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Criminal Procedure - Evidence: Defining the Exclusionary Rule in the Information Age

Robert G. Manly

CRIMINAL PROCEDURE—EVIDENCE: DEFINING THE EXCLUSIONARY RULE IN THE INFORMATION AGE

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

I. FACTS

On January 5, 1991, Isaac Evans was stopped by a Phoenix police officer for traveling the wrong way down a one-way street.[1] After Evans explained to the officer that his driver's license had been suspended, the officer ran Evans' name through the computer in his patrol car.[2] The search showed that Evans' license had been suspended and an arrest warrant existed on an outstanding misdemeanor charge.[3] At that time, the officer arrested Evans for the outstanding warrant, not the suspended license.[4] While handcuffing Evans, Evans dropped a handrolled cigarette.[5] After determining that the cigarette contained marijuana, the officer searched Evans' car and found a bag of marijuana under the passenger seat.[6]

As a result of the search, Evans was charged with possession of marijuana.[7] Thereafter, Evans filed a motion to suppress evidence of the marijuana, claiming his arrest violated the Fourth and Fourteenth Amendments.[8] The misdemeanor warrant had been quashed seventeen days prior to his arrest; however, an error in the computer records left the warrant on file.[9]

On April 15, 1991, the trial court held an evidentiary hearing on the motion to suppress.[10] At the hearing, the chief clerk of the East Phoenix Number One Justice Court presented the court's records regarding the warrant on Evans.[11] Under Maricopa County procedure for quashing a warrant, a court clerk calls the Sheriff's Office to inform them that a warrant has been quashed, and logs this call in the justice court file.[12]

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1. Brief for Petitioner at 2, Arizona v. Evans, 115 S.Ct. 1185 (1995) (No. 93-1660).
2. *Id.* The arresting officer did what is referred to as a "wants and warrants" check. Brief for Respondent at 2, Arizona v. Evans, 115 S. Ct. 1185 (1995) (No. 93-1660). The computer reported a "hit" which reflected an active misdemeanor warrant. *Id.*
3. Brief for Petitioner at 2, *Evans* (No. 93-1660).
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.* at 3.
8. Brief for Petitioner at 3, *Evans* (No. 93-1660).
9. Brief for Respondent at 2, Arizona v. Evans, 115 S. Ct. 1185 (1995) (No. 93-1660). Seventeen days earlier, Evans had appeared in justice court on a bench warrant for failure to appear on several traffic tickets. *Id.*
10. Brief for Petitioner at 3, *Evans* (No. 93-1660).
11. *Id.* at 3-4.
12. *Id.* at 4.

The Sheriff's Office then notes the call and removes the warrant from the computer records.[13]

Evans' justice court file, however, contained no notice indicating that the Sheriff's Office had been called about the quashed warrant.[14] When asked, the justice court chief clerk could not say conclusively whether a call had been made, or whether the caller failed to make the proper notation.[15] Nonetheless, the court clerk surmised that the call had not been made.[16] The clerk supported this conclusion by the fact that three other warrants which had been quashed on the same day as Evans' were also not removed from the computer system, and these files also contained no notation that the Sheriff's Office had been informed.[17]

The trial court did not determine whether the justice court or Sheriff's Office personnel were responsible for the failure to delete the warrant from the computer.[18] The court did, however, determine that regardless of whether the fault lay with the police department or the justice court clerk, the State was at fault for the error in Evans' computer records.[19] The court granted the motion to suppress, and the State appealed.[20] The Arizona Court of Appeals reversed, finding that the exclusion of evidence due to a clerical error that lay outside of the police department's control would not deter court employees or the Sheriff's Office from making similar errors in the future.[21] The Arizona Supreme Court vacated the Appeals Court's ruling and determined that the exclusionary rule should apply to deter future errors on the part of the criminal justice system's record keepers, regardless of whether they are affiliated with the police or the courts.[22] The State of Arizona appealed the decision to the United States Supreme Court, which granted

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13. *Id.* at 5. The Sheriff's Office makes its notations on their "recall warrants list," which shows the name of the person named on the warrant, his/her birthdate, the warrant number, and the date it was issued. *Id.* This information is then compared with the corresponding Sheriff's Office active file to verify the accuracy of the information. *Id.* If this information matches, the Sheriff's Office then removes the warrant from the computer records. *Id.*

14. *Id.* at 4.

15. Brief for Respondent at 3, Arizona v. Evans, 115 S. Ct. 1185 (1995) (No. 93-1660).

16. Brief for Petitioner at 4, *Evans* (No. 93-1660).

17. *Id.* The chief court clerk also noted that Evans' case was unusual because a pro tem judge had quashed the warrant and had not made the same notation on Evans' file regarding the quashing of the warrant that the justice of the peace normally made. *Id.* at 4.

