence should be permitted pursuant to Arizona's "good faith exception" statute.[18]

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

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

12. *Evans*, 866 P.2d at 870.

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

14. 783 P.2d 829 (Ariz. Ct. App. 1989). In *State v. Greene*, an Arizona police officer, relying on computer records showing an outstanding warrant, arrested the appellee after stopping him for a minor traffic violation. *Id.* at 829. While taking Greene into custody, the officer discovered narcotics in his possession. *Id.* After charging Greene, however, law enforcement officials learned that their computer records were erroneous; Greene's arrest warrant had been quashed eight months earlier. *Id.* It was unclear from the record whether police department personnel were responsible for the error. *Id.* at 830. In *Greene*, the Arizona Court of Appeals allowed the suppression of evidence seized at the time of the arrest, reasoning that

> the ends of the exclusionary rule would be furthered in an appreciable way by holding the evidence inadmissible because such a holding would tend to deter the South Tucson Police Department from deliberately or negligently failing to keep its paperwork or computer entries up to date, exposing persons to a possible wrongful arrest.

Id.

15. State v. Evans, 836 P.2d 1024, 1026 (Ariz. Ct. App. 1992), *rev'd*, 866 P.2d 869 (Ariz. 1994), *rev'd*, 115 S. Ct. 1185 (1995).

16. *Evans*, 866 P.2d at 870.

17. *Evans*, 836 P.2d at 1025-26.

18. *Id.* at 1026 (citing ARIZ. REV. STAT. ANN. § 13-3925 (1993)). The Arizona statutory good faith exception provides in part:

> 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

Evans maintained that the purpose of the exclusionary rule would be served regardless of the source of the mistake because exclusion would deter future errors.[19] Evans also argued that the good faith exception to the exclusionary rule did not apply because police, not judicial, error caused the unlawful arrest.[20]

The trial court found the source of the error irrelevant and granted Evans's motion to suppress, reasoning that the exclusionary rule serves to deter negligence by the State generally.[21] The Arizona Court of Appeals reversed, believing that exclusion under these circumstances would not deter those not "directly associated with the arresting officers or the arresting officers' police department."[22]

The Arizona Supreme Court vacated the intermediate appellate court's opinion, maintaining that regardless of the source of the error, application of the rule would "hopefully serve to improve the efficiency of those who keep records in our criminal justice system."[23] The United States Supreme Court granted certiorari[24] to determine whether the exclusionary rule "requires suppression of evidence seized incident to an arrest resulting from an inaccurate computer record, regardless of whether police personnel or court personnel were responsible for the record's continued presence in the police computer."[25]

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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.
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).

19. *Evans*, 836 P.2d at 1026.

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

21. *Id.*

22. *Evans*, 836 P.2d at 1027.

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

24. Arizona v. Evans, 114 S. Ct. 2131 (1994).

25. *Evans*, 115 S. Ct. at 1189.

II. LEGAL BACKGROUND

A. *Development of the Exclusionary Rule*

The Fourth Amendment provides in pertinent part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ."[26] The Fourth Amendment itself contains no express provision for the exclusion of evidence seized in violation of its commands.[27] One of the first cases associated with the Supreme Court's development of the exclusionary rule was *Weeks v. United States*.[28] In *Weeks*, the Court held that where a defendant's private papers were unlawfully seized by federal law enforcement officers, and where the defendant had made a seasonable request for the return of those papers, use of the evidence at trial constituted "prejudicial error."[29]

The *Weeks* Court reasoned that the Constitution mandated exclusion of evidence unlawfully seized by federal law enforcement officers.[30] In *Mapp v. Ohio*,[31] the Court not only imposed the exclusionary rule on the states, it reaffirmed its belief that the exclusionary rule was constitutionally mandated.[32]

A major turning point in the development of the exclusionary rule came in 1973 with the Court's decision in *United States v. Calan-*

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26. 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 persons or things to be seized.

Id.

27. *Id.*

28. 232 U.S. 383, 398 (1914); *see also* 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, 1374 (1983).

