EXPANDING THE GOOD FAITH EXCEPTION TO
THE EXCLUSIONARY RULE:
ARIZONA v. EVANS

INTRODUCTION

The exclusionary rule is a judicially created remedy that effectuates Fourth Amendment rights of citizens to be free against unreasonable searches and seizures.\(^1\) The exclusionary rule prohibits the use at trial of evidence that was unreasonably gathered in violation of a citizen’s Fourth Amendment rights.\(^2\) Notwithstanding the importance of the exclusionary rule’s remedial design, the United States Supreme Court has identified exceptions to the exclusionary rule’s application.\(^3\)

Prior to 1995, the United States Supreme Court defined exclusionary rule exceptions only in terms of a police officer’s objective reliance on facially valid search warrants or laws authorizing searches in existence at the time the warrants were executed, but which later were held invalid.\(^4\) The Supreme Court first articulated a good faith exception to the exclusionary rule in its 1984 decision in *United States v. Leon*.\(^5\) This first exception applied to situations in which an officer reasonably relied on a facially valid search warrant that was later held to be invalid due to judicial error during the probable cause determination.\(^6\)

In 1987, the United States Supreme Court created another exception to the exclusionary rule in *Illinois v. Krull*.\(^7\) In *Krull*, the Supreme Court recognized an exception to the exclusionary rule, finding objectively reasonable an officer’s reliance on a facially valid statute allowing a warrantless search even though the courts subsequently declared the statute unconstitutional.\(^8\)

---

In *Arizona v. Evans*, the United States Supreme Court expanded the exclusionary rule's exceptions to include a police officer's objective reliance on an arrest warrant previously quashed but erroneously reflected as valid in a computer system due to a court employee's clerical error. By continuing the expansion of exclusionary rule exceptions in *Evans*, the Supreme Court reaffirmed that the exclusionary rule's primary objective remains the deterrence of police misconduct violative of constitutional Fourth Amendment rights and not the remedying of judicial or legislative error.

This Note will first review the United States Supreme Court's decision in *Evans*. This Note will then discuss the development of the exclusionary rule and its judicially created exceptions. This Note concludes that the Supreme Court's decision in *Evans* is consistent with the Court's history of creating good faith exceptions to the exclusionary rule.

FACTS AND HOLDING

On January 5, 1991, Phoenix police officer Bryan Sargent stopped Isaac Evans in front of the police station for driving the wrong way on a one-way street. After Evans told Officer Sargent that his driver's license had been suspended, Officer Sargent entered Evans' name into a mobile computer located inside his patrol car. The computer records check verified Evans' suspended license and also revealed an outstanding misdemeanor arrest warrant for past traffic violations. Officer Sargent then placed Evans under arrest.

During the process of arresting Evans for the outstanding misdemeanor warrant, Officer Sargent asked Evans to relax his hands so that Officer Sargent could more easily handcuff him. In complying with Officer Sargent's request, Evans dropped what appeared to be a hand-rolled cigarette. After determining that the cigarette smelled of marijuana, Officer Sargent then searched the passenger compart-

---

12. *See infra* notes 15-76 and accompanying text.
13. *See infra* notes 77-276 and accompanying text.
20. *Id.*
ment of Evans' car and discovered a bag of marijuana hidden under the passenger seat.\textsuperscript{21} After concluding the search, Officer Sargent arrested Evans for possession of marijuana.\textsuperscript{22}

When the Phoenix Police Department notified the Maricopa County Justice Court of Evans' arrest, justice court personnel discovered that the outstanding misdemeanor arrest warrant on Evans had been previously quashed.\textsuperscript{23} The justice court advised the police department that, on December 13, 1990, a misdemeanor arrest warrant on Evans had been issued and entered into the Maricopa County, Arizona, criminal justice computer system after Evans failed to appear at a hearing.\textsuperscript{24} On December 19, 1990, Evans finally appeared before the justice court, and the justice court then entered a notation in Evans' file to quash the arrest warrant issued six days earlier.\textsuperscript{25}