18. Brief for Respondent at 4, *Evans* (No. 93-1660).

19. *Id.*

20. *Id.*

21. State v. Evans, 836 P.2d 1024, 1027 (Ariz. Ct. App. 1992).

22. State v. Evans, 866 P.2d 869, 871-72 (Ariz. 1994). The Arizona Supreme Court was also concerned with the added impact computers might have on precipitating warrantless arrests. *Id.* at 872. The court stated that "[a]s automation increasingly invades modern life, the potential for Orwellian mischief grows. Under such circumstances, the exclusionary rule is a 'cost' we cannot afford to be without." *Id.*

certiorari.[23] The United States Supreme Court reversed and remanded, *holding* that evidence seized in violation of the Fourth Amendment as a result of clerical errors by court employees, causing incorrect computer records, fell within the good faith exception to the exclusionary rule.[24]

II. LEGAL HISTORY

A. THE EXCLUSIONARY RULE

The Fourth Amendment provides that all persons should be free from unreasonable searches and seizures, and that all warrants must be supported by probable cause.[25] However, the Fourth Amendment contains no explicit provision precluding the use of evidence obtained in its violation.[26] In order to enforce the protections granted by the Fourth Amendment, the United States Supreme Court has ruled that unconstitutionally obtained evidence typically cannot be used against a defendant.[27] This is the basic foundation of the exclusionary rule.[28]

The roots of the exclusionary rule can be traced to the 1886 case, *Boyd v. United States*.[29] In *Boyd*, the United States Supreme Court held

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

24. *Id.* at 1193-94. In *Evans*, the Supreme Court also held that it had jurisdiction to review the state court's decision because the decision rested primarily on federal law. *Id.* Evans had argued that Arizona's good faith statute was the basis for the Arizona Supreme Court decision, and thus the United States Supreme Court did not have jurisdiction. Brief for Respondent at 8-9, Arizona v. Evans, 115 S. Ct. 1185 (1995) (No. 93-1660). This Comment is confined to the Fourth Amendment issue of whether the good faith exception to the exclusionary rule applies to the facts of this case.

25. U.S. CONST. amend. IV. The Fourth Amendment provides: "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.*

26. *See id.* The Court noted in *United States v. Calandra*, that "the rule is a judicially created remedy designed to safeguard Fourth Amendment rights . . . rather than a personal constitutional right of the party aggrieved." 414 U.S. 338, 348 (1974). However, some commentators have argued that the exclusionary rule is implicit in the Fourth Amendment. *See, e. g.*, Lawrence Crocker, *Can the Exclusionary Rule be Saved?*, 84 J. CRIM. L. & CRIMINOLOGY 310, 312 (1993) (arguing that the best means of preserving the exclusionary rule is to recognize it as implicit in the Fourth Amendment); *see also* 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, 391-94, (1981) (arguing that Fourth Amendment requirements of "probable cause" and "warrant" makes the exclusionary rule a necessary remedy).

27. *See* United States v. Calandra, 414 U.S. 338, 348 (1974) (determining the exclusionary rule upholds the Fourth Amendment by producing a deterrent effect); Mapp v. Ohio, 367 U.S. 643, 657-58 (1961) (holding that the exclusionary rule is applicable in state courts); Weeks v. United States, 232 U.S. 383, 398 (1914) (holding that illegally obtained evidence is inadmissable in federal courts).

28. The exclusionary rule has also been referred to as "The Suppression Doctrine." *See, e.g.*, Warren E. Burger, *Who Will Watch the Watchman?*, 14 AM. U. L. REV. 1, 10-14 (1964) (criticizing the exclusionary rule as a means of enforcing the Fourth Amendment).

29. 116 U.S. 616 (1886). *Boyd* was a civil suit involving a government forfeiture proceeding. Boyd v. United States, 116 U.S. 616, 617 (1886).

for the first time[30] that some types of evidence could not be admitted if the evidence was obtained in violation of the Fourth Amendment.[31] However, the Court did not exclude evidence under the Fourth Amendment in a criminal context until 1914.[32] In *Weeks v. United States*,[33] the Court held that illegally seized evidence was not admissible in federal courts.[34] Acting out of concern for the proper enforcement of the Fourth Amendment,[35] the Court extended the exclusionary rule to illegal seizures conducted by federal agents.[36]

After *Weeks*, the Supreme Court gradually extended the scope of the exclusionary rule[37] until 1949, when it decided *Wolf v. Colorado*.[38] In *Wolf*, the Court declined to force states to comply with the federal exclusionary rule through the Due Process Clause of the Fourteenth Amendment.[39] The Court instead elected to allow states to decide when the exclusionary rule should apply, depending on the extent of the police misconduct involved.[40]

This period of judicial restraint, characterized by *Wolf*, was merely temporary.[41] As the Supreme Court entered the Warren era,[42] the Court began to construe the exclusionary rule more liberally.[43] This gradual

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30. 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, 1372 (1983) (tracing the origins of the exclusionary rule to *Boyd*). *See also* Burger, *supra* note 28, at 4 (citing *Boyd* as the origin of the exclusionary rule).