29. 232 U.S. at 398. In *Weeks*, the Court reasoned that:

> [i]f letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment declaring his right to be secure against such searches and seizures is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution.

Id.

30. *Id.*; *see also* United States v. Leon, 468 U.S. 897, 935 (1984) (Brennan, J., dissenting).

31. 367 U.S. 643, 655 (1961).

32. *Id.* The Court held that "all evidence obtained by searches and seizures in violation of the Constitution is, *by that same authority*, inadmissible in a state court." *Id.* (emphasis added). The Court reaffirmed *Mapp* in 1971 in Whiteley v. Warden, Wyo. State Penitentiary, 401 U.S. 560, 569 (1971).

dra.[33] In *Calandra*, the Court held that a witness summoned before a grand jury may not refuse to answer questions based on evidence seized in violation of the Fourth Amendment.[34] Contrary to its earlier statements in *Mapp*, the *Calandra* Court held that the exclusionary rule constituted a "judicially created remedy," not a personal constitutional right.[35] The Court found that the exclusionary rule functions to "safeguard Fourth Amendment rights generally through its deterrent effect."[36] Thus, its use should be limited to circumstances "where its remedial objectives are thought most efficaciously served."[37] The Court also adopted a cost-benefit approach to be used by a court when considering application of the exclusionary rule: where the benefits of deterrence are minimal and the cost to society's law enforcement interests are high, the rule does not apply.[38]

In the wake of *Calandra*, the Court has continued to narrow the scope of the exclusionary rule.[39] In 1976 the Court ruled that in civil proceedings initiated by the federal government, the government could use evidence unlawfully seized by state criminal law enforcement agents.[40] That same year, the Court held that "where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial."[41] Furthermore, in 1980 the Court held that unlawfully seized evidence may be used to impeach a defendant's testimony.[42] In each of these cases, the Court concluded that society's law enforcement interests outweighed the minimal benefits of deterrence.

B. Development of the "Good Faith" Exception

In 1984, in the landmark case of *United States v. Leon*, the Supreme Court dramatically limited the reach of the exclusionary rule by permitting the admission of "evidence obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by prob-

33. 414 U.S. 338 (1974).
34. *Id.* at 351-52.
35. *Id.* at 348.
36. *Id.*
37. *Id.*
38. *Id.* at 354.
39. Stewart, *supra* note 28, at 1389.
40. United States v. Janis, 428 U.S. 433, 454 (1976).
41. Stone v. Powell, 428 U.S. 465, 494 (1976).
42. United States v. Havens, 446 U.S. 620, 627-28 (1980).

able cause."[43] The Court's decision in *Leon* established what is commonly referred to as the good faith exception to the exclusionary rule.[44] In arriving at this holding, the Court concluded that application of the rule would neither deter magistrates and judges from committing future errors nor alter the conduct of a police officer acting in reasonable reliance on a warrant.[45] Therefore, applying *Calandra*'s cost-benefit analysis, the Court reasoned that application of the rule could not be justified because its use would yield no appreciable deterrence benefits and would impose "substantial costs" to society's law enforcement interests.[46] The Court held that an officer's reliance must be "objectively reasonable" before the exception may be in-

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43. 468 U.S. 897, 900 (1984).

44. *Id.* at 913. Several Supreme Court Justices advocated a good faith exception in cases prior to *Leon*. In his dissent in Stone v. Powell, 428 U.S. at 538 (White, J., dissenting), Justice White opined that both *Weeks* and *Mapp* "overshot their mark insofar as they aimed to deter lawless action by law enforcement personnel." *Id.* The exclusionary rule, Justice White argued, failed to achieve its intended results and had proven to be a "senseless obstacle to arriving at the truth in many criminal trials." *Id.* Consequently, Justice White proposed substantial modification to the rule "so as to prevent its application in those many circumstances where the evidence at issue was seized by an officer acting in the good-faith belief that his conduct comported with existing law and having reasonable grounds for this belief." *Id.; see also Leon*, 468 U.S. at 913 n.11 (detailing history of prior debate surrounding the adoption of a good faith exception).