When the justice court noted a quashed warrant in a suspect's file, the justice court's standard procedure required a court clerk to telephone the Maricopa County Sheriff's Office to advise the Sheriff's Office of the quashed warrant.\textsuperscript{26} Usual procedure then directed both offices to make written file notations identifying the court clerk who made the telephone call and the sheriff's office personnel who received the information.\textsuperscript{27} Evans' file lacked such notations.\textsuperscript{28}

At an evidentiary hearing prior to trial, Evans moved to suppress the drug evidence seized during Officer Sargent's search.\textsuperscript{29} Evans claimed the marijuana discovered during the January 5th search was the fruit of an unlawful arrest, because the misdemeanor arrest warrant serving as the basis for Officer Sargent's arrest of Evans had been quashed seventeen days earlier.\textsuperscript{30} At the suppression hearing, Officer Sargent testified that, absent the computer record of the outstanding arrest warrant, he would not have placed Evans under arrest.\textsuperscript{31} The state also presented conflicting evidence as to whether the county justice court staff or the Phoenix police employees were at

\begin{itemize}
\item \textsuperscript{21} \textit{Id.} The search of Evans' car also included a search of a passenger's purse. \textit{Id.}
\item \textsuperscript{22} \textit{Evans}, 866 P.2d at 870. The state charged Evans with possession of marijuana, a Class Six felony. \textit{Id.}
\item \textsuperscript{23} \textit{Evans}, 115 S. Ct. at 1188.
\item \textsuperscript{24} \textit{Evans}, 836 P.2d at 1024-25.
\item \textsuperscript{25} \textit{Id.} at 1025 The arrest warrant was issued only six days prior to the direction to quash the warrant. \textit{Id.}
\item \textsuperscript{26} \textit{Evans}, 115 S. Ct. at 1188.
\item \textsuperscript{27} \textit{Id.}
\item \textsuperscript{28} \textit{Evans}, 836 P.2d at 1025.
\item \textsuperscript{29} \textit{Id.}
\item \textsuperscript{30} \textit{Evans}, 115 S. Ct. at 1188.
\item \textsuperscript{31} \textit{Evans}, 866 P.2d at 870.
\end{itemize}
fault for the computer error. 32 Relying on State v. Greene, 33 the trial
court concluded that, irrespective of which office erred in failing to re-
move Evans' arrest warrant from the computer system, the error com-
mited required suppression of the seized evidence. 34 Thus, the trial
court granted Evans' motion to suppress. 35

The state appealed the trial court's order. 36 In reversing the trial
court, the Arizona Court of Appeals distinguished Evans from Greene
by noting that neither Officer Sargent nor the Phoenix Police Depart-
ment were negligent in causing the computer error. 37 The court of
appeals found that Officer Sargent's arrest and subsequent search of
Evans was objectively reasonable, because the officer had no way of
knowing that the justice court previously quashed Evans' arrest war-
rant. 38 Viewing the facts in Evans as similar to the those in the
United States Supreme Court decision in United States v. Leon, 39 the
court of appeals held that, when a police officer acts in good faith, the
deterrent effect of the exclusionary rule is lost. 40 The court of appeals
also noted that neither Officer Sargent's actions nor the actions of the
Phoenix Police Department constituted negligence under Arizona's
good faith exception statute. 41 Concluding that the police officer did
not err in searching Evan's car, the court of appeals found that the
trial court abused its discretion in granting Evans' suppression mo-
tion. 42 Thus, the court of appeals reversed the holding of the trial
court. 43

Evans then appealed to the Arizona Supreme Court which vac-
cated the court of appeals' opinion and found that the trial court did
not abuse its discretion in granting Evans' motion to suppress. 44 The
supreme court refused to "support the distinction drawn . . . between