31. Boyd v. United States, 116 U.S. 616, 638 (1886). The central evidence in *Boyd* was Boyd's private papers. *Id.* at 618. Thus, the Court merely excluded a type of illegally procured evidence, "papers," which is explicitly protected by the Fourth Amendment. *See* Burger, *supra* note 28, at 5 (emphasizing that the exclusionary rule principle in Weeks v. United States, 232 U.S. 383, 398 (1914), distinguished between evidence obtained in violation of the Fourth Amendment and illicit articles).

32. Weeks v. United States, 232 U.S. 383, 398 (1914).

33. 232 U.S. 383 (1914).

34. Weeks v. United States, 232 U.S. 383, 398 (1914).

35. *Id.* The Court stated that if law enforcement agencies were allowed to seize private documents as evidence, the protection of the 4th Amendment "is of no value, and, . . . might as well be stricken from the Constitution." *Id.* at 393.

36. *Id.* at 398.

37. *See* Silverthorne Lumber Co. v United States, 251 U.S. 385, 392 (1920) (holding that illegally seized evidence could not be used even after returned to defendant); Agnello v. United States, 269 U.S. 20, 34 (1925) (holding that illegally seized contraband could not be admitted against the defendant); Nardone v. United States, 302 U.S. 379, 382 (1937) (holding that the exclusionary rule applied to violations of federal statutes as well as the Constitution).

38. 338 U.S. 25 (1949).

39. Wolf v. Colorado, 338 U.S. 25, 31 (1949). The Due Process clause states that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV.

40. *Wolf*, 338 U.S. at 31.

41. *See* Stewart, *supra* note 30, at 1379-80 (tracing the development of the exclusionary rule).

42. *See* GROLIER MULTIMEDIA ENCYCLOPEDIA (CD Rom Version 7.0.2, 1995) (discussing briefly Earl Warren's term as Chief Justice of the Supreme Court from 1953 to 1969).

43. *See* Miller v. United States, 357 U.S. 301, 313-14 (1958) (holding that evidence seized incidental to an unlawful entry into a private dwelling was inadmissible); Elkins v. United States, 364 U.S. 206, 223 (1960) (holding that evidence seized unlawfully by state police officers would be

expansion culminated in 1961 with *Mapp v. Ohio*.[44] This landmark case involved obscene materials illegally seized from the defendant's home by city police officers that were later used against the defendant in state court.[45]

In *Mapp*, the Court overruled *Wolf*,[46] and extended the exclusionary rule to cover all evidence obtained by searches and seizures in violation of the Fourth Amendment.[47] As a result of the *Mapp* decision, all illegally obtained evidence was inadmissible in a court of law, no matter how probative.[48] The Court expressed its concern with protecting average citizens from obtrusive and denigrating searches and seizures, by focusing on citizens' right of privacy.[49] The Court further recognized that illegally seized evidence should be excluded in order to promote judicial integrity and respect for the law.[50]

Three years later, in *Beck v. Ohio*,[51] the Court reiterated that the exclusionary rule would be applied to any violation of the Fourth Amendment.[52] In *Beck*, the Court found that even if police officers believe that they are acting within the confines of the legal standards, the evidence they obtain will be inadmissible if procured in violation of the law.[53]

After *Beck*, some jurists advocated curtailing the breadth of the exclusionary rule in certain instances.[54] Justice White, for example, felt that courts were excluding too much valuable evidence because of the exclusionary rule.[55] In the 1974 decision *Calandra v. United States*,[56]

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excluded in federal courts). *See also* Stewart, *supra* note 30, at 1379-80 (discussing how the *Elkins* decision led to the *Mapp* decision by extending the Fourth Amendment protections to the states via the Fourteenth Amendment).

44. 367 U.S. 643 (1961).

45. Mapp v. Ohio, 367 U.S. 643, 644-46 (1961).

46. Wolf v. Colorado, 338 U.S. 25, 31 (1949) (determining that the exclusionary rule did not apply to the states via the due process clause of the Fourteenth Amendment).

47. *Mapp*, 367 U.S. at 655.

