FOURTH AND FOURTEENTH AMENDMENTS — EXCLUSIONARY RULE — THE EXCLUSIONARY RULE DOES NOT APPLY TO EVIDENCE SEIZED IN VIOLATION OF THE FOURTH AMENDMENT BY A POLICE OFFICER RELYING ON A COMPUTER RECORD, LATER FOUND TO BE ERRONEOUS BECAUSE OF CLERICAL ERRORS OF COURT EMPLOYEES — *Arizona v. Evans*, 115 S. Ct. 1185 (1995).

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I. INTRODUCTION

For many years, the efficiency of the exclusionary rule[1] has been vehemently debated by litigants and legal scholars alike.[2] Growing concern over the release of patently guilty defendants has prompted the courts to reconsider the once-liberal exclusion of criminal evidence seized in violation

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[1]The exclusionary rule has been held to apply "where evidence has been obtained in violation of the search and seizure protection guaranteed by the U.S. Constitution, the illegally obtained evidence cannot be used at the trial of the defendant." BLACK'S LAW DICTIONARY 564 (6th ed. 1990). The exclusionary rule is a judicially created remedy and not a personal Fourth Amendment right of the person aggrieved. *See* United States v. Calandra, 414 U.S. 338 (1974) (holding that the exclusionary rule is a judicially created remedy); Linkletter v. Walker, 381 U.S. 618 (1965) (the rule of *Mapp v. Ohio* requiring exclusion of illegally seized evidence should not be applied retrospectively to cases decided in the period prior to *Mapp*).

[2]*See, e.g.*, Anthony G. Amsterdam, *Perspectives on the Fourth Amendment*, 58 MINN. L. REV. 349 (1974); Yale Kamisar, *Does (Did) (Should) the Exclusionary Rule Rest on a "Principled Basis" Rather than an "Empirical Position"?*, 16 CREIGHTON L. REV. 565, 571-79 (1983) [hereinafter Kamisar, *Exclusionary Rule*]; Yale Kamisar, *Search and Seizure of America: The Case for Keeping the Exclusionary Rule*, 10 HUMAN RIGHTS 14 (1982) [hereinafter Kamisar, *Search and Seizure*]; William J. Mertens & Silas Wasserstrom, *Foreword: The Good Faith Exception to the Exclusionary Rule: Deregulating the Police and Derailing the Law*, 70 GEO. L.J. 365 (1982); Stephen K. Sharpe & John E. Fennelly, Massachussetts v. Sheppard: *When the Keeper Leads the Flock Astray — A Case of Good Faith or Harmless Error?*, 59 NOTRE DAME L. REV. 665, 667-68 (1984); 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); Malcolm Richard Wilkey, *The Exclusionary Rule: Why Suppress Valid Evidence?*, 62 JUDICATURE 215 (1978); Charles Alan Wright, *Must the Criminal Go Free if the Constable Blunders?*, 50 TEX. L. REV. 736 (1972); Christine M. D'Elia, Comment, *The Exclusionary Rule: Who Does It Punish?*, 5 SETON HALL CONST. L.J. 563 (1995).

of the Fourth Amendment.[3] While the language of the Fourth Amendment does not specifically create a right to exclude evidence, courts have only recently reexamined the origin and application of the exclusionary rule.[4] Moreover, the judicial creation of certain exceptions to the exclusionary rule has redefined the scope and purpose of the rule in an attempt to narrow its application.[5] *Arizona v. Evans*[6] creates a categorical exception to the exclusionary rule that will encourage courts to determine whether the rule's application in a particular case truly prevents unlawful police conduct.

Recently, in *Arizona v. Evans*,[7] the United States Supreme Court further defined the scope of the exclusionary rule by refusing to apply the rule to court employees.[8] After reviewing prior decisions establishing the purpose of the exclusionary rule as a deterrent to illegal police conduct,[9] the Court concluded that the rule's remedial objective was not served by applying it to court employees.[10] Moreover, the Court reasoned that there is no basis to believe that the application of the rule to a court employee

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[3]*See* Wilkey, *supra* note 2, at 215; Wright, *supra* note 2, at 736.

[4]*See, e.g.*, *Calandra*, 414 U.S. at 348 (holding that the exclusionary rule is a judicially created remedy). *Contra* Mapp v. Ohio, 367 U.S. 643, 654-58 (1961) (positing that the exclusionary rule is part of the Fourth Amendment).

[5]*See, e.g.*, Illinois v. Krull, 480 U.S. 340, 355-56 (1987) (concluding that evidence should not be excluded when it was obtained by officers who manifested objectively reasonable reliance on a statute that was subsequently declared invalid); United States v. Leon, 468 U.S. 897, 922 (1984) (holding that evidence seized by officers relying in "good faith" on a warrant subsequently determined to be invalid should not be suppressed).

[6]115 S. Ct. 1185 (1995).

[7]*Id.*

[8]*Id.* Chief Justice Rehnquist wrote for the majority opinion in which Justices O'Connor, Scalia, Kennedy, Souter, Thomas and Breyer joined. *Id.* at 1187. Justice O'Connor filed a concurring opinion in which Justice Souter and Justice Breyer joined in part. *Id.* at 1194. Justice Souter filed a concurring opinion in which Justice Breyer joined. *Id.* at 1195. Justice Stevens filed a dissenting opinion. *Id.* at 1195. Justice Ginsburg filed a dissenting opinion in which Justice Stevens joined in part. *Id.* at 1197.

[9]Illinois v. Gates, 462 U.S. 213, 238-39 (1983) (holding that the "totality of circumstances" test for determining probable cause would be similarly applied when evaluating information provided by an informant); United States v. Janis, 428 U.S. 433 (1976); United States v. Calandra, 414 U.S. 338 (1974); *see also infra* notes 59-62, 73.

[10]*Evans*, 115 S. Ct. at 1193-94 (citing Illinois v. Gates, 462 U.S. 213, 238-39 (1983)).

would have any deterrent effect on the action of the arresting officer.[11] Therefore, the Court denied respondent's claim for exclusion concluding that the exclusionary rule was not intended to deter mistakes by court employees, but rather only police misconduct.[12]

This Casenote will discuss the factual implications that influenced the Court's decision in *Arizona v. Evans*. Moreover, it will familiarize the reader with the exclusionary rule through a discussion of prior cases that have molded the rule's application. The Casenote will further analyze the rationale employed by the majority, concurring and dissenting justices in reaching their respective decisions. Finally, the conclusion will explain the beneficial consequences of employing the Court's rationale in analyzing the exclusionary rule.

II. STATEMENT OF THE CASE

In January of 1991, a police officer stopped Isaac Evans for driving the wrong way down a one-way street.[13] The officer entered Evans's name into the patrol car's computer terminal and learned that his license was suspended and that there was an outstanding misdemeanor warrant for Evans's arrest.[14] Based on this information, the officer placed Evans under arrest.[15] While Evans was being handcuffed, he dropped a hand-rolled cigarette which the officer immediately identified as marijuana.[16] A search of the car revealed a bag of marijuana concealed under the passenger's seat.[17] Subsequently, Evans was charged with possession of marijuana.[18]

After informing the Justice Court of Evans's arrest the police were notified that the arrest warrant had been quashed seventeen days prior to the

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[11]*Id.*

[12]*Id.*

[13]*Id.* at 1188.