---

32. Id.
33. 783 P.2d 829 (Ariz. Ct. App. 1989) (applying the exclusionary rule where police
personnel were negligent in maintaining computer records relied on for the warrantless
arrest of the defendant).
34. Evans, 866 P.2d at 870 (citing State v. Greene, 783 P.2d 829, 830 (Ariz. Ct.
App. 1989)).
35. Id.
36. Evans, 836 P.2d at 1024.
37. Id. at 1024, 1026-27 (noting that the state presented evidence indicating that
the justice court clerk and not the Phoenix Police Department was negligent in failing to
inform the Sheriff's Office of Evans' quashed warrant).
38. Id. at 1027.
41. Id. at 1028 (citing ARiz. Rev. Stat. ANN. § 13-3925 (1989) in which admissibil-
ity of evidence obtained as a result of an unlawful search or seizure is an exclusionary
rule exception for good faith mistakes or technical violations).
42. Id.
43. Id.
44. Evans, 866 P.2d at 871.
clerical errors committed by law enforcement personnel and similar mistakes by court employees." Even if responsibility for the error rested with the justice court, the Arizona Supreme Court found the exclusionary rule applicable to the facts in Evans. The supreme court noted that the error resulted from negligence in a ministerial state function, not through judicial discretion, and, as such, was not protected by the exclusionary rule exception of objective reliance. The supreme court noted "that as automation increasingly invades modern life, the potential for Orwellian mischief grows . . . [and] the exclusionary rule is a 'cost' we cannot afford to be without."

The state appealed to the United States Supreme Court. The Supreme Court granted certiorari to determine "whether the exclusionary rule requires suppression of evidence seized incident to an arrest resulting from an inaccurate computer record, regardless of whether police personnel or court personnel were responsible for the record's continued presence in the police computer." The Court reversed the decision of the Arizona Supreme Court and held that the exclusionary rule does not require suppression of evidence seized in violation of the Fourth Amendment where the erroneous information resulted from clerical errors of a court employee.

In reaching its decision, the United States Supreme Court relied on its holding in Leon, which framed the exceptions to the exclusionary rule. The Supreme Court stated that "the exclusionary rule operates as a judicially created remedy designed to safeguard against future violations of Fourth Amendment rights through the rule's general deterrent effect." In deciding when to apply the exclusionary rule, the Court stated, "[W]here the exclusionary rule does not result in appreciable deterrence, then, clearly, its use . . . is unwarranted."

45. Id.
46. Id.
47. Id. at 872 (citing United States v. Leon, 468 U.S. 897 (1984)).
48. Id.
49. Evans, 115 S. Ct. at 1189.
50. Id.
51. Id. The Court noted:
[The Solicitor General, as amicus curiae, argues that an analysis similar to that we apply here to court personnel also would apply in order to determine whether the evidence should be suppressed if police personnel were responsible for the error. As the State has not made any such argument here, we agree that '[t]he record in this case . . . does not adequately present that issue for the Court's consideration."

Id. at 1194, n.5.
52. Evans, 115 S. Ct. at 1194 (citing United States v. Leon, 468 U.S. 897, 916-22 (1984)).
53. Id. at 1191.
54. Id. at 1191 (quoting United States v. Janis, 428 U.S. 433, 454 (1976)).
unlawful police conduct, the Court held that, even if a court clerk was responsible for the erroneous entry on the police computer, application of the exclusionary rule could not be expected to alter the behavior of the arresting officer.\textsuperscript{55} Thus, the Court found the exclusionary did not apply to the facts in Evans' case.\textsuperscript{56}

The Court found that even the trial court acknowledged Officer Sargent's professional obligation to arrest Evans by noting that Officer Sargent would have been derelict in his duty had he failed to arrest Evans.\textsuperscript{57} The Court also noted that the record did not indicate that Officer Sargent acted in any manner other than what would be considered objectively reasonable when he relied on the computer record as a basis for arresting Evans.\textsuperscript{58} In applying the \textit{Leon} exception, the Court held that the exclusionary rule's deterrent penalty would not extend to a police officer's objective reliance on erroneous information caused by an error of a court clerk.\textsuperscript{59}