45. *Leon*, 468 U.S. at 915-16. The Court relied on three factors in finding that application of the rule would not affect the behavior of judges and magistrates. First, the Court concluded that the exclusionary rule was "designed to deter police misconduct rather than to punish the errors of judges and magistrates." *Id.* at 916. Second, the Court found no evidence that suggested that judges and magistrates are "inclined to ignore or subvert the Fourth Amendment or that lawlessness among these actors requires application of the extreme sanction of exclusion." *Id.* Third, the Court found no basis for "believing that exclusion of evidence seized pursuant to a warrant will have a significant deterrent effect on the issuing judge or magistrate" because they are "not adjuncts to the law enforcement team." *Id.* at 916-17. Therefore, judges and magistrates "have no stake in the outcome of particular criminal prosecutions." *Id.* at 917.

Furthermore, the Court concluded that "[p]enalizing the officer for the magistrate's error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations." *Id.* at 921. The Court reasoned that magistrates ultimately assume responsibility for a probable-cause determination, and police officers "cannot be expected to question the magistrate's probable-cause determination or his judgment that the form of the warrant is technically sufficient." *Id.*

46. *Id.* at 913.

voked.[47] Ordinarily, an officer has acted objectively reasonably when he conducts a search pursuant to a warrant.[48]

The Court applied the *Leon* standard in *Massachusetts v. Sheppard*, an opinion handed down on the same day as *Leon*.[49] In *Sheppard*, the Court held that officers acted reasonably in relying upon a warrant issued by a judge who failed to make necessary clerical corrections.[50] Three years later, the Court expanded the good faith exception, holding that a police officer's reliance on a statute is objectively reasonable even when the statute is later found unconstitutional.[51]

III. SUMMARY OF THE COURT'S REASONING

In *Arizona v. Evans*, the Supreme Court declined to apply the exclusionary rule where an arrest resulted from a police officer's reliance on an erroneous computer record generated by court employees.[52] As an initial matter, however, the Court considered whether it could maintain jurisdiction over the case.[53] Evans argued that because the Arizona Supreme Court based its decision on an "adequate and independent state ground," the Supreme Court lacked jurisdiction to review the case.[54] The Court was not persuaded by

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47. *Id.* at 922. In *Leon*, the Court provided guidance for determining when an officer has acted objectively reasonably. *Id.* at 923. The Court asserted that an officer has not acted in objective good faith when he obtains a warrant by intentionally misleading a magistrate or judge or when an officer demonstrates a reckless disregard for the truth in presenting the facts to a magistrate or judge. *Id.* Similarly, an officer has not acted objectively reasonably when he relies on a warrant based on an affidavit "'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable,'" *id.* at 923 (quoting Brown v. Illinois, 422 U.S. 590, 610-11 (1975) (Powell, J., concurring in part)), or under circumstances where the "issuing magistrate wholly abandoned his judicial role." *Id.* (citing Lo-Ji Sales, Inc. v. New York, 442 U.S. 319 (1979)). Finally, an officer who relies on a facially deficient warrant has not acted in objective good faith. *Id.*

48. *Id.* at 922 (citing United States v. Ross, 456 U.S. 798, 823 n.32 (1982)).

49. 468 U.S. 981 (1984).

50. *Id.* at 990-91. In *Sheppard*, the officer pointed out to the issuing judge all potential defects in the application for the warrant. *Id.* The judge assured the officers that he would make all necessary changes and, upon issuing the warrant to the officers, informed them that the warrant provided sufficient authority to conduct the search. *Id.* at 986.

51. Illinois v. Krull, 480 U.S. 340, 349-50 (1987).

52. 115 S. Ct. at 1194. Despite the fact that Evans's trial produced conflicting evidence as to the source of the clerical error and despite the fact that the certiorari question addressed the issue directly, *see supra* text accompanying notes 24-25, the Court declined to address the question of whether the exclusionary rule applies where police department clerks caused the error. *Id.* (O'Connor, Souter, Breyer, JJ., concurring) ("Prudently, then, the Court limits itself to the question of whether a *court employee's* departure from such established procedures is the kind of error to which the exclusionary rule should apply.") (emphasis added).