48. *Id.* at 659.

49. *Id.* at 655-57.

50. *Id.* at 659. The Court commented that "[n]othing 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." *Id.*

51. 379 U.S. 89 (1964).

52. Beck v. Ohio, 379 U.S. 89, 96 (1964).

53. *Id.* at 97 (quoting Henry v. United States, 361 U.S. 98, 102 (1959)).

54. *See* Terry v. Ohio, 392 U.S. 1, 13 (1968) (finding that the exclusionary rule has its limitations as a means of judicial control over police action); *See also id.* at 34 (White, J., concurring) (noting there are no limitations in the Constitution to prevent police from addressing questions to people on the streets).

55. *See* Alderman v. United States, 394 U.S. 165, 174 (1969) (holding that the exclusionary rule does not extend to one who was not the victim of the unlawful search). Justice White, writing for the Court, noted that the extension of the exclusionary rule was not justified due to the public interest in prosecuting criminals on the basis of truthful evidence. *Id.* at 174-75.

56. 414 U.S. 338 (1974).

the Court separated the violation of the Fourth Amendment from the application of the exclusionary rule.[57] The exclusionary rule would only be invoked "where its remedial objectives are thought most efficaciously served."[58] The Court stated that in some instances using the fruits of a past unlawful arrest would not necessarily violate the Fourth Amendment if excluding the evidence would have no deterrent effect on police conduct.[59] Thus, the emphasis of the test evolved from protecting the rights of citizens[60] to deterring violative conduct of law enforcement.[61]

B. THE GOOD FAITH EXCEPTION

As the last vestiges of the Warren Court began to fade in the mid-1970s,[62] the Burger Court emerged, prepared to further limit the scope of the exclusionary rule.[63] In *United States. v. Janis*,[64] the Court limited the exclusionary rule's application to instances where it would cause "appreciable deterrence."[65]

In the 1980s, political pressure mounted on the courts to punish criminals and to ensure that fewer criminals were released on what were perceived to be technicalities precipitated by the exclusionary rule.[66] Legislation was advanced to allow illegally obtained evidence to be used if the police officers, in good faith, believed that their actions were in accordance with the law.[67]

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57. Calandra v. United States, 414 U.S. 338, 348 (1974).

58. *Id.*

59. *Id.* at 348, 354.

60. *See* Mapp v. Ohio, 367 U.S. 643, 653-57 (1961) (finding that the exclusionary rule is necessary to enforce the right to privacy).

61. *See Calandra*, 414 U.S. at 347 (finding that the primary purpose of the exclusionary rule is to deter future unlawful police conduct).

62. GROLIER MULTIMEDIA ENCYCLOPEDIA (CD Rom Version 7.0.2, 1995) (noting Warren E. Burger's succession of Earl Warren as Chief Justice of the Supreme Court, serving from 1969 to 1986).

63. *See* Burger, *supra* note 28, at 1. As an Appeals Court judge, Burger had openly criticized the Supreme Court's application of the exclusionary rule, referring to the exclusionary rule as "a manifestation of sterile judicial indignation." *Id.* at 23.

64. 428 U.S. 433 (1976).

65. United States v. Janis, 428 U.S. 433, 454 (1976).

66. *See, e.g.*, Gary S. Goodpaster, *An Essay on Ending the Exclusionary Rule*, 33 HASTINGS L.J. 1065, 1067 (1982) (citing *Exclusion Rule High on Reagan's Hit List!*, NAT'L L.J., Aug. 10, 1981, at 21) (naming abolition of the exclusionary as one method of crime control); Stewart, *supra* note 30, at 1393 (stating that the exclusionary rule has been seen as a hinderance to police officers); Crocker, *supra* note 26, at 320 (stating that the Reagan and Bush Justice Departments challenged the constitutional basis of the exclusionary rule).

67. *See* Stewart, *supra* note 30, at 1399 (citing the "Comprehensive Crime Control Act of 1983," H.R. Doc. No. 98-32, 98th Cong. 1st Sess. 136 (1983), as an example of a congressional attempt at codifying a good faith exception).