Justice John Paul Stevens dissented.\textsuperscript{60} Justice Stevens argued that the Court failed to recognize the purpose, scope, and application of the exclusionary rule.\textsuperscript{61} Justice Stevens rejected as limited the Court's characterization of police deterrence as the primary purpose of the exclusionary rule.\textsuperscript{62} Justice Stevens asserted that the actual purpose of the exclusionary rule in effectuating Fourth Amendment guarantees encompassed misconduct of the entire sovereign, not just an individual police officer.\textsuperscript{63} Justice Stevens argued that broad application of the exclusionary rule was mandatory in order to motivate the sovereign to train its officials to avoid future Fourth Amendment violations.\textsuperscript{64} Within this framework, Justice Stevens contended, the error of the Maricopa County court clerk regarding Evans was actionable, and the trial court should have applied the exclusionary rule.\textsuperscript{65}

Justice Stevens also rejected the Court's assertion that the exclusionary rule's application extended only to punish police misconduct, not to vindicate violations of an individual's Fourth Amendment

\begin{itemize}
\item \textsuperscript{55} Id.
\item \textsuperscript{56} Id.
\item \textsuperscript{57} Id.
\item \textsuperscript{58} Id. at 1194.
\item \textsuperscript{59} Id.
\item \textsuperscript{60} Id. at 1195-97 (Stevens, J., dissenting).
\item \textsuperscript{61} Id. at 1195 (Stevens, J., dissenting).
\item \textsuperscript{62} Id. (Stevens, J., dissenting).
\item \textsuperscript{63} Id. (Stevens, J., dissenting).
\item \textsuperscript{64} Evans, 115 S. Ct. at 1195 (Stevens, J., dissenting).
\item \textsuperscript{65} Id. at 1196 (Stevens, J., dissenting).
\end{itemize}
EXCLUSIONARY RULE

rights. Justice Stevens contended that the exclusionary rule effectuates Fourth Amendment commands, and, as such, constrains the power of the entire sovereign, not just its agents.

Justice Stevens also rejected the Court’s reliance on Leon. Justice Stevens distinguished Leon, because in Leon a facially valid warrant actually existed, but in Evans the issuing court had quashed Evans’ previously existing warrant prior to his arrest. Finally, Justice Stevens argued that the Court improperly favored intrusive state action over the protection of constitutional integrity of individual rights by allowing a bureaucratic error to result in deprivation of a citizen’s liberty.

Justice Ruth Bader Ginsburg also dissented. Applying the United States Supreme Court’s holding in Michigan v. Long, Justice Ginsburg stated that the Supreme Court lacked jurisdiction over Evans. Justice Ginsburg agreed with the Arizona Supreme Court, recognizing the potential new dangers to individual liberty presented by the growing use of computerized records in law enforcement. Justice Ginsburg noted that, absent a plain statement to the contrary, the Arizona Supreme Court’s decision in Evans rested on an independent state law ground. Justice Ginsburg concluded that the Arizona Supreme Court decision preserved the state’s own constitutional interpretation of what constituted unwarranted state intrusion into the lives of Arizona citizens.

BACKGROUND

The constitutional tenets of the exclusionary rule are specifically grounded in the Fourth Amendment. While the Fourth Amendment
established the fundamental right against unreasonable searches and seizures, the Fourth Amendment did not provide a remedy for its violation.\textsuperscript{78} The United States Supreme Court provided such a remedy through the creation of the exclusionary rule.\textsuperscript{79} Years after formally announcing the exclusionary rule's design and purpose, the Supreme Court established exceptions to the rule in order to more fairly effectuate the exclusionary rule's purpose.\textsuperscript{80} In creating such exceptions, the Court sought to balance the exclusionary rule's deterrent design against the societal costs involved in the suppression of illegally obtained evidence.\textsuperscript{81}