[14]*Id.*

[15]*Id.*

[16]*Id.*

[17]*Id.*

[18]*Id.*

arrest.[19] As a result, Evans, seeking suppression of the marijuana, argued that the marijuana was tainted as the fruit of an unlawful arrest because the arrest was based on a previously quashed warrant.[20] Moreover, Evans asserted that the good faith exception[21] to the exclusionary rule was inapplicable in this case because the invalid arrest was initiated by police error.[22] Finally, Evans argued that the purpose of the exclusionary rule would be served by making those in the clerk's office who were responsible for the mistake more careful in removing warrants from the records.[23]

At the suppression hearing,[24] the Chief Clerk of the Justice Court testified that on December 13, 1990, a Justice of the Peace issued the arrest warrant because Evans failed to appear in court for several traffic violations.[25] Nevertheless, on December 19, 1990, Evans appeared before a *pro tem* Justice of the Peace who indicated in Evans's file that the warrant should be quashed.[26] Furthermore, the Chief Clerk of the Justice Court also testified that there was no indication in Evans's file that a court clerk called the warrant section of the Sheriff's Office to inform them that the warrant was quashed.[27] In addition, a records clerk from the Sheriff's

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[19]*Id.*

[20]*Id.*

[21]The good faith exception to the exclusionary rule created in United States v. Leon, 468 U.S. 897 (1984), permits the use of evidence in the prosecution's case-in-chief when obtained by police officers acting in reasonable reliance on a search warrant that is later determined to lack probable cause. *See infra* notes 63-74 and accompanying text; *see also* Illinois v. Krull, 480 U.S. 340 (1987).

[22]Arizona v. Evans, 115 S. Ct. 1185, 188 (1995).

[23]*Id.*

[24] A suppression hearing is conducted when the defendant files a pre-trial motion alleging that the evidence to be used at trial was obtained in violation of the defendant's rights. WAYNE R. LAFAVE & JEROLD H. ISRAEL, CRIMINAL PROCEDURE § 10.5 at 510 (2d ed. 1992). If the defendant's motion is successful, the case will probably be dismissed because the remaining evidence will be insufficient to prosecute. *Id.*

[25]*Evans*, 115 S. Ct. at 1188.

[26]*Id.*

[27]*Id.* The Chief Clerk testified that standard court practice required the court clerk to call and notify the warrant section of the Sheriff's Office that a warrant had been quashed. *Id.* At the same time, the clerk would note in the file the name of the clerk making the

Office testified that the warrant section of the Sheriff's Office had no record of a telephone call indicating that Evans's arrest warrant had indeed been quashed.[28] The trial court granted Evans's motion to suppress, concluding that the state was responsible for failing to ensure that the warrant was quashed.[29] In so ruling, the court did not make a factual determination as to which department in particular was responsible for the failure to quash the warrant.[30] Thus, the court failed to draw a distinction between state action by the police department and the court's clerical employees.[31]

In a split decision, the Arizona Court of Appeals reversed.[32] The court of appeals stated that the exclusionary rule was not intended to deter court employees or Sheriff's Office employees not directly associated with the arresting officer or an arresting officer's police department.[33] As a result, the court of appeals concluded that the exclusion of evidence in this case would not serve the deterrent objective of the exclusionary rule.[34]

The Arizona Supreme Court reversed the appellate court's ruling.[35] First, the court rejected the distinction made by the lower court between errors made by court employees and those made by law enforcement.[36] Moreover, the court posited that careful application of the exclusionary rule might improve the efficiency of the criminal justice system's record keepers.[37] Finally, the Arizona Supreme Court rejected the reasoning of the

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phone call and the individual at the Sheriff's Office with whom the clerk spoke. *Id.* Then, the Sheriff's Office would remove the warrant from the computer records. *Id.*

[28]*Id.*

[29]*Id.*

[30]*Id.*

[31]*Id.*

[32]State v. Evans, 836 P.2d 1024 (Ariz. Ct. App. 1992).

[33]*Id.* at 1027.

[34]*Id.*

[35]State v. Evans, 866 P.2d 869 (Ariz. 1994).

[36]*Id.* at 871.

[37]*Id.* at 872.

lower court that the purpose of the exclusionary rule would not be served because the error in this case was made by a court clerk.[38]

The United States Supreme Court granted *certiorari* to determine whether the exclusionary rule should be applied to court employees.[39] The Court concluded that the exclusionary rule was intended to deter police misconduct and not errors committed by court employees.[40]

III. THE EXCLUSIONARY RULE

The Fourth Amendment to the United States Constitution states 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."[41] An analysis of the framers' motives for creating the Fourth Amendment reveals that the amendment was mainly intended to prevent the abuses of the general warrant and the writ of assistance.[42] Unlike

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[38]*Id.*

[39]Arizona v. Evans, 114 S. Ct. 2131 (1994).

[40]Arizona v. Evans, 115 S. Ct. 1185, 1193-94 (1995).

[41]U.S. CONST amend. IV. The Fourth Amendment also states that "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.*

[42]Stewart, *supra* note 2, at 1369. The framers believed that the liberty of every citizen was at risk because of the general warrant and the writ of assistance used by the British. *Id.* Christine M. D'Elia, Comment, *The Exclusionary Rule: Who Does It Punish?*, 5 SETON HALL CONST. L.J. 563 (1995); *see also* Kamisar, *Exclusionary Rule*, *supra* note 2, at 571-79.

the Fifth Amendment,[43] however, the Fourth Amendment contains no express provision requiring exclusion of illegally seized evidence.[44]

It was not until 1886 in Boyd v. Ohio[45] that the United States Supreme Court began exploring the limits of the Fourth Amendment. The Court did so by initially linking the Fourth Amendment to the Fifth Amendment and excluding seized invoices during a quasi-criminal forfeiture proceeding constituting compelled self-incrimination.[46] In 1914, *Weeks v. United States*[47] marked the first application of the exclusionary rule to a

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[43]The Fifth Amendment states:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life and limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST amend. V.

[44]*See* LAFAVE & ISRAEL, *supra* note 24, § 3.1(a) at 105; Sharpe & Fennelly, *supra* note 2, at 667-68. There are other exclusionary rules that apply to evidence obtained in violation of the Fifth Amendment. *See, e.g.*, Malloy v. Hogan, 378 U.S. 1 (1964) (holding that the 5th Amendment exception to self-incrimination applies to the states via the 14th Amendment); Massiah v. United States, 377 U.S. 201 (1964) (concluding that defendant's Fifth and Sixth Amendment rights were violated because the evidence used consisted of statements made by defendant to co-defendant, without the presence of counsel, while defendant was unaware of the recording device).

[45]116 U.S. 616 (1886).

[46]*Id.* Although the forfeiture proceeding was a civil proceeding, the taking of property and heavy fines that would be levied entitled Boyd to the protection of the Fourth and Fifth Amendments. *Id.* at 634. *But see* Adams v. New York, 192 U.S. 585, 594 (1904) (refusing to inquire into the means by which otherwise inadmissible evidence was acquired); *contra* Rochin v. California, 342 U.S. 165, 172 (1952) (forcing a suspect to ingest an emetic solution which would cause him to regurgitate drugs he had swallowed required exclusion because the officer engaged in "conduct that shocked the conscience").

[47]232 U.S. 383 (1914).

criminal proceeding.[48] In *Weeks*, federal officers entered the defendant's home without a warrant and seized various certificates, books, letters and other papers belonging to the defendant, in an attempt to convict him of illegally selling lottery tickets.[49] Implying that the Fourth Amendment required the exclusion of illegally seized evidence,[50] the Supreme Court ruled that evidence confiscated by local police, and later by federal officials, had to be excluded because the search violated the defendant's constitutional rights.[51]

Nevertheless, in 1949, the Court refused to apply the *Weeks* exclusionary rule in *Wolf v. Colorado*,[52] despite the fact that the Court recognized the enforceability of the Fourth Amendment against the states.[53] As a result, the Court concluded that the only remedy for victims of illegal searches by the state was private legal action.[54]

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[48]The Court stated that "the tendency of those who execute the criminal laws of the country to obtain conviction by means of unlawful seizures . . . should find no sanction in the judgments of the courts." *Id.* at 392.

[49]*Id.* at 386-87.

[50]*Id.* at 393. The Court proclaimed that "the Fourth Amendment might as well be stricken from the Constitution" if private papers can be seized without a warrant and used as evidence against that person. *Id.*

[51]*Id.* at 398. The Court posited that permitting the illegal search of Weeks' home by federal officers would "affirm by judicial decision a manifest neglect, if not an open defiance of the prohibitions of the Constitution, intended for the protection of the people against such unauthorized action." *Id.* at 394.