53. *Id.* at 1189-90.

54. *Id.* at 1189.

Evans's argument, and found that in accordance with its decision in *Michigan v. Long*,[55] jurisdiction was proper.[56] The *Long* Court held that when

> a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion . . . [the Court] . . . 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.[57]

In dicta, the *Long* Court suggested that a state court can avoid review simply by including a "plain statement" in its opinion indicating that references to federal precedent served merely as guidance and did not "compel the result" that the court had reached.[58] The Court in *Evans* noted that the Arizona Supreme Court made reference to *United States v. Leon* and failed to make an express statement that the court used *Leon* only for guidance.[59] Consequently, the Court found that the state court based its opinion "squarely upon" an interpretation of federal law and that jurisdiction was proper.[60]

In holding that the exclusionary rule did not apply, the Court expressly declined to rely on pre-*Calandra* decisions,[61] and instead adhered to the cost-benefit approach articulated in *Calandra* and later cases.[62] Specifically, the Court applied the good faith exception established in *Leon* to the facts of the *Evans* case,[63] and held that application of the exclusionary rule would have little or no deterrent effect where court employees were responsible for the errors that led to an unlawful arrest.[64]

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55. 463 U.S. 1032 (1983).

56. *Evans*, 115 S. Ct. at 1190-91.

57. *Long*, 463 U.S. at 1040-41.

58. *Id.* at 1041.

59. *Evans*, 115 S. Ct. at 1190-91.

60. *Id.*

61. *Id.* at 1192-93. The Court rejected Evans's argument, which relied in part upon Whiteley v. Warden, Wyo. State Penitentiary, 401 U.S. 560 (1971). The Court explained that at the time *Whiteley* was decided, "identification of a Fourth Amendment violation [was] . . . synonymous with application of the exclusionary rule to evidence secured incident to that violation." *Evans*, 115 S. Ct. at 1192. Later case law rejected such a "reflexive" application of the rule. *Id.* at 1192-93.

62. *Evans*, 115 S. Ct. at 1192-93; *see also supra* notes 33-51 and accompanying text.

63. *Evans*, 115 S. Ct. at 1193 (citing United States v. Leon, 468 U.S. 897, 906 (1984)).

64. *Id.*

The Court stated that the exclusionary rule traditionally served to discourage misconduct by police officers, not court employees.[65] The Court found no evidence to suggest that court employees are "inclined to ignore or subvert the Fourth Amendment, or that lawlessness among these actors requires application of the extreme sanction of exclusion."[66] Thus, the Court concluded that application of the rule would have no "significant" deterrent effect on court employees.[67] The Court supported this conclusion by reasoning that, unlike police officers who are engaged in the "competitive enterprise of ferreting out crime," court employees have no real stake in the outcome of criminal prosecutions because they are sufficiently detached from police operations.[68] Consequently, the Court found that the threat of evidence suppression would not deter court employees from making future errors.[69]

The Court also held that application of the exclusionary rule in *Evans* would not deter police officers from committing future Fourth Amendment violations because the arresting officer acted objectively reasonably in relying on the computer record.[70] In the Court's view, the officer who arrested Evans would have been negligent if he had ignored the warrant.[71] The officer was duty-bound to arrest Evans, and therefore, application of the exclusionary rule "could not be expected to alter the behavior of the arresting officer."[72] Rather, evidence suppression would only serve to discourage police from fully discharging their duties.[73] Thus, in the absence of an appreciable deterrent effect, use of the rule could not justify the substantial costs of exclusion.[74]

IV. ANALYSIS

The Court's holding in *Evans* broadens the scope of the good faith exception in two respects.[75] First, the Court extended the exception to encompass not only judges and magistrates, as in *Leon*, but

65. *Id.*
66. *Id.*
67. *Id.*
68. *Id.* (citing Johnson v. United States, 333 U.S. 10, 14 (1948)).
69. *Id.*
70. *Id.* at 1194.
71. *Id.* at 1193.
72. *Id.*
73. *Id.*
74. *Id.*
75. *Id.* at 1196 (Stevens, J., dissenting).

court employees as well.[76] Second, the Court extended the *Leon* exception beyond situations involving reasonable reliance on a presumptively valid warrant to include cases where no warrant exists at the time of the search.[77] By broadening the good faith exception, *Evans* necessarily narrows the scope of the exclusionary rule, thus contributing to what Justice Brennan aptly described as the Court's "gradual but determined strangulation" of the rule.[78] This continuing trend is premised upon questionable reasoning and may yield disturbing results in the area of civil liberties.