\textbf{FOURTH AMENDMENT FOUNDATIONS}

The Fourth Amendment of the United States Constitution guarantees to citizens a fundamental right against unreasonable searches and seizures.\textsuperscript{82} The Fourth Amendment also requires a warrant based on probable cause that contains a specific description of the items to be seized or the persons to be searched.\textsuperscript{83} To meet the reasonableness requirement of the Fourth Amendment, a search or seizure must follow from a valid search warrant issued by a detached and neutral magistrate.\textsuperscript{84} The magistrate may issue the search warrant only after making a probable cause determination based on a police officer's affidavit attesting to the validity of the information.\textsuperscript{85} The United States Supreme Court has also recognized the validity of

\begin{itemize}
\item \textsuperscript{78} See infra notes 82-88, 125-37 and accompanying text.
\item \textsuperscript{79} See infra notes 87-176 and accompanying text.
\item \textsuperscript{80} See infra notes 177-227 and accompanying text.
\item \textsuperscript{82} U.S. Const. amend. IV. The Fourth Amendment states:
\begin{quote}
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 Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the places to be searched, and the persons or things to be seized.
\end{quote}
\item \textsuperscript{83} U.S. Const. amend. IV. Constitutional historians believe the Constitution's Framers' most likely incorporated the particularity requirement to preclude the government's use of two British Crown carryover legal instruments: the general warrant and the writ of assistance. See Potter Stewart, The Road to Mapp v. Ohio and Beyond: The Origins, Development and Future of the Exclusionary Rule in Search and Seizure Cases, 83 Colum. L. Rev. 1365, 1369 (1982). The General Warrant was a legal device issued by the Crown to its agents to conduct "search and destroy" missions against printers publishing political pamphlets critical of the Crown. \textit{Id.} The Writ of Assistance was created to stem the colonist smuggling activities. \textit{Id.} A Writ of Assistance gave the holder, typically a customs official, unlimited "power to search with unlimited discretion for the duration of the life of the reigning monarch." \textit{Id.} at 1369-70.
\item \textsuperscript{84} Diffendal, 68 St. John's L. Rev. at 217.
\item \textsuperscript{85} \textit{Id.}
searches conducted without a legal warrant in circumstances in which exceptions to the Fourth Amendment warrant requirement apply. The United States Supreme Court created the exclusionary rule to remedy violations of these Fourth Amendment protections. The exclusionary rule operates by prohibiting the introduction at trial of otherwise relevant evidence because the evidence was obtained using procedures that violated Fourth Amendment protections.

The United States Supreme Court first announced an exclusionary rule remedy for Fourth Amendment violations in *Boyd v. United States*. In *Boyd*, the Supreme Court developed the foundation for an exclusionary rule remedy against the government's unreasonable search and seizure of a citizen's property. In *Boyd*, a New York business, E.A. Boyd & Sons ("Boyd"), imported thirty-five cases of plate glass into the United States and fraudulently represented importation of a lesser amount in order to reduce the duty tax owed. The district attorney charged Boyd with violating federal revenue laws. In order to acquire evidence of the actual value or quantity of the imported glass, the district attorney obtained an order from the United States District Court for the Southern District of New York compelling Boyd to produce an invoice. The district attorney later used this invoice to convict Boyd. Boyd objected to the validity of the order and the unconstitutionality of the law compelling his surrender of personal records. At trial, the court denied Boyd's objection to the use of the papers as evidence against him, stating that the procedures utilized by the state fully complied with federal law.