[52]338 U.S. 25, 26, 33 (1949) (holding that the Fourteenth Amendment does not prevent the admission of evidence resulting from an unreasonable search and seizure in state criminal proceedings).

[53]*Id.* at 27. Initially, the Bill of Rights was only applied to the federal government, and not the states. LAFAVE & ISRAEL, *supra* note 24, at §§ 2.5-2.7. After the Fourteenth Amendment was adopted, many of the guarantees of the first eight amendments were "incorporated" and subsequently applied to the states through the Due Process Clause of the Fourteenth Amendment. *Id.*

[54]*Wolf*, 338 U.S. at 1362. Despite the harsh result in *Wolf*, the Court in Elkins v. United States, 364 U.S. 206, 223 (1960), held that "evidence obtained by state officers during a search, which, if conducted by federal officers, would have violated the defendant's Fourth Amendment rights, was inadmissible." Moreover, the *Elkins* Court concluded that the determination of whether a search and seizure is unreasonable is an independent inquiry to be made by the federal court. *Id.* at 224.

Nearly twelve years later, *Mapp v. Ohio*[55] overruled the doctrine of *Wolf*.[56] By that time, many states had considered the Fourth Amendment enforceable against the states through the Due Process Clause of the Fourteenth Amendment, thus compelling the *Mapp* Court to enforce the exclusionary rule in a similar fashion.[57] The *Mapp* decision advocates deterrence as the primary objective of the exclusionary rule.[58]

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[55]367 U.S. 643 (1961).

[56]*Id.* Justice Stewart stated that the *Mapp* decision should not be viewed in isolation:

> The decision is best understood as the last event in a three-stage evolutionary process: (1) the formulation of the [F]ourth [A]mendment; (2) the annexation of the exclusionary rule to the [F]ourth [A]mendment; and (3) the incorporation of the [F]ourth [A]mendment . . . including the exclusionary rule, into the [F]ourteenth [A]mendment, thereby restricting the individual states.

Stewart, *supra* note 2, at 1368. The Court in Mapp v. Ohio, 367 U.S. 643 (1961), posited that the exclusionary rule is part of the Fourth Amendment. Later cases rejected this rationale. *See, e.g.*, United States v. Leon, 468 U.S. 897 (1994) discussed *infra* at notes 63-74.

[57]*Mapp*, 367 U.S. at 655. In decrying the "ignoble shortcut to conviction left open to the State," the Court recognized the need to implement the same standard for both federal and state law enforcement personnel. *Id.* at 660. In delivering the opinion of the Court, Justice Clark stated:

> Our decision, founded on reason and truth, gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and to the courts, that judicial integrity so necessary in the true administration of justice.

Id. at 660.

[58]*Id.* at 656. The *Mapp* Court stated that purpose of the exclusionary rule "is to deter — to compel respect for the constitutional guaranty in the only effectively available way — by removing the incentive to disregard it." *Id.* (quoting *Elkins*, 364 U.S. at 217); *see also* United States v. Calandra, 414 U.S. 338, 357 (1974) (Brennan, J., dissenting) (expressing concern with the need to assure the victims of unlawful government intrusion that the government would not benefit from its unlawful behavior); *see also* notes 52-54 and accompanying text for a discussion of Wolf v. Colorado, 338 U.S. 25 (1949); *accord* Terry v. Ohio, 392 U.S. 1, 12 (1969) (noting that the rule's major thrust is one of deterrence); Linkletter v. Walker, 381 U.S. 618, 620 (1965) (holding that the rule established in *Mapp* does not apply retrospectively upon cases finally decided in the period prior to *Mapp*); *see also Elkins*, 364 U.S. at 217 (stating that the imperative of judicial integrity is another consideration of the exclusionary rule). Nevertheless, the courts never

A multitude of decisions following *Mapp* molded and revised the scope and purpose of the exclusionary rule. In *Calandra*, for example, the United States Supreme Court refused to apply the rule to grand jury proceedings.[59] The Court declared that the main purpose of the exclusionary rule is to deter future illegal police conduct and not to redress the injury to the victim.[60] More importantly, the *Calandra* Court drastically changed the import of the exclusionary rule because it concluded that the rule is a judicially-created remedy, not a personal Fourth Amendment right of the aggrieved party.[61] In addition, Justice Powell, writing for the Court, pointed out that the rule's application should be restricted to cases where "its remedial objectives are thought most efficaciously served."[62]

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considered judicial and governmental integrity that important and eventually recognized that the only objective of the exclusionary rule was to deter unlawful police conduct. *Id.* at 222; *see also Calandra*, 414 U.S. at 348.

[59]*Calandra*, 414 U.S. at 338.

[60]*Id.* at 347. The *Calandra* Court refused to permit a witness summoned to testify before a grand jury to refuse to answer questions on the ground that they addressed evidence related to an illegal search and seizure. *Id.* at 350, 354. The Court reasoned that despite the initial Fourth Amendment violation, the questions were a derivative use of the unlawful search and seizure and, therefore, they did not create a new Fourth Amendment wrong. *Id.* Thus, the Court argued that "[a]ny incremental deterrent effect which might be achieved by extending the rule to grand jury proceedings is uncertain at best." *Id.* at 351.

[61]*Id.* at 348; *see also Linkletter*, 381 U.S. at 618; Elkins v. United States, 364 U.S. 206, 217 (1961) (discussing the Court's assertion that the rule is calculated to prevent, not to repair). Prior to *Calandra*, courts had interpreted the Fourth Amendment to include the exclusionary rule. Expressing his concern regarding the Court's characterization of the exclusionary rule, Justice Brennan dissented in *Calandra* stating:

> The door is again ajar. As a consequence, I am left with the uneasy feeling that today's decision may signal that a majority of my colleagues have positioned themselves to reopen the door still further and abandon altogether the exclusionary rule in search-and-seizure cases.

Calandra, 414 U.S. at 365 (Brennan, J., dissenting).

[62]*Calandra*, 414 U.S. at 348. For example, in the case of United States v. Janis, 428 U.S. 433 (1976), the Court refused to extend the exclusionary rule to illegally seized state evidence to be used in a civil proceeding. In *Janis*, police officers turned over certain wagering records of the defendant to the IRS. *Id.* at 438. In not permitting the seized evidence to be used in a federal civil proceeding, Justice Blackmun proffered:

Ten years later, in *United States v. Leon*,[63] the Supreme Court created the "good faith" exception to the exclusionary rule.[64] The Court refused to penalize police officers who made honest mistakes and, accordingly, created an exception that would prohibit the suppression of evidence seized by officers acting within the confines of the Fourth Amendment.[65] In *Leon*, police officers, based on an informant's tip, obtained a facially valid search warrant issued by a neutral and detached magistrate.[66] As a result of the ensuing search, the officers discovered large quantities of narcotics.[67] The district court excluded the evidence based on the defendants' motions to suppress because it concluded that the warrant was insufficient to establish probable cause.[68] The Circuit Court affirmed, and the United States

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> Assuming . . . [that the rule is a substantial and efficient deterrent], the additional marginal deterrence provided by forbidding a different sovereign from using the evidence in a civil proceeding surely does not outweigh the cost to society of extending the rule to that situation. If, on the other hand, the exclusionary rule does not result in appreciable deterrence, then, clearly, its use in the instant situation is unwarranted.

Id. at 453-54.

[63]468 U.S. 897 (1984).

[64]*Id.* The Court held that the Exclusionary Rule should be modified to prevent the exclusion of evidence obtained by an officer acting in reasonable reliance on a search warrant that was ultimately found to be invalid. *Id.* at 922. Furthermore, the Court rejected the argument that adopting a good faith standard would cause defendants to "lose their incentive to litigate meritorious Fourth Amendment claims." *Id.* at 925.

[65]*Id.* at 926.

[66]*Id.* at 901-02.