In 1980, the Fifth Circuit Court of Appeals adopted a good faith exception to the exclusionary rule in *United States v. Williams*.[68] Three years later, in 1983, the Supreme Court fell just short of adopting the good faith doctrine in *Illinois v. Gates*.[69] Although Justice White urged the Court to adopt the good faith exception,[70] the Court decided against modifying the exclusionary rule in this case because the good faith doctrine had not been raised in the lower state court proceeding.[71]

The next year, in 1984, the Court applied the good faith doctrine in *United States v. Leon*.[72] In *Leon*, the Court determined that evidence seized by officers acting in good faith reliance on a warrant issued without probable cause was admissible through a good faith exception to the exclusionary rule.[73] The Court found that because judges have no stake in the outcome of criminal trials, evidence obtained due to judicial error should not be excluded.[74] Thus, *Leon* represents not only the Court's initial adoption of the good faith doctrine, but also indicates the Court's emphasis on the exclusionary rule's deterrent purpose.[75]

In cases subsequent to *Leon*, the Court continued to recognize, and expand upon, the good faith doctrine.[76] As the evolution of the exclusionary rule demonstrates, the central purpose for application of the exclusionary rule has become deterrence of law enforcement misconduct rather than prevention of police intrusion. Thus, the primary issue the Court faced in *Arizona v. Evans*[77] was whether this deterrent purpose would be properly served by applying the exclusionary rule to the errors of court clerks.[78]

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68. 622 F.2d. 830, 846 (5th Cir. 1980), *cert. denied*, 449 U.S. 1127 (1981) (holding that heroin seized during an unauthorized arrest was admissible when officers act in good faith that their actions are authorized).

69. 462 U.S. 213, 223 (1983). *Gates* drew exceptional attention from the legal community. Briefs of amici curiae were filed by Attorneys General from the states of California, Florida, and Virginia, the National District Attorneys Association, Inc., the Association of Trial Lawyers of America, the American Bar Association, and the American Civil Liberties Union, among others. Illinois v. Gates, 562 U.S. 213, 215 (1983).

70. *Id.* at 246 (White, J. concurring).

71. *Id.* at 221-24.

72. 468 U.S. 897 (1984).

73. United States v. Leon, 468 U.S. 897, 918-21 (1984).

74. *Id.* at 917.

75. *See* Fletcher V. Baldwin Jr., *Due Process and the Exclusionary Rule: Integrity and Justification*, 39 U. FLA. L. REV. 505, 532 (1987) (describing the impact of *Leon* on the exclusionary rule).

76. *See generally* Illinois v. Krull, 480 U.S. 340, 990-91 (1987) (holding that the exclusionary rule did not apply to evidence obtained by police who acted in reasonable reliance upon a statute authorizing warrantless administrative searches, which was subsequently found to violate the Fourth Amendment); Massachusetts v. Sheppard, 468 U.S. 981, 990-91 (1984) (holding that evidence should not be excluded because a judge failed to make necessary clerical corrections).

77. 115 S. Ct. 1185 (1995).

78. Arizona v. Evans, 115 S. Ct. 1185, 1187-88 (1995).

III. CASE ANALYSIS

In *Arizona v. Evans*,[79] the Supreme Court reemphasized that the exclusionary rule should apply only in situations where it will act as deterrent for *police* misconduct.[80] Furthermore, the Court stated that this deterrent effect is not meant to apply to other state officials, such as court clerks.[81] Excluding evidence due to the error of a court clerk, reasoned the Court, would do little to deter or eliminate future errors.[82] Furthermore, because the police officer who arrested Evans acted properly,[83] application of the exclusionary rule serves no deterrent purpose with respect to police conduct.[84]

Chief Justice Rehnquist, writing for the Court,[85] began the Court's analysis by noting the limits of the exclusionary rule.[86] The Court emphasized that the rule was designed to safeguard Fourth Amendment rights through the rule's general deterrent effect.[87] Furthermore, the rule's application was to be restricted to only those instances where its remedial objectives are most efficaciously served.[88]

The Court analogized the facts of *Evans* with those of *Leon*.[89] Like *Evans*, *Leon* involved a police search where the officers acted in reasonable reliance on a search warrant that the Court later determined was invalid.[90] The Court cited its finding in *Leon* that because judges and magistrates are not part of a law enforcement team,[91] the exclusion of evidence would not serve as a deterrent.[92]

By relying on *Leon* as its foundation, the Court rejected the Respondent's attempts to analogize *Evans* to other cases dealing with the

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79. 115 S. Ct. 1185 (1995).

80. Arizona v. Evans, 115 S. Ct. 1185, 1191 (1995).

81. *Id.*

82. *Id.* at 1193-94.

83. *Id.* at 1193. The Court determined that the officer would have been "derelict in his duty" had he failed to arrest Evans. *Id.*

84. *Id.* at 1193.

85. *Evans*, 115 S. Ct. at 1187.

86. *Id.* at 1191.

87. *Id.*

88. *Id.* (citing United States v. Leon, 468 U.S. 897, 908 (1984); and United States v. Calandra, 414 U.S. 338, 348 (1974)).

89. *Id.* at 1191-92 (comparing the facts with those in United States v. Leon, 468 U.S. 897 (1984)).