On appeal to the United States Supreme Court, Boyd asserted that both the law and the court order compelling his production of the evidence used against him were unconstitutional. The Supreme Court reversed the lower court's decision, holding that the government action and manner of discovering the evidence violated Boyd's constitutional right against self-incrimination as well as his Fourth Amend-

86. See infra notes 177-227 and accompanying text.
87. Diffendal, 68 St. John's L. Rev. at 218.
89. 116 U.S. 616, 634-38 (1886) (finding that both a Fourth and Fifth Amendment violation occurred).
92. Id. at 617-18.
93. Id.
94. Id. at 618.
95. Id.
96. Id.
97. Id.
The Court held that the lower court's order and underlying law compelling Boyd to produce the invoice violated Boyd's Fifth Amendment rights against self-incrimination and were the "equivalent of an unreasonable search and seizure within the meaning of the Fourth Amendment."99

The United States Supreme Court applied Boyd's principle of exclusion of evidence in a federal action in Weeks v. United States.100 In Weeks, the Supreme Court held that the Fourth Amendment alone extended protections against unreasonable searches and seizures by federal officials and was the basis for excluding evidence in a federal trial.101 This case involved federal marshals who arrested Freemont Weeks on suspicion of selling lottery tickets through the mail in violation of federal criminal codes.102 Lacking a search warrant, a federal marshal and local police officers searched Weeks' home and seized papers and records upon which they based his arrest and subsequent conviction.103 The United States District Court of the Western District of Missouri denied Weeks' petition for return of his papers.104 The court allowed introduction of the papers and records as evidence at trial, relying on existing law that allowed papers having come within the control of the court to be used as evidence.105 After conviction, Weeks appealed directly to the United States Supreme Court.106 The Supreme Court reversed and remanded the case, ordering the federal trial court to exclude the papers and records seized by the federal marshal because the Court determined that such a seizure was illegal and violated Weeks' Fourth Amendment rights.107

The United States Supreme Court's decision in Weeks did not address actions of state officers who violated Fourth Amendment guarantees.108 The Supreme Court remedied this in Mapp v. Ohio109

98. Id. at 638. See Gleason, 28 WM. & MARY L. REV. at 744.
100. 232 U.S. 383, 391-92 (1914).
102. Weeks, 232 U.S. at 386.
103. Id.
104. Id. at 387.
105. Id. at 394.
106. Id. at 389.
107. Id. at 393, 398-99. The Supreme Court found that
[i]f letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment declaring his right to be secure against such searches and seizures is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution.

Id. at 393.
when the Court extended the exclusionary rule to the states.\textsuperscript{110} In \textit{Mapp}, police officers seeking a bomb suspect were refused entry into Dollee Mapp's home because they lacked a search warrant.\textsuperscript{111} The police then forced their way into Mapp's home, restrained Mapp, and seized certain "lewd" materials discovered during a search of the premises.\textsuperscript{112}

The Ohio Common Pleas Court of Cleveland convicted Mapp of possession of lewd and lascivious materials.\textsuperscript{113} Mapp then appealed to the Ohio Court of Appeals, citing a violation of her Fourth Amendment rights.\textsuperscript{114} The court of appeals disregarded Mapp's argument and affirmed Mapp's conviction.\textsuperscript{115} Mapp then appealed on constitutional grounds to the Ohio Supreme Court which affirmed the court of appeals' decision, finding that, even if the search was made without authority, the state was not prevented from using such unconstitutionally seized evidence at trial.\textsuperscript{116}

On writ of certiorari to the United States Supreme Court, Mapp asserted that the Ohio statute, the police conduct, her sentence, and the trial court's jury instructions were unconstitutional.\textsuperscript{117} The Supreme Court applied the \textit{Weeks} exclusionary rule distinction noting that "[s]ince the Fourth Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth, it is enforceable against them by the same sanction of exclusion as is used against the Federal Government."\textsuperscript{118} The Court reversed and remanded the Ohio Supreme Court's decision, noting that Ohio's unconstitutional shortcut to the conviction of Mapp "destroyed the entire system of constitutional restraints on which the liberties of the people rest."\textsuperscript{119} The Court articulated in \textit{Mapp} that states too must follow Constitutional guarantees against unreasonable searches and seizures.\textsuperscript{120}