[67]*Id.*

[68]*Id.* at 903. Both a search warrant and an arrest warrant can only be issued upon a showing of probable cause to the issuing authority. United States v. Harris, 403 U.S. 573, 580-82 (1971) (stating that an affidavit provided sufficient factual information because it described the defendant's criminal reputation, it set forth the observations of the constable as well as the statements of a reliable informant); Henry v. United States, 361 U.S. 98, 104 (1959) (holding that federal officers who were following the defendant in his car and observed him loading items in his trunk did not have probable cause). The test for probable cause for the issuance of an arrest warrant is objective, allowing the officer to rely on his experience and expertise. *See* Johnson v. United States, 333 U.S. 10, 13 (1948) (positing that an officer may have probable cause based on the distinctive nature of an odor that the officer is qualified to know). When a search warrant is sought, the

Supreme Court granted *certiorari* solely to decide whether to recognize a good faith exception to the exclusionary rule.[69]

In reaching its decision, the Supreme Court reasoned that the exclusionary rule is a judicially-created remedy and not a personal right of the aggrieved party.[70] Furthermore, the Court posited that the rule must be applied by balancing the costs and benefits of preventing the use of illegally obtained evidence.[71] Stating that the rule is not intended to deter the conduct of magistrates responsible for issuing warrants,[72] the Court concluded that the exclusion of evidence seized by a police officer who justifiably relied on the prior judgment of the magistrate would vitiate the deterrent purpose of the rule.[73] In sum, the *Leon* Court explained that the

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warrant must be issued by a "neutral and detached magistrate." *See* Lo-Ji Sales, Inc. v. New York, 442 U.S. 319, 328-29 (1979) (holding that the neutral and detached requirement is not satisfied when a town justice accompanied the police armed with an open-ended search warrant (quoting Shadwick v. Tampa 407 U.S. 345, 350 (1972))). Furthermore, the warrant must describe with particularity the place to be searched and the items that are sought. *See, e.g.*, Steele v. United States, 267 U.S. 498, 501-02 (1925) (stating that search warrant complied with statutory and constitutional requirements when it described the premises and items to be seized).

[69]United States v. Leon, 468 U.S. 897, 900 (1984).

[70]*Id.* at 906 (quoting United States v. Calandra, 414 U.S. 338 (1974)).

[71]*Id.* at 907-09.

[72]*Id.* at 910-12. Many legal scholars have argued that some magistrates are nothing more than rubber stamps for the police. *See generally* Kamisar, *Exclusionary Rule*, *supra* note 2, at 14; *see also* Massachusetts v. Sheppard, 468 U.S. 981, 990-91 (1984) (stating that the exclusionary rule is not intended to deter judicial misconduct: "The exclusionary rule may not be well tailored to deterring judicial misconduct. If applied to judicial misconduct the rule would be just as costly as it is when it is applied to police misconduct, but it may be ill-fitted to the job-created motivations of judges.").

[73]*Leon*, 468 U.S. at 918-19; *see also* United States v. Janis, 428 U.S. 433, 449-50 (1976) (stating that no empirical researcher, proponent or opponent of the rule, has yet been able to establish with any assurance whether the rule has a deterrent effect). Based on the assumption that the deterrent effect of the rule has not yet been established, the *Leon* Court reasoned that even if the rule effectively deters only some police misconduct, it should not be applied to deter objectively reasonable reliance. Leon, 468 U.S. at 919; *see also infra* note 96 (discussing Illinois v. Krull, 480 U.S. 340, 348 (1987)). The *Leon* Court stressed that the reasonableness standard was an objective one, requiring officers to have a reasonable knowledge of the law and its prohibitions. *Leon*, 468 U.S. at 919 n.20.

marginal benefits produced by applying the exclusionary rule did not justify the substantial cost of exclusion.[74]

IV. *ARIZONA v. EVANS* — THE UNITED STATES SUPREME COURT FURTHER DEFINES THE PARAMETERS OF THE EXCLUSIONARY RULE

A. CHIEF JUSTICE REHNQUIST'S MAJORITY OPINION

In *Arizona v. Evans*,[75] the United States Supreme Court held that the exclusionary rule does not require suppression of evidence seized in violation of the Fourth Amendment where erroneous information resulted from clerical errors of court employees.[76] Chief Justice Rehnquist, writing for a seven to two majority,[77] began by considering whether the Court had jurisdiction

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[74]*Leon*, 468 U.S. at 922. The Court proffered that the exception would apply in cases where the magistrate was misled by false information, disregarded the truth, or totally abandoned his judicial role. *Id.* at 923. Thus, in those cases, an officer would not be justified in relying on the warrant because such reliance would not be objectively reasonable. *Id.*; *see also* Illinois v. Krull, 480 U.S. 340 (1987). In *Krull* police officers seized evidence while acting in objectively reasonable reliance upon a statute which was subsequently found to violate the Fourth Amendment. *Id.* at 344. The Court created another exception to the exclusionary rule stating that the officer's reliance on the statute was objectively reasonable because the defect in the statute was not sufficiently obvious for the officer to realize that the statute was unconstitutional. *Id.* at 360. The Court noted that the possibility of deterrence is even less when an officer is acting in objective reasonable reliance on a statute than on an invalid warrant as was the case in *Leon*. *Id.* at 350 n.7. Therefore, the Court concluded that the approach in *Leon* is applicable to *Krull* because: (1) there would be little deterrent effect on officers exhibiting reasonable reliance on a statute; and (2) the rule is not intended to deter legislators, just as it is not intended to deter judges. *Id.* at 350. As the Court noted: "There is no evidence suggesting that Congress or state legislatures have enacted a significant number of statutes permitting warrantless administrative searches violative of the Fourth Amendment." *Id.* at 351.

[75]115 S. Ct. 1185 (1995).

[76]*Id.* at 1200-03.

[77]Chief Justice Rehnquist was joined by Justices O'Connor, Scalia, Kennedy, Souter, Thomas, and Breyer. *Id.* at 1187. Justice O'Connor filed a concurring opinion in which Justices Souter and Breyer joined. *Id.* at 1194. (O'Connor, J., concurring). Justice Souter filed a concurring opinion in which Justice Breyer joined. *Id.* at 1195. (Souter, J., concurring). Justice Stevens filed a dissenting opinion. *Id.* at 1195. (Stevens, J., dissenting). Justice Ginsburg filed a separate dissent, in which Justice Stevens joined. *Id.* at 1197. (Ginsburg, J., dissenting).

to review the decision of the Arizona Supreme Court.[78] In order to determine whether the Court had jurisdiction, the Chief Justice reviewed *Michigan v. Long*,[79] where the Court created the standard for deciding whether a state court decision was based upon an adequate and independent state ground, and therefore, immune from federal appellate review.[80]

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[78]*Id.* at 1189. Respondent Evans argued that the Court lacked jurisdiction under 28 U.S.C. § 1257 because the lower court never considered the Fourth Amendment issue and relied solely on the Arizona good faith statute. *Id.* Therefore, Evans argued that the Arizona Supreme Court rendered its decision based solely on an adequate and independent state ground and the Court had no jurisdiction to review the case. *Id.*

[79]463 U.S. 1032 (1983).

[80]*Evans*, 115 S. Ct. at 1189-90 (citing *Long*, 463 U.S. at 1032). In *Long*, the respondent argued that the Court did not have jurisdiction to decide the case because the lower court's decision was based on an independent and adequate state ground. *Long*, 463 U.S. at 1038. Moreover, Long argued that Michigan courts provided greater protection from search and seizures and that the lower court set forth the necessary grounds to prevent the United States Supreme Court from reviewing its decision by referring to the Michigan constitution. *Id.* The Court had to decide whether the lower court's decision rested solely on independent and adequate state grounds. *Id.*

First, the *Long* Court noted that the lower court merely cited the state constitution in a footnote. *Id.* at n.3. Then, the Court reiterated several principles previously utilized in ascertaining whether the Court had jurisdiction. *Id.* at 1039. However, the Court stated: "This ad hoc method of dealing with cases that involve possible adequate and independent state grounds is antithetical to the doctrinal consistency that is required when sensitive issues of federal-state relations are involved." *Id.*

As a result, the Court sought to implement an efficient method that would not hinder the administration of justice. *Id.* at 1039-40. Declining to examine unfamiliar state law, the Court opined that vacation and clarification of lower court decisions would decrease the efficiency of the judicial system. *Id.* The Court further posited that dismissal of cases would vitiate the need for the uniformity that comes from the decisions rendered by the Court. *Id.* at 1040.