A. Jurisdiction

Justice Ginsburg, joined by Justice Stevens, strongly objected to the Court's decision to assert jurisdiction in *Evans*.[79] In her dissent, Justice Ginsburg argued that the Arizona Supreme Court failed to base its decision in *Evans* on "a close analysis" of Fourth Amendment precedent and that the court had explicitly found *Leon* unhelpful in deciding the case.[80] The Court's decision to assert jurisdiction rests on questionable grounds.

The Arizona Supreme Court's decision contains little discussion of federal law, except to discount the lower court's consideration of *Leon*.[81] Furthermore, the court followed prior Arizona precedent established in *State v. Greene*,[82] and considered application of the good faith exception as defined by Arizona statute.[83] These facts support Evans's argument that the Arizona Supreme Court based its decision on adequate and independent state law grounds. The decision to assert jurisdiction in *Evans* suggests a heightened standard that state courts must meet in order to ensure a finding of adequate and independent state law grounds. This standard surpasses that established

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76. *Id.*

77. *Id.* Justice Stevens, dissenting, argued that the Court's reasoning in *Leon* "assumed the existence of a warrant" and, therefore, is "wholly inapplicable to warrantless searches and seizures." *Id.*

78. United States v. Leon, 468 U.S. 897, 928-29 (1984) (Brennan, J., dissenting).

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

80. *Id.* ("Indeed, the [Arizona Supreme C]ourt found our most relevant decision . . . *Leon* . . . 'not helpful!'") (quoting State v. Evans, 866 P.2d 869, 871 (Ariz. 1994)).

81. *Evans*, 866 P.2d at 871 ("*Leon* is also not helpful. . . . [The] situation [in *Leon*] is distinguishable from one like this, where no warrant at all was in existence at the time of the arrest.").

82. 783 P.2d 829 (Ariz. Ct. App. 1989); *see also supra* note 14 and accompanying text; *Evans*, 866 P.2d at 870-74.

83. *Evans*, 866 P.2d at 871 (rejecting the State's argument that Arizona's codification of the good faith exception, ARIZ. REV. STAT. ANN. § 13-3925, *supra* note 18, should apply where there was no showing of "reasonable judgmental error").

by the facts in *Long*, where, unlike in *Evans*, federal law clearly played a central role in the Michigan Supreme Court's decision.[84] After *Evans*, state courts wishing to avoid Supreme Court review must heed the Court's emphasis in *Evans* on the need for a plain statement denial of reliance on federal law.[85] Indeed, the Arizona Supreme Court did everything short of including such a plain statement. Arguably, it was this absence that led the Supreme Court to conclude that jurisdiction was proper in *Evans*.

Evans aptly demonstrates that *Long's* jurisdictional presumption may cause "premature settlement of important federal questions."[86] Justice Ginsburg noted that the Arizona Supreme Court viewed *Evans* as involving more than the mere slip of a court employee in maintaining police records, but rather as illuminating the "'potential for Orwellian mischief' in the government's increasing reliance on computer technology in law enforcement."[87] Emphasizing the increased risk of error caused by computerization and the need for swift corrective action, Justice Ginsburg persuasively argued that the *Long* presumption "impedes the States' ability to serve as laboratories for testing solutions to novel legal problems."[88] Such an approach is illogical particularly in the instant case where the "debate over the efficacy of an exclusionary rule reveals that deterrence is an empirical question, not a logical one."[89] As Justice Ginsburg stated, "the *Long* presumption interferes prematurely with state-court endeavors to explore different solutions to new problems facing modern society."[90]