90. United States v. Leon, 468 U.S. 897, 901-05 (1984).

91. *Id.* at 916-917. In *Leon*, the Court fails to specify expressly which officials are part of the "law enforcement team." *Id.* However, the Court does state that law enforcement officers are "engaged in the often competitive enterprise of ferreting out crime." *Id.* at 914 (quoting Johnson v. United States, 333 U.S. 10, 14 (1948)). It has been suggested that this definition of those susceptible to the exclusionary rule's deterrent effect is overly broad. *See* Burger, *supra* note 28, at 12-13 (suggesting that prosecutors are not part of the law enforcement team and are not effected by the exclusionary rule's deterrent effect).

92. Arizona v. Evans, 115 S. Ct. 1185, 1191 (1995) (citing *Leon*, 468 U.S. at 917).

issuer of probable cause.[93] The Respondent claimed that the decision in *United States v. Hensley*[94] suggested that admissibility hinges on whether the information's issuer had probable cause to seize evidence.[95] The Court rejected this suggestion because no Fourth Amendment violation occurred in *Hensley*, and thus the issue of whether the seized evidence should have been excluded was not determined.[96] The Respondent also cited the Court's holding in *Whiteley v. Warden, Wyoming State Penitentiary*[97] to support his argument that computer information was not a sufficient basis for the officer's reliance.[98] Again, the Court rejected the Respondent's comparison to *Whiteley* because at the time that case was decided, the Court had not yet adopted the good faith exception to the exclusionary rule.[99]

After refuting the Respondent's analogies, the Court proceeded to apply *Leon*'s[100] analytical framework to *Evans*.[101] The Court found that if court employees were responsible for the erroneous computer records, the exclusion of the evidence would not act as a sufficient deterrent to prevent future errors.[102] The Court reasoned that because court clerks are not connected to the law enforcement team,[103] they have no stake in the outcome of the case.[104] The Court then inferred that due to the clerks' neutral standing, exclusion of evidence would have no deterrent effect on the clerks' conduct.[105] Thus, since application of the rule would not serve to deter clerks from failing to inform police officers that a warrant had been quashed, the deterrent purpose of the exclusionary rule would not be fulfilled.[106]

Finally, the Court concluded that the police officer in *Evans* acted reasonably by relying on the computer's information, and thus acted in good faith.[107] Furthermore, the Court found it significant that the chief

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93. *Id.* at 1192.

94. 469 U.S. 221, 236 (1985) (holding that reliance on another police department's wanted flyer supported a reasonable suspicion which justified a stop).

95. Brief for Respondent at 21, Arizona v. Evans, 115 S. Ct. 1185 (1995) (No. 93-1660).

96. *Evans*, 115 S. Ct. at 1192 (citing United States v. Hensley, 469 U.S. 221, 236 (1986)).

97. 401 U.S. 560, 568 (1971) (holding that a police bulletin based on an inadequate complaint did not provide probable cause for a warrantless arrest).

98. Brief for Respondent at 19-20, Arizona v. Evans, 115 S. Ct. 1185 (1995) (No. 93-1660).

99. *Evans*, 115 S. Ct. at 1192-93 (referring to the precedential value of the application of the exclusionary rule in *Whiteley* as "dubious") (citations omitted).

100. United States v. Leon, 468 U.S. 897 (1984); *see supra* notes 72-76 and accompanying text (discussing the *Leon* analysis).

101. *Evans*, 115 S. Ct. at 1193 (citation omitted).

102. *Id.*

103. *See supra* note 91 and accompanying text (describing the Court's definition of "law enforcement team").

104. *Evans*, 115 S. Ct. at 1193.

105. *Id.*

106. *Id.*

107. *Id.* at 1194.

clerk of the justice court had testified that such computer errors occurred only once every three or four years.[108] Thus, the police officer could not have anticipated such an error.[109] For these reasons, the Court concluded that clerical errors of court employees should be categorically exempted from the exclusionary rule.[110]

Justice O'Connor and Justice Souter each filed cautionary concurrences, to which Justice Breyer joined, expressing their caveats with the Court's opinion.[111] In her concurrence, Justice O'Connor warned officers that they cannot rely blindly on the information provided through computers.[112] Should computer information become unreliable, the police officers would be expected to consider the information with closer scrutiny.[113] Justice Souter echoed O'Connor's sentiments, and advocated a narrow understanding of the Court's opinion.[114] Souter asserted that the Court had not decided the question of whether the exclusionary rule should be extended to the government as a whole when computer error occurs.[115]