In recognizing the need to respect the independence of state courts and the beneficial aspects of avoiding the issuance of advisory opinions, the Court held that:

> [W]hen, as in this case, 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, 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. . . . If the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate and independent grounds, we, of course, will not undertake to review the decision.

First, Chief Justice Rehnquist reiterated the standard established in *Long* setting forth the various reasons for its adoption.[81] Disagreeing with Justice Ginsburg's desire to overrule *Michigan v. Long*, Chief Justice Rehnquist concluded that the *Michigan v. Long* standard should not be disturbed.[82] Recognizing that in particular cases state courts are obligated to follow the United States Constitution, the Court pointed out that adherence to the standard set forth in *Long* is consistent with prior case law.[83] Therefore, the majority concluded that the Court had jurisdiction because the

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Id. at 1040-41.

[81]*Evans*, 115 S. Ct. at 1189-90. Chief Justice Rehnquist posited that the *Long* decision was created to obviate the need for requiring state courts to clarify their decision, and to preserve federal law while providing state judges with the opportunity to create state jurisprudence. *Id.*

[82]*Id.* The Chief Justice stated that the *Long* decision gives state courts the freedom to interpret state constitutions if they wish to accord greater protection to their citizens than that afforded by the United States Constitution. *Id.* Citing Justice Brandeis's dissent in New State Ice Company v. Liebmann, 285 U.S. 262, 311 (1932), Chief Justice Rehnquist observed that the *Long* decision enables state courts to become experimental laboratories that should not be constrained by federal courts. *Evans*, 115 S. Ct. at 1190.

[83]*Id.* Chief Justice Rehnquist stated that the United States Supreme Court is the final authority in cases when state courts interpret the United States Constitution. *Id.* The majority cited Cohens v. Virginia, 19 U.S. (6 Wheat.) 264 (1821), and Minnesota v. National Tea Company, 309 U.S. 551 (1940), emphasizing that the Court's authority "as final arbiter of the United States Constitution could be eroded by a lack of clarity in state court decision." *Evans*, 115 S. Ct. at 1190.

Specifically, Minnesota v. National Tea Company, 309 U.S. 551 (1940), evidences the Court's insistence on clarity in a state court's decision. In that case, the respondents paid a newly enacted chain store tax under protest and subsequently sued in the state court for a refund. *Id.* at 551. The United States Supreme Court vacated and remanded the state court judgment granting respondents refunds, stating that:

> It is fundamental that state courts be left free and unfettered by us in interpreting their state constitutions. But it is equally important that ambiguous or obscure adjudications by state courts do not stand as barriers to a determination by this Court of the validity under the federal constitution of the state action. . . . For no other course assures that important federal issues, such as have been argued here, will reach this Court for adjudication; that state courts will not be the final arbiters of important issues under the federal constitution; and that we will not encroach on the constitutional jurisdiction of the states.

Id. at 557.

Arizona Supreme Court's decision was based on its interpretation of federal law.[84]

Next, Chief Justice Rehnquist addressed Evans's Fourth Amendment arguments.[85] First, the Court recognized that the exclusionary rule is a judicially-created remedy intended to prevent future violations of the Fourth Amendment through deterrence.[86] The Court, however, pointed out that the rule should only be applied when the deterrent effect outweighs the social costs of its application.[87] Outlining the factual scenario presented in *Leon*, Chief Justice Rehnquist assessed the factors that militate against exclusion in that case.[88] Tracing the *Leon* Court's application of the exclusionary rule, the majority repeated the requisite deterrent effect discussed in *Leon* that would prompt the Court to apply the exclusionary rule.[89]

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[84]*Evans*, 115 S. Ct. at 1189-90.

[85]*Id.* at 1191. The Court observed that there is no express provision mandating the suppression of evidence obtained in violation of the Fourth Amendment. *Id.*

[86]*Id.* at 1191. The majority recognized that the exclusionary rule is a distinct remedy from the Fourth Amendment. *Id.*; *see also* Illinois v. Gates, 462 U.S. 213, 223 (1983) (concluding that any argument seeking modification of the exclusionary rule constitutes a separate claim that must be apart from any allegation of a Fourth Amendment violation). Moreover, the *Gates* Court noted the importance of adhering to the limitations of the court's discretion in modifying the rule where difficult issues of public importance are debated. *Id.* at 224; *see also* Stone v. Powell, 428 U.S. 465, 486-87 (1976) (stating that the primary justification for the exclusionary rule is the deterrence of police conduct that violates Fourth Amendment rights).

[87]*Evans*, 115 S. Ct. at 1191; *see also* United States v. Janis, 428 U.S. 433, 454 (1976) (holding that the exclusionary rule does not apply in those proceedings where there is no appreciable gain in terms of deterrence by the suppression of the evidence). In *Janis*, a police officer turned over illegally seized gambling records and funds to the IRS where they were used as a basis for an IRS assessment satisfied by levying on the seized funds. *Id.*

[88]*Evans*, 115 S. Ct. at 1191. The three factors which led the court to deny exclusion of the evidence in *Leon* were: (1) the rule was designed to deter misconduct by the police and not by judges and magistrates; (2) the evidence did not suggest that judges subvert the Fourth Amendment; and (3) there was no reason to believe that exclusion of the evidence would have a deterrent effect on judges. *Id.*; *see also supra* notes 63-74 and accompanying text.

[89]*Evans*, 115 S. Ct. 1192; *see also* Massachusetts v. Sheppard, 468 U.S. 981, 990-91 (1984) (stating that the exclusionary rule is not intended to deter judicial misconduct).

Similarly, Chief Justice Rehnquist rejected respondent's argument that the evidence should be suppressed based on *United States v. Hensley*.[90] The Chief Justice contended that the *Hensley* decision was consistent with the Court's earlier decisions because the *Hensley* Court decided that there has been no Fourth Amendment violation.[91] Thus, the Chief Justice made it clear that the respondent's reliance on *Hensley* was misplaced because that decision did not contradict the pronouncement that the application of the exclusionary rule is separate from the alleged Fourth Amendment violation.[92]

Moreover, the Court summarily dismissed Evans's reliance on *Whiteley v. Warden, Wyoming State Penitentiary*,[93] stating that the application of the

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[90]469 U.S. 221 (1985).

[91]*Evans*, 115 S. Ct. at 1192. In United States v. Hensley, 469 U.S. 221, 223 (1985), a police officer issued a "wanted" flyer stating that the respondent was wanted for investigation based on information obtained from an informant. Subsequently, police officers from a different jurisdiction stopped respondent's car after recognizing him based on the description from the flyer. *Id.* at 224. As a result of the search, officers uncovered several handguns and promptly arrested the suspect. *Id.* Holding that there had been no Fourth Amendment violation, the Court posited that:

> [I]f a flyer or bulletin has been issued on the basis of articulable facts supporting a reasonable suspicion that the wanted person has committed an offense, then reliance on that flyer or bulletin justifies a stop to check identification . . . the evidence uncovered in the course of the stop is admissible if the police who issued the flyer or bulletin possessed a reasonable suspicion to justify a stop . . . and if the stop that in fact occurred was not significantly more intrusive than would have been permitted by the issuing department.

Id. at 232; *see also* Adams v. Williams, 407 U.S. 143, 146 (1972) ("[A] brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be the most reasonable in light of the facts known to the officer at that time.").