B. Costs to Society's Law Enforcement Interests

In order to justify the good faith exception and other efforts to narrow the exclusionary rule, the Court has raised a number of policy concerns regarding the high costs that the exclusionary rule imposes on society's law enforcement interests.[91] In *Evans*, as in *Leon*, the

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84. Except for two references to its state constitution, the Michigan Supreme Court's decision in *Long* relied heavily on federal law. People v. Long, 320 N.W.2d 866 (Mich. 1982). The Michigan Supreme Court, unlike the Arizona court in *Evans*, specifically focused on application of Fourth Amendment protection under Terry v. Ohio, 392 U.S. 1 (1968). *Long*, 320 N.W.2d at 870 ("We hold, therefore, that the . . . search . . . was proscribed by the Fourth Amendment . . . .").

85. *See supra* text accompanying notes 58-60.

86. *Evans*, 115 S. Ct. at 1202 (Ginsburg, J., dissenting).

87. *Id.* at 1198.

88. *Id.*

89. *Id.* at 1200.

90. *Id.* at 1202.

91. *See, e.g., id.* at 1193-94 (majority opinion); Stone v. Powell, 428 U.S. 465, 489-92.

Court characterized the rule as an extreme sanction.[92] The Court has expressed concern that the rule requires exclusion of what is often probative and reliable evidence relating to the guilt of the defendant.[93] Use of the rule, the Court has argued, allows the guilty to go free; this rewards criminals and in turn undermines public confidence in, and respect for, the judicial system and the law.[94] In describing the rule as an extreme sanction, the Court has stated that the "disparity in particular cases between the error committed by the police officer and the windfall afforded a guilty defendant by application of the rule is contrary to the idea of proportionality that is essential to the concept of justice."[95]

However, the Court's characterization of the exclusionary rule as an extreme sanction is unfounded because the rule merely restores law enforcement to the position it held prior to the unlawful seizure.[96] Criticism of the exclusionary rule is often misdirected and is more appropriately "directed at the fourth amendment itself."[97] Retired Justice Potter Stewart contended:

> It is true that . . . the effect of the rule is to deprive the courts of extremely relevant, often direct evidence of the guilt of the defendant. But . . . the same extremely relevant evidence would not have been obtained had the police officer complied with the commands of the fourth amendment in the first place.[98]

Moreover, one empirical study suggests that, while application of the exclusionary rule may weaken the government's case, it rarely causes prosecutors to abandon cases, or results in dismissals or acquittals.[99]

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92. *Evans*, 115 S. Ct. at 1193; United States v. Leon, 468 U.S. 897, 916 (1983).

93. *Stone*, 428 U.S. at 490.

94. *Id.* at 490-91.

95. *Id.* at 490.

96. *Evans*, 115 S. Ct. at 1195 (Stevens, J., dissenting) (citing Stewart, *supra* note 28, at 1392).

97. Stewart, *supra* note 28, at 1392.

98. *Id.*

99. COMPTROLLER GENERAL, U.S. GENERAL ACCOUNTING OFFICE, IMPACT OF THE EXCLUSIONARY RULE ON FEDERAL CRIMINAL PROSECUTIONS 14 (Rep. No. GGD-79-45 (1979)). The General Accounting Office study showed that of all cases federal prosecutors declined for prosecution, only 0.4% were primarily due to Fourth Amendment violation problems. *Id.* Furthermore, the study showed that motions to suppress evidence seized in violation of the Fourth Amendment were filed in 10.5% of all federal criminal cases surveyed. *Id.* at 8. Courts denied suppression in approximately 80 to 90% of cases handled by large U.S. attorneys offices. *Id.* at 10. Overall, evidence was suppressed in only 1.3% of the cases studied. *Id.* at 8.