\begin{thebibliography}{99}
\bibitem{111} Mapp, 367 U.S. at 644.
\bibitem{112} Id. at 643-45.
\bibitem{113} Id. at 643.
\bibitem{114} Id.
\bibitem{115} Stewart, 83 \textit{COLUM. L. REV.} at 1367.
\bibitem{116} Id. \textit{See Mapp}, 367 U.S. at 645.
\bibitem{117} Mapp, 367 U.S. at 643.
\bibitem{118} Id. at 655.
\bibitem{119} Id. at 660.
\bibitem{120} Id. at 659-60. \textit{But see United States v. Janis}, 428 U.S. 433, 446-47, 453-54 (1976) (noting that a state police officer's reliance on a judicially signed warrant subsequently determined invalid did not render evidence seized inadmissible in a federal civil tax trial). In \textit{Janis}, the United States Supreme Court balanced the exclusionary rule's deterrent effect on the state police officer's future actions against the societal costs of excluding relevant evidence gathered in good faith reliance by the officer. \textit{Janis}, 428
After its decision in *Mapp*, and before formally announcing an exclusionary rule exception, the United States Supreme Court rendered several independent decisions that defined the scope of exclusionary rule applications. The Supreme Court thus began to recognize that the exclusionary rule's scope must allow for exceptions. The Court in these post-*Mapp* cases held that the exclusionary rule did not apply in grand jury proceedings, habeas corpus proceedings, or civil proceedings. These cases illustrate the Court's willingness to not only define the scope of the exclusionary rule, but also to anticipate its exceptions.

The Scope of the Exclusionary Rule

The United States Supreme Court's decision in *United States v. Calandra* framed the Supreme Court's view of the scope of the exclusionary rule's design. In *Calandra*, federal agents possessing a search warrant authorizing the search for evidence of bookmaking and wagering records searched John P. Calandra's business, Royal Machine & Tool Co., in Cleveland, Ohio. During the search, one agent discovered and seized promissory notes and a payment ledger because the agent concluded these items were evidence that Calandra might also have been involved in loansharking.

A special grand jury was convened in the District Court for the Northern District of Ohio to investigate Calandra's alleged loansharking. Under grand jury subpoena, Calandra appeared but refused to testify when called, opting rather to invoke his Fifth Amendment privilege against self-incrimination. The Government requested the district court to grant Calandra immunity, but Calandra moved for suppression of the loansharking evidence seized, citing that the warrant was insufficient and that the search exceeded the scope of the warrant. The district court granted Calandra's motion to suppress,

U.S. at 434. The Supreme Court concluded that excluding the evidence would only marginally deter future actions and therefore the societal costs compelled admission. Id.

121. See infra notes 125-76 and accompanying text.
123. Id.
124. Id.
126. Stewart, 83 COLUM. L. REV. at 1390.
129. Id. at 341.
130. Id.
131. Id. Calandra's motion to suppress was made pursuant to Federal Rule of Civil Procedure 41(e). Id.
finding that the federal agent's search had indeed exceeded the warrant's scope; the district court further ordered that Calandra could choose not to answer any grand jury questions regarding the suppressed evidence.132

The Government appealed to the United States Court of Appeals for the Sixth Circuit, arguing that the search was lawful; the Sixth Circuit, however, affirmed, finding that the district court properly applied the exclusionary rule in suppressing evidence illegally seized from Calandra.133 The Government petitioned for certiorari to the United States Supreme Court, again arguing the legality of the search.134 The Supreme Court reversed, noting that a witness summoned to appear before a grand jury could not decline to answer questions on the grounds that such questions were predicated on an unlawful search.135 In reaching its decision, the Court noted that the exclusionary rule "is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved."