[92]*Evans*, 115 S. Ct. at 1192.

[93]401 U.S. 560 (1971). In *Whiteley*, pursuant to a complaint issued by a sheriff, a police radio bulletin was issued describing the car and the suspects that were sought. *Id.* at 563. Relying on the bulletin, a police officer from a different jurisdiction arrested the suspects and subsequently searched the car, removing incriminating evidence. *Id.* 564. The Court held that the arrest violated Whiteley's Fourth and Fourteenth Amendment rights because the officers conducting the search did not have the requisite probable cause. *Id.* 568-69. The Court further concluded that the bulletin alone could not have supplied the necessary probable cause that the issuing officer lacked. *Id.*

exclusionary rule therein lacked precedential value.[94] Therefore, the majority emphasized that the *Whiteley* Court's reflexive application of the exclusionary rule was no longer viable as the current standard required the exclusion of evidence "only if the rule's objectives are most efficaciously served."[95] In addition, the Court noted that in *Illinois v. Krull*[96] the dissent agreed that *Leon* set forth the appropriate framework for applying the exclusionary rule. Based on this reasoning, Chief Justice Rehnquist restated the principle that *Leon* is the appropriate starting point in analyzing Evans's request for exclusion.[97]

Next, the Court stated that the Arizona Supreme Court's application of the exclusionary rule to court employees is contrary to the rationale promulgated in *Leon*.[98] Chief Justice Rehnquist reasoned that holding court employees responsible for clerical errors would not sufficiently promote the mandates of the exclusionary rule because the rule was intended to deter law enforcement personnel.[99] Moreover, the majority added that the rare occurrence of such clerical errors, coupled with the lack of evidence that court employees attempt to undermine the Fourth Amendment, militate

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[94]*Evans*, 115 S. Ct. at 1192.

[95]*Id.* While rejecting Evans's reliance on *Whiteley*, the Court effectively restated its position that the exclusionary rule is not to be applied automatically. *Id.* at 1193.

[96]480 U.S. 340 (1987). *Krull* involved an Illinois statute that required licensed vendors of motor vehicles and motor vehicle parts to allow state officials to inspect certain records. *Id.* at 342. In reliance on the statute, a police officer entered the respondents' wrecking yard and observed that several of the cars on the premises were stolen. *Id.* at 343. As a result, the respondents were arrested and charged with various criminal violations of the Illinois motor vehicle statutes. *Id.* at 343-44. In granting respondents' motion to suppress the evidence as violative of the Fourth Amendment, the lower court invalidated the statute and applied its decision to all pending prosecutions. *Id.* at 344. The United States Supreme Court disagreed with the exclusion of the evidence and applied the good faith exception of the exclusionary rule. *Id.* at 356. As a result, the *Krull* Court concluded that the exclusionary rule does not apply to a search conducted by an officer who acted in objective reliance on a statute that was subsequently declared unconstitutional. *Id.* In so doing, the Court based its rationale on the framework set forth in *Leon*. *Id.* at 347-56.

[97]*Evans*, 115 S. Ct. at 1193.

[98]*Id.* The Chief Justice criticized the Arizona Supreme Court's inability to distinguish between clerical errors made by law enforcement officers and those made by court employees. *Id.*

[99]*Id.*

against the exclusion of evidence in this case.[100] More importantly, the Chief Justice opined that application of the rule in the case at bar would not affect the conduct of court employees as such parties do not have a stake in the prosecution of criminal defendants.[101] Thus, concluding that the arresting officer was acting in objectively reasonable reliance on the computer record, the Court stated that precedent favored the creation of an exception to the exclusionary rule for clerical errors of court employees.[102] As a result, the Court reversed the judgment of the Supreme Court of Arizona and remanded the case to that court for further proceedings.[103]

B. CONCURRING OPINIONS: LAW ENFORCEMENT SHOULD NOT RELY BLINDLY ON MODERN TECHNOLOGY

Noting that the computer error resulted from the unintentional mistake of a court clerk, Justice O'Connor's concurred in the majority's limited holding.[104] In so doing, the Justice recognized the need for rational application of the exclusionary rule due to the tremendous costs imposed on society by the exclusion of reliable evidence.[105] Nevertheless, contending that the police may not have necessarily acted in reasonable reliance on the computer record, Justice O'Connor criticized the Court's failure to conclude that the sole error was that made by the court employees.[106]

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[100]*Id.* The Court pointed out that the testimony of the Chief Clerk of the Justice Court indicated that such clerical errors only happen every three or four years. *Id.*

[101]*Id.* The majority observed that court employees are "not engaged in the often competitive enterprise of ferreting out crime." *Id.*

[102]*Id.* at 1194. Recognizing that the police officer was simply performing his duty when he arrested Evans, the majority stated that exclusion in this case would not have deterred the officer from acting again in a similar fashion, pursuant to his accepted procedure. *Id.*

[103]*Id.*

[104]*Id.* (O'Connor, J., concurring). The Court's holding applied solely to the errors committed by court employees who failed to follow established procedure. *Id.* Justice O'Connor agreed that the rule should only be applied when its objectives can be "efficaciously served." *Id.*

[105]*Id.*

[106]*Id.*

Comparing the reliability of record-keeping systems to that of informants who frequently supply the police with dubious information,[107] the Justice opined that the requirement of probable cause is still crucial in determining the propriety of an officer's actions.[108] Therefore, Justice O'Connor asserted that the beneficial advantages enjoyed by the police through the use of modern technology should not lead to blind reliance on such mechanisms without a heightened awareness of the applicable constitutional guarantees.[109]

Agreeing with the reasoning set forth by Justice O'Connor, Justice Souter reiterated the Court's narrow holding.[110] Moreover, the Justice pointed out that the question of the potentially detrimental effects of computer error by the government was not at issue in the case at bar.[111]

C. JUSTICE STEVENS'S DISSENTING OPINION: THE FOURTH AMENDMENT APPLIES TO THE GOVERNMENT AS A WHOLE

Justice Stevens joined Justice Ginsburg in concluding that the *writ of certiorari* must be denied.[112] Criticizing the Court's assumption that the objective of the exclusionary rule is to deter police misconduct, Justice Stevens posited that the Fourth Amendment is intended to constrain the power of the government as a whole.[113] Justice Stevens disputed the

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[107]*Id.* Justice O'Connor cited Illinois v. Gates, 462 U.S. 213, 233 (1983), where the Court decided that where an informant provides information without specifying the basis for his contentions, the reliability of the informant must be established in order to support a finding of probable cause.

[108]*Evans*, 115 S. Ct. at 1194 (O'Connor, J., concurring).

[109]*Id.* at 1195 (O'Connor, J., concurring).

[110]*Id.* (Souter, J., concurring).

[111]*Id.*

[112]*Id.* (Stevens, J., dissenting).

[113]*Id.* (citing Olmsted v. United States, 277 U.S. 438, 472-79 (1928) (Brandeis, J., dissenting)). Justice Stevens argued that the sovereign should be responsible for training all of its agents in the appropriate enforcement of the law. *Id.*; *see also* Stewart, *supra* note 2, at 1365. The opponents of the good faith exception to the exclusionary rule argue, that despite the cases that call for a weighing of the costs and benefits of the rule, the Fourth Amendment is automatically violated if any illegally obtained evidence is used at trial. *Id.* at 1400. Moreover, they assert:

majority's characterization of the exclusionary rule as an "extreme sanction" and consequently agreed with the opinion of the Arizona Supreme Court denying the state the ability to profit from the officer's conduct.[114]

Assuming that deterrence is the correct rationale for the application of the exclusionary rule, Justice Stevens disagreed with the Court's reliance on *Leon*. The Justice stated that this case differed from *Leon* due to the lack of an outstanding warrant for Evans's arrest.[115] Thus, the Justice argued that the *Leon* rationale was inapplicable because the reasoning in *Leon* assumed the existence of a warrant.[116] Recognizing that the *Leon* Court's exemption of judges and magistrates from the scope of the exclusionary rule was based "on those officials' constitutionally determined role in issuing warrants,"[117] Justice Stevens asserted that the *Leon* exception should not apply to exempt court employees from the sanctions of the exclusionary rule.[118]

In addition, Justice Stevens posited that since the Phoenix Police Department was part of the chain of events that resulted in Evans's arrest, those law enforcement officials were in the best position to prevent the existence of errors.[119] As a result, the Justice concluded that despite the

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> [The Exclusionary rule is] intended to create an incentive for law enforcement officials to establish procedures by which police officers are trained to comply with the [F]ourth [A]mendment because the purpose of the criminal justice system — bringing criminals to justice — can be achieved only when evidence of guilt can be used against defendants

Id. Thus, opponents of the good faith exception argue that the appropriate application of the exclusionary rule would create "systematic deterrence." *Id.*

[114]*Evans*, 115 S. Ct. at 1196 (Stevens, J., dissenting).