C. *Deterrence*

While the conclusion that application of the exclusionary rule will not deter judges and magistrates from committing future errors may itself be debatable, the Court's extension of this rationale to include court employees is even more tenuous. Justice Stevens's dissent correctly observed that the *Leon* Court's "exemption of judges and magistrates from the deterrent ambit of the exclusionary rule rested, consistently with the emphasis on the warrant requirement, on those officials' constitutionally determined role in issuing warrants."[100] This same reasoning cannot extend to court clerks, "some of whom work in the same building with police officers and may have more regular and direct contact with police than with judges or magistrates."[101] Furthermore, in this modern age of electronic recordkeeping, "court personnel and police officers are not neatly compartmentalized actors. Instead, they serve together to carry out the State's information-gathering objectives."[102] This co-mingling of court and police clerk recordkeeping functions can make it difficult, if not impossible, to discern who is responsible for the error.[103] As Justice Ginsburg observed, "Whether particular records are maintained by the police or the courts should not be dispositive where a single computer database can answer all calls."[104] Given these logistical realities of modern judicial and law enforcement systems, it is disingenuous to portray court employees as entirely detached and neutral actors.

The Court unconvincingly suggested that in order to deter court employees, they must have a direct stake in the outcome of criminal trials.[105] Justice Stevens persuasively argued that law enforcement officials are in the best position to monitor errors such as those that occurred in *Evans*, and that these officials "can influence mundane communication procedures in order to prevent those errors."[106] This "presumption comports with the notion that the exclusionary rule exists to deter future police misconduct systemically."[107] Common sense suggests that application of the exclusionary rule provides a strong incentive for policymakers and court administrators to monitor more closely the integrity of court records.[108]

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100. *Evans*, 115 S. Ct. at 1196 (Stevens, J., dissenting).
101. *Id.*
102. *Id.* at 1200 (Ginsburg, J., dissenting).
103. *Id.*
104. *Id.*
105. *Id.* at 1193 (majority opinion).
106. *Id.* at 1196 (Stevens, J., dissenting).
107. *Id.*
108. *Id.* at 1200 (Ginsburg, J., dissenting).

D. Costs to Individual Liberty and Privacy

While the Court since *Calandra* has paid much attention to the arguably minimal costs imposed on society's law enforcement interests, it has shown very little concern for the costs imposed on individual liberty and privacy that inevitably result from narrowing the exclusionary rule.[109] This is perhaps the most glaring weakness in *Evans* because these costs may prove to be inordinately high. As Justice Stevens noted,

> The 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. In this case, of course, such an error led to the fortuitous detection of respondent's unlawful possession of marijuana, and the suppression of the fruit of the error would prevent the prosecution of his crime. That cost, however, must be weighed against the interest in protecting other, wholly innocent citizens from unwarranted indignity.[110]

Eventually, it may be these costs that undermine respect for, and public confidence in, the judicial system and the law. An increase in the number of innocent citizens subjected to unlawful searches and arrests is likely to provoke public furor, particularly where no alternative means exist to remedy the harm done. Even accepting the Court's position that the exclusionary rule inevitably results in allowing a relatively small number of guilty persons to go free, this cost must be considered in light of the need to preserve the right of citizens to be free of invasive and humiliating unlawful searches and seizures.

In *Evans*, the Court attempted to diminish the impact of its ruling on individual civil liberties by pointing to testimony in the record that suggested that errors by court employees occur infrequently.[111] This argument is self-defeating. If such errors were in fact rare, "that would merely minimize the cost of enforcing the exclusionary rule."[112]

A recent case involving the application of *Evans* demonstrates the potential dangers of widespread computer error.[113] In *People v. Downing*, the computer error that led to the unlawful search of the defendant's home was committed by an inexperienced court clerk who, for

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109. *Id.* at 1197 (Stevens, J., dissenting).
110. *Id.*
111. *Id.* at 1193 (majority opinion); *see also id.* at 1196 (Stevens, J., dissenting).
112. *Id.* at 1197 (Stevens, J., dissenting).
113. People v. Downing, 40 Cal. Rptr. 2d 176 (Cal. Ct. App. 1995).