Justices Stevens and Ginsburg filed dissenting opinions.[116] In his dissent, Justice Stevens contended that the purpose of the exclusionary rule is not simply to deter police misconduct, but rather to prevent unwarranted government intrusions.[117] Stevens also countered the Court's assertion that the exclusionary rule is an extreme sanction.[118] Stevens stated that the exclusionary rule merely puts police in the same position they would have been had they not conducted the illegal search.[119]

In concluding his dissent, Justice Stevens cautioned the Court of the consequences of prematurely isolating computer records from the exclusionary rule.[120] Such isolation, warned Stevens, could result in widespread infractions of Fourth Amendment rights caused by careless misuse of computers.[121] Stevens asserted that the cost of enforcing the

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108. *Id.* at 1193-94.
109. *Evans*, 115 S. Ct. at 1194.
110. *Id.*
111. *Id.* at 1194-95 (O'Connor, J., and Souter, J., concurring).
112. *Id.* at 1195 (O'Connor J., concurring.)
113. *Id.* at 1194.
114. *Evans*, 115 S. Ct. at 1195 (Souter, J., concurring).
115. *Id.*
116. *Id.* at 1195, 1197 (Stevens, J., and Ginsburg, J., dissenting).
117. *Id.* at 1195 (Stevens, J., dissenting). Stevens' philosophy of the exclusionary rule is similar to the version of the rule as defined in Mapp v. Ohio, 367 U.S. 643 (1961). *See supra* notes 44-50 and accompanying text (explaining the exclusionary rule as defined by Mapp v. Ohio).
118. *Evans*, 115 S. Ct. at 1195 (Stevens, J., dissenting).
119. *Id.*
120. *Id.* at 1197.
121. *Id.*

exclusionary rule is minimal compared to the cost of allowing innocent people to be unjustly arrested and interrogated.[122]

Like Justice Stevens, Justice Ginsburg was equally uneasy about resolving problems with computer technology too hastily.[123] Furthermore, Justice Ginsburg asserted that the Court ignored the high costs of allowing unwarranted arrests as the result of faulty computer records.[124] Justice Ginsburg asserted that as computers gain prominence, the deleterious effect of minor computer errors will also grow.[125] To illustrate this, Justice Ginsburg pointed out the case of Terry Dean Rogan, a man who was arrested three times at gunpoint over a two year period because of a computer related error.[126] Because of the enormous impact computer errors can wield, Justice Ginsburg suggested that application of the exclusionary rule to the errors of court clerks and others dealing with computer records is not unreasonable and that the decision of the Arizona Supreme Court should be affirmed.[127]

Although the concurring and dissenting opinions caution not to assume the reliability of computer-relayed information, the Court's opinion clearly allows law enforcement officers to assume the data they receive via computer is accurate. The Court's decision in *Arizona v. Evans,* therefore opens the door for law enforcement officers to rely unconditionally on computer information, while limiting the scope of the exclusionary rule.

IV. IMPACT

A. THE SCOPE OF THE EXCLUSIONARY RULE HAS BEEN LIMITED

In *Arizona v. Evans*,[128] the United States Supreme Court held that the clerical errors of court employees are categorically exempted from application of the exclusionary rule.[129] Thus, the Court has expanded the umbrella of those untouched by the rule's deterrent effect to include not only judges and magistrates, but court clerks and employees as well.[130] This further limitation on the exclusionary rule is consistent with

122. *Id.*
123. *Evans*, 115 S. Ct. at 1197-98 (Ginsburg, J., dissenting).
124. *Id.* at 1199.
125. *Id.*
126. *Id.* (citing Rogan v. Los Angeles, 668 F. Supp. 1384, 1387-89 (C.D. Cal. 1987)).
127. *Id.* at 1200. Justice Ginsburg also dissented to the issue of whether the Court had jurisdiction over this case. *Id.* at 1203. Because this Comment is confined to the issue of whether the good faith exception to the exclusionary rule is applicable in this case, the jurisdictional issue has not been analyzed.
128. 115 S. Ct. 1185 (1995).
129. Arizona v. Evans, 115 S. Ct. 1185, 1194 (1995).
130. The Court had previously held that evidence could not be excluded because of a judge's

the Court's trend toward weakening the rule's powers.[131] Interestingly, only Justice Stevens suggested that the Court should apply the exclusionary rule in all cases of Fourth Amendment infringements, rather than simply in cases when police misconduct is so malevolent that exclusion of evidence is the only proper sanction.[132] Thus, the exclusionary rule as first envisioned in *Mapp v. Ohio* [133] is no more. In fact, as some commentators have feared, the exclusionary rule may be in danger of extinction.[134]

However, rumors of the exclusionary rule's impending death may be exaggerated. Though the Court did not exclude evidence in *Evans*, it reiterated that exclusion would be applied when necessary to deter police misconduct.[135] Although the reach of the exclusionary rule may continue to be curtailed and modified, it will continue to exist so long as no alternative enforcement mechanism for the Fourth Amendment exists.