[115]*Id.* (stating that, in *Leon*, there was a warrant issued by a Superior Court Judge that was subsequently found invalid because it lacked probable cause).

[116]*Id.*

[117]*Id.*

[118]*Id.*

[119]*Id.* The Justice argued that the presumption that law enforcement officers were in the best position to monitor the occurrence of errors was consistent with the exclusionary rule's goals of "systemic deterrence." *Id.* (citing Kamisar, *Exclusionary Rule*, *supra* note 2, at 659-62). Kamisar stated:

> [T]he rule controls police behavior not the way the criminal law seeks to control the behavior of the general public . . . 'through a police department's

police officer's "good faith" reliance on the computer record, the Court should avoid diminishing the deterrent effect of the exclusionary rule and, thus, should have declared the arrest invalid.[120] Referring to the chief clerk's testimony that this type of computer error only occurred once every three years, Justice Stevens rejected this assertion as "slim evidence" which failed to support the conclusion that computer error does not threaten the rights guaranteed by the Fourth Amendment.[121] In so doing, the Justice pointed out that there are many unlawful searches of innocent people that do not result in the discovery of incriminating contraband which nevertheless constitute violations of the Fourth Amendment.[122]

Agreeing with Justice Ginsburg's admonition against the premature adjudication of the erroneous arrest based on a computer mistake, Justice Stevens contended that the innocent citizen would now suffer because he could be wrongfully arrested based on computer error.[123] Thus, the Justice pointed out that the humiliation suffered by the people who are arrested and searched in public based on such errors, is equivalent to the outrage that

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> institutional compliance with judicially articulated fourth amendment standards,' i.e., by 'systemic deterrence.'
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> . . . Consequently, even if a particular constable is indifferent to whether his arrests and seizures result in convictions, those who run the police department are concerned with successful prosecutions. . . . At least the more professional police forces can be expected to encourage [F]ourth [A]mendment compliance through training and such guidelines as the department provides for conducting searches, seizures and arrests.

Kamisar, *Exclusionary Rule*, *supra* note 2, at 660 (citing Mertens & Wasserstrom, *supra* note 2, at 394, 399).

[120]Arizona v. Evans, 115 S. Ct. 1185, 1196 (1995) (Stevens, J., dissenting).

[121]*Id.* In so doing, the Justice emphasized that the rapid change in computer technology over the past years has created a different type of threat to privacy interests. *Id.* Thus, Justice Stevens asserted that the only change that has not taken place is the recurrent Fourth Amendment violations that are not corrected. *Id.*

[122]*Id.* at 1196-97 (Stevens, J., dissenting) (quoting Brinegar v. United States, 338 U.S. 160, 181 (1948) (Jackson, J., dissenting)).

[123]*Id.* at 1197. Noting that an officer who exercises reasonable reliance in effectuating a search subsequently deemed to violate the Fourth Amendment is immune from a § 1983 action, Justice Stevens proffered that the exclusionary rule is the only device that can enable courts to truly discourage Fourth Amendment violations. *Id.* Section 1983 permits a party claiming a violation of the Fourth Amendment to bring an action in state or federal court against a municipality and state officers. 42 U.S.C. § 1983 (1988).

spurred the creation of the Bill of Rights.[124] Therefore, Justice Stevens concluded that the cost of potentially seizing contraband in a search that was in violation of the Fourth Amendment must be weighed against the cost of subjecting innocent citizens to humiliating, unlawful searches.[125]

D. JUSTICE GINSBURG'S DISSENTING OPINION: MODERN TECHNOLOGY SHOULD NOT DIMINISH CONSTITUTIONAL RIGHTS

Justice Ginsburg began by urging the Court to avoid summarily dismissing the law enforcement problems caused by modern technology.[126] Observing that the Court based its decision on the presumption set forth in *Michigan v. Long*, the Justice urged that the *Long* decision was an obstacle in the states' attempt to "serve as laboratories for testing solutions to novel legal problems."[127] Thus, the Justice stated that the Court should presume that the Arizona Supreme Court relied on adequate and independent state grounds, basing its decision on the Arizona constitution's prohibition of unwarranted searches and seizures.[128] Citing favorably to the conclusions reached by the Arizona Supreme Court, Justice Ginsburg pointed out that the state supreme court did not rely on *United States v. Leon* in reaching its decision.[129] Moreover, Justice Ginsburg commended the state court's foresight in excluding evidence seized pursuant to an erroneous computer

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[124]*Id.*; *see also* Lo-Ji Sales, Inc. v. New York, 442 U.S. 319, 325 (1979) (holding that the neutral and detached requirement is not satisfied when a town justice accompanies the police, armed with an open-ended search warrant).

[125]*Evans*, 115 S. Ct. at 1197 (Stevens, J., dissenting).

[126]*Id.* (Ginsburg, J., dissenting).

[127]*Id.* at 1198 (Ginsburg, J., dissenting). The presumption created in *Long* states that if it is unclear whether a state court's decision rests on state or federal grounds, the state court is presumed to have relied on federal law. *Id.* This presumption comes into play when two requirements are satisfied: (1) the state court decision appears to rest on federal law or be interwoven with federal law; and (2) the court's reliance on independent state ground is not clear from the opinion itself. Michigan v. Long, 463 U.S. 1032, 1040-41 (1983).

[128]115 S. Ct. at 1198 (Ginsburg, J., dissenting).

[129]*Id.* (citing State v. Evans, 866 P.2d 869, 871 (Ariz. 1994)). The Justice stated that the state supreme court relied solely on the severe interference with individual liberty created by arrest warrants. *Id.*

record.[130] The Justice urged the Court to note the state court's recognition for a potentially "Orwellian" result due to law enforcement's reliance on computer technology.[131] Setting forth the reasons employed by the Arizona Supreme Court, Justice Ginsburg concluded that the *Long* presumption was erroneous.[132]

Next, the Justice discussed the widespread use of computers in law enforcement and the effects it generated.[133] In so doing, Justice Ginsburg cited *Rogan v. Los Angeles*,[134] where an innocent citizen was repeatedly

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[130]*Id.* Concluding that the exclusion of evidence based on computer error would reduce the incidence of erroneous records, the Arizona Supreme Court stated that:

> [T]he dissent laments the "high costs" of the exclusionary rule, and suggests that its application here is "purposeless" and provides "no offsetting benefits". Such an assertion ignores the fact that arrest warrants result in a denial of human liberty, and are therefore among the most important of legal documents. 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.

Id. (quoting *Evans*, 866 P.2d at 872).

[131]*Id.* Justice Ginsburg cited the state supreme court's assertion that "as automation increasingly invades modern life, the potential for Orwellian mischief grows." *Id.* (citing *Evans*, 866 P.2d at 872).