almost three full months, systematically input incorrect search waiver expiration dates into a computer database.[114] Moreover, in *Evans*, the very court clerk who testified that errors were made only infrequently later admitted that several other errors had been made that same day.[115] When one considers the additional possibility of computer malfunctions, the "conclusion that computer error poses no appreciable threat to Fourth Amendment interests" loses its force.[116]

Justices O'Connor, in her concurring opinion, described what she sees as the limited scope of *Evans* by pointing out that the exclusionary rule might apply in a situation like *Evans* if the police, though "innocent of the court employee's mistake," act unreasonably in their "reliance *on the recordkeeping system itself.*"[117] After *Downing*, it would seem, California police reliance on this computer record, wrought with widespread error, would not be reasonable.[118]

As Justice Souter noted in his concurrence, the Court in *Evans* did not address questions regarding the scope of its holding and just

> how far, in dealing with fruits of computerized error, our very concept of deterrence by exclusion of evidence should 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.[119]

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114. *Id.* at 179 (denying exclusion because facts did not show that police knew or should have known about numerous errors in computer systems). In *Downing*, a California police officer conducted an unlawful search of the defendant's home, relying on computer information that erroneously indicated that the defendant was subject to a search waiver. *Id.* In fact, the waiver had already expired at the time of the search. *Id.* An inexperienced court clerk committed the error. *Id.* After only two and a half days of training, the clerk began to systematically input erroneous waiver expiration dates from December 1989 until March 1990, when she was instructed on the proper procedure for calculating waiver expiration dates. *Id.*

115. Initially, the chief clerk of the East Phoenix Number One Justice Court testified that errors, such as the one that resulted in Evans's arrest, occurred once every three or four years. *Evans*, 115 S. Ct. at 1196. In subsequent testimony, however, the clerk testified that after the error in Evans's case was discovered, court employees initiated a search to locate other possible errors in their records and, in fact, discovered that three other errors were made the same day. *Id.*

116. *Id.* at 1197 (Stevens, J., dissenting).

117. *Id.* at 1194 (O'Connor, Breyer, Souter, JJ., concurring) (maintaining that "it would not be reasonable for the police to rely . . . on a recordkeeping system, their own or some other agency's, that has no mechanism to ensure its accuracy over time and that routinely leads to false arrests").

118. *See Downing*, 40 Cal. Rptr. 2d at 187 n.26 ("We caution, however, that where the police department has knowledge of flaws in a record or data base system, it would not seem 'objectively reasonable' to rely solely on it without taking additional steps to insure its accuracy.").

119. *Evans*, 115 S. Ct. at 1195 (Souter, J., concurring).

By failing to define when the exclusionary rule should apply to government officials other than the police, and exactly when reliance on computer systems becomes unreasonable, the Court left many unanswered questions for lower courts to address. Courts may have difficulty in determining the point at which a police force knew or should have known that it could not rely on the integrity of a computer system. More important, the deterrence mechanism suggested by Justice O'Connor[120] only kicks in *after* the damage has been done. According to her formulation, the exclusionary rule would apply only after a computer system is proven unreliable, which could delay corrective action until after widespread abuses have taken place and public confidence in law enforcement and the judicial system is undermined. On the contrary, application of the exclusionary rule under circumstances similar to those in *Evans* provides prior incentive for law enforcement and court personnel to implement procedures to detect such computer errors and to take corrective action if needed.

V. CONCLUSION

The Court, by broadening the good faith exception in *Evans*, continued its effort to narrow the scope of the exclusionary rule. The Court wrongly concluded that the benefits of deterrence were outweighed by the cost to society's law enforcement interests. The Court bolstered this conclusion by overemphasizing the costs to law enforcement, a conclusion that is disputed by empirical evidence.[121] More important, the Court failed to give adequate weight in its cost-benefit analysis to the potential costs to individual liberty and privacy. Fortunately, the concurrences of Justices O'Connor and Souter limit these costs by recognizing the possibility of inappropriate reliance on an inherently flawed computer or recordkeeping system. However, whether such a limitation goes far enough to afford society the necessary protection to individual liberty and privacy remains to be seen.

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120. *See supra* note 117 and accompanying text.
121. *See supra* note 99 and accompanying text.