B. LAW ENFORCEMENT OFFICIALS MAY RELY ON COMPUTER DATA REGARDLESS OF ITS ACCURACY

The Court's opinion in *Arizona v. Evans* failed to address the added dimension computer technology brings to this case.[136] Instead, the Court merely drew a line between the police department and court clerks.[137] However, as the Arizona Supreme Court pointed out, it seems anomalous that evidence seized pursuant to a clerical error of a police clerk would be excluded, while evidence seized due to the same error made by a court clerk would be permitted.[138] As computers become the link between county offices and the police, information can be passed

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clerical errors. *See* Massachusetts v. Sheppard, 468 U.S. 981, 990-91 (1984) (finding that suppressing evidence because the judge failed to make all the necessary clerical corrections will not serve the deterrent function the exclusionary rule was designed to achieve).

131. *See supra* notes 56-78 and accompanying text (describing the Court's limitations on the exclusionary rule throughout the 1970s and 1980s); *see also supra* note 76 and accompanying text (discussing the Court's expansion of the good faith exception prior to *Evans*).

132. *Evans*, 115 S. Ct. at 1195 (Stevens, J., dissenting).

133. 367 U.S. 643 (1961).

134. Crocker, *supra* note 26, at 311-13; Baldwin, *supra* note 75, at 542-43; Richard A. Jochum, Comment, *I Come Not to Praise the Exclusionary Rule But to Bury It—United States v. Leon; Massachusetts v. Sheppard*, 18 CREIGHTON L. REV. 815, 819 (1985).

135. *Evans*, 115 S. Ct. at 1193.

136. *See generally* Arizona v. Evans, 115 S. Ct. 1185, 1185 (1995) (focusing upon incorrect computer records caused by clerical errors of court employees). In its opinion, the Court failed to acknowledge the rapidity with which computers can pass information from source to receiver. Interestingly, the only reference made by the Court pertaining to the enhanced efficiency allowed by computers is in noting how quickly the court clerks were able to correct the error. *Id.* at 1194.

137. *Id.* at 1193.

138. State v. Evans, 866 P.2d 869, 872 (1994).

between the two agencies at unfathomable speeds, causing this line to blur.[139] Making the distinction between the law enforcement team and the detached magistrate, as the Court does in *Evans*, will no doubt become increasingly difficult as reliance on computerized information becomes more commonplace.

Furthermore, as law enforcement agencies become increasingly dependent on computer information, it is critical that the information, and the computers, be reliable.[140] As Justice Ginsburg pointed out in her dissent, the FBI's nationwide computer data base contains over twenty-three million records, and any error entered into this enormous computer base spreads nationwide instantly.[141] In *Evans*, the Court found that the police officer's reliance on the erroneous computer information was warranted due to the chief county clerk's testimony that an error of this type occurred only once every three or four years.[142] However, as computer information becomes increasingly utilized by law enforcement, more errors may occur; and accordingly, the Court may have to reevaluate its position on computer reliability.

Nonetheless, excluding evidence acquired as a result of such errors may not be the solution to deterring carelessness on the part of those who enter data into these powerful computer networks. As the Court found in *Evans*, the county clerk who forgot to phone the sheriff's office likely would not act with greater care had charges against Isaac Evans been dropped due to his or her error.[143] If excluding evidence in such cases would fail to deter such carelessness, application of the exclusionary rule would serve no purpose, and potentially allow a guilty party to go free.

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139. *See* Robert Garcia, *Garbage In, Gospel Out: Criminal Discovery, Computer Reliability and the Constitution*, 38 UCLA L. REV. 1043, 1046-48 (illustrating the speed with which government computers can relate information).

140. *See Evans*, 115 S. Ct. at 1194 (O'Connor, J., concurring) (concluding that it would be unreasonable for the police to rely on inaccurate recordkeeping). *See also* Garcia, *supra* note 139, at 1069-72 (finding that computer errors can result in improper arrests and millions of dollars in lost revenues).

141. *Evans*, 115 S. Ct. at 1199 (Ginsburg, J., dissenting).

142. *Id.* at 1193-94.

143. *Id.* at 1193.

Undoubtedly, computers increase law enforcement efficiency by allowing police officers access to important information in seconds. By finding in *Evans* that the arresting officer's reliance on computer information was reasonable, the Court has allowed law enforcement to enter the information age.

Robert G. Manly