[132]*Id.* at 1199 (Ginsburg, J., dissenting). The Justice stated that the state court's decision should be presumed to be based solely on state ground, unless a plain statement is made to the contrary. *Id.*

[133]*Id.* (Ginsburg, J., dissenting). Justice Ginsburg pointed out that the advance of computer technology has brought about benefits, as well as amplified the effect of errors. *Id.* Asserting that such errors can have a widespread effect, the Justice explained that the FBI's National Crime Information Center ("NCIC"), contains over 23 million records some containing the identity of persons sought nationwide. *Id.* (citing Hearings before the Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies of the House Committee on Appropriations, 102d Cong., 2d Sess., pt. 2B, at 467 (1992)). Therefore, an error not corrected in the NCIC computer can have a drastic, widespread effect because federal, state and local agencies have the NCIC information at their disposal. *Id.* (citing Hearings before the Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies of the House Committee on Appropriations, 103d Cong., 1st Sess., pt. 2A, at 489 (1993)).

[134]668 F. Supp. 1384 (C.D. Cal. 1987).

accosted by law enforcement personnel based on an erroneous police record.[135] Moreover, Justice Ginsburg offered *United States v. Mackey*[136] as another example of computer error that subjected an innocent person to unnecessary harassment by law enforcement.[137] Referring to the testimony of the chief clerk of the justice court, the Justice posited that the clerk's testimony was contradictory because the discovery of the erroneous record pertaining to Evans led to the discovery of three additional errors that occurred on the same day.[138] Therefore, relying on the aforementioned examples, Justice Ginsburg reinforced the position that the increased use of computers by law enforcement personnel warranted careful scrutiny by the courts.[139]

Analyzing the Court's opinion, Justice Ginsburg disagreed with the majority's conclusion that sanctioning police officers for the mistakes made by court employees would not promote the deterrent purpose of the exclusionary rule.[140] Justice Ginsburg argued that despite the federal precedents enunciated by the majority, the holding in this case "is not the lesson inevitably to be drawn from logic and experience."[141] In addition, the Justice opined that the exclusion of evidence in this case would prompt law enforcement agencies to enhance the efficiency of record keepers involved in the criminal justice system.[142] Rejecting the majority's

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[135]*Evans*, 115 S. Ct. at 1199 (Ginsburg, J., dissenting). In *Rogan*, a man named Rogan was arrested four times over the course of two years because the police issued a warrant for a man impersonating Rogan who had committed robbery and murder. *Rogan*, 668 F. Supp. 1387-89 (C.D. Cal. 1987). Moreover, the lack of a physical description of the suspect's characteristics made the erroneous warrant even more repugnant. *Id.* For a discussion of the warrant requirements, see *supra* note 68 and accompanying text.

[136]387 F. Supp. 1121 (Nev. 1975). In that case, the mistaken listing in the NCIC computer made the defendant a "marked man for the five months prior to his arrest." *Id.* at 1124.

[137]*Evans*, 115 S. Ct. at 1200 (Ginsburg, J., dissenting).

[138]*Id.*

[139]*Id.*

[140]*Id.* at 1201 (Ginsburg, J., dissenting).

[141]*Id.* at 1200 (Ginsburg, J., dissenting).

[142]*Id.* at 1198-99 (Ginsburg, J., dissenting) (quoting State v. Evans, 866 P.2d 869, 872 (Ariz. 1994)).

holding, the Justice refused to differentiate between police clerks and court clerks, arguing that the compilation of records in a single database should not make a difference when deciding who is responsible for clerical mistakes.[143] Thus, Justice Ginsburg concluded that the Arizona Supreme Court's suppression of the evidence was reasonable.[144]

V. CONCLUSION

In *Arizona v. Evans*,[145] the United States Supreme Court, relying on the *Leon* "good faith" exception, refused to apply the exclusionary rule to clerical errors made by court employees.[146] In light of this decision, opponents of the "good faith" exception will probably claim that such a rule would erode the protection afforded by the Constitution.[147] In the past, they have argued that the force of the exclusionary rule would be diminished because the "good faith" exception removes the incentive for police officers to adhere to the mandates of the Fourth Amendment.[148] Proponents of the "good faith" exception have stressed that the exclusionary rule's benefit to society is uncertain due to the absence of a significant deterrent effect from the rule's application.[149] In addition, those proponents maintain that courts should experiment with possible alternatives that would diminish the

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[143]*Id.* at 1200 (Ginsburg, J., dissenting). The Justice also stated that it is often difficult to pinpoint who is responsible for the error. *Id.* Therefore, applying the rule to all law enforcement employees would not diminish the incentive to update records. *Id.*

[144]*Id.* at 1203 (Ginsburg, J., dissenting).

[145]*Id.* at 1185.

[146]*Id.* at 1194.

[147]See *supra* notes 21, 63-74 and accompanying text for a discussion of the "good faith" exception.

[148]*See* Stewart, *supra* note 2, at 1400. Opponents of the "good faith" exception argue that the rule's objective, "systematic deterrence," is intended to create an incentive for all police officers to comply with the mandates of the Fourth Amendment and is not designed to punish a specific officer. *Id.* As a result, the creation of the "good faith" exception vitiates that objective and "would put a premium on ignorance." *Id.*

[149]*See* Wright, *supra* note 2, at 741.

exclusion of tangible evidence while preserving a suspect's constitutional rights.[149]

Unlike cases where the need for exclusion is apparent,[150] *Arizona v. Evans*[151] presents a situation that justifies the application of the "good faith" exception to the exclusionary rule. The majority's reasoning is based on the Court's conclusion that the exclusionary rule is a judicially created remedy intended to deter unconstitutional police conduct.[152] As a result, suppressing evidence based on the clerical errors of court employees would not contribute to that objective. Such exclusion would simply frustrate the efforts of police officers whose respect for a suspect's constitutional rights would be in vain. Simply put, officers who adhere to the dictates of the Fourth Amendment cannot change their conduct when the seizure of evidence is rendered illegal by the actions of those unconnected with law enforcement.[153]

Nevertheless, the widespread use of computers, as evidenced by Justice Ginsburg's dissent, affects innocent citizens who are mistakenly targeted by the police.[154] While these cases[155] raise serious concerns regarding the ramifications of using computers in law enforcement, they do not address the issue of deterrence. It is evident that Evans's arrest exemplifies the risk associated with the use of computers in law enforcement.[156] A police officer who may be well versed in the complexities of the Fourth

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[149]*See* Wilkey, *supra* note 2, at 232. Wilkey argues that disciplinary punishment along with civil penalties would provide greater deterrence against Fourth Amendment violations than the current rule. *Id.* at 231.

[150]*See, e.g.*, Rochin v. California, 342 U.S. 165 (1952) (holding that when the police forced a suspect to ingest an emetic solution which caused him to regurgitate narcotics previously swallowed amounted to conduct that "shocked the conscience")

[151]115 S. Ct. 1185 (1995).

[152]*See supra* note 58 (quoting Elkins v. United States, 364 U.S. 206, 217 (1960)). Even the rule's opponents agree that the rule is intended to deter police misconduct. *See generally* Stewart, *supra* note 2, at 1365.

[153]The Court noted that court employees "are not adjuncts to the law enforcement team engaged in . . . ferreting out crime." *Evans*, 115 S. Ct. at 1193.

[154]*Id.* at 1199 (Ginsburg, J., dissenting).

[155]*See supra* notes 133-36.

[156]*Evans*, 115 S. Ct. at 1199 (Ginsburg, J., dissenting).

Amendment, however, cannot know of the Constitutional violation he is committing because the officer is relying on an incorrect computer record. Therefore, even if one accepts as true the current problems created by computer errors, the objective of the exclusionary rule would not be fulfilled if courts suppressed evidence obtained as a result of clerical errors of court employees.

The Court's decision in *Arizona v. Evans*[157] sends a clear message that the exclusionary rule should not be applied blindly. Such decisions will likely curtail the practice of releasing patently guilty defendants based on technicalities that can only be grasped by the courts. As a result, *Arizona v. Evans* paves the way for future decisions that avoid the reflexive application of the exclusionary rule without thoughtful consideration of its deterrence rationale.

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[157]*Id.* at 1185.