Thus, the Court in Calandra found that application of the exclusionary rule to grand jury proceedings would seriously impede the grand jury's fact finding function.137

In United States v. Janis,138 the United States Supreme Court further defined the post-Mapp application of the exclusionary rule.139 In Janis, the Supreme Court addressed the issue of whether evidence seized by a California police officer in good faith reliance on a warrant that was subsequently determined to be unconstitutional was admissible in a federal civil trial by or against the United States.140 In Janis, a Los Angeles Police Department officer obtained a warrant to search Max Janis' apartment for evidence of bookmaking paraphernalia.141 The search warrant was issued by a judge of the Municipal Court of the Los Angeles Judicial District, California, based on the affidavit of a Los Angeles Police Department officer.142 The police officer executed the search warrant on Janis' residence, seized cash and wagering records, and arrested Janis.143 After Janis' arrest, the po-
lice notified agents of the United States Internal Revenue Service ("IRS") of their possession of the gambling records, and the police and the IRS then jointly estimated the extent of Janis's illegal gambling activities. The IRS determined that Janis owed unpaid taxes derived from wagering gains and levied the amount seized in cash from the search of Janis' residence as partial payment for the amount owed the IRS. The state filed charges against Janis for violation of local gambling laws.

Prior to trial, Janis moved the issuing court to quash the search warrant. Janis argued that the search warrant lacked particularity in identifying the underlying circumstances from which a magistrate could independently assess the reliability of a confidential informant supplying information to the police. The trial court granted Janis' motion, quashed the warrant, and ordered all items seized except the cash levied by the IRS returned to Janis.

Seeking return of his money, Janis filed a claim against the IRS with the United States District Court for the Central District of California. The Government answered Janis' claim and counterclaimed for the remainder of the unpaid balance of the IRS assessment. The district court concluded that, because all of the evidence used to assess the tax penalty against Janis was derived as a result of a defective search warrant, use of the evidence violated Janis' Fourth Amendment rights. The district court found that Janis' money had to be returned, and the civil tax assessment made by the IRS against Janis had to be quashed.

On appeal to the United States Court of Appeals for the Ninth Circuit, the Government contended that the exclusionary rule did not apply to the civil tax assessment against Janis. The Ninth Circuit in an unpublished memorandum opinion affirmed the district court's ruling.

144. Id. at 436. The officer testified that his notification of the IRS was not within departmental procedure; rather the officer did so because of the magnitude of Janis' gambling records. Id. at 437, n.3.
145. Calandra, 414 U.S. at 437.
146. Id.
147. Id. at 437-38.
148. Id. (noting that Janis based his motion on Spinelli v. United States, 393 U.S. 410 (1969)).
149. Id. at 438.
150. Id.
151. Id. The original IRS claim was assessed against Janis in the amount of $89,026.09, and the IRS retained $4,940 from the cash seizure. Id. at 437-38.
152. Calandra, 414 U.S. at 439.
153. Id.
154. Id.
155. Id. (noting that the Ninth Circuit found in favor of the district court on "findings of fact and conclusions of law").
The Government then appealed to the United States Supreme Court on petition of certiorari to determine whether the exclusionary rule barred the admissibility of evidence in a federal civil trial. The Supreme Court reversed the Ninth Circuit's decision and remanded the case. The Court utilized a balancing test to determine whether the exclusionary rule's deterrent effect on a police officer's future actions should prevail or whether the societal costs of excluding relevant evidence gathered in good faith reliance by the officer compelled admission. The Court concluded that the exclusionary rule should not be applied in a civil proceeding to bar the use by "one sovereign of evidence seized by a criminal law enforcement agent of another sovereign."

The United States Supreme Court in Stone v. Powell again addressed the scope of the application of the exclusionary rule. In Powell, Lloyd Charles Powell was convicted of murdering a San Bernardino, California, liquor store owner. Powell's conviction was in part due to the introduction of the murder weapon found on Powell during a search incident to his arrest for vagrancy in Henderson, Nevada. After extradition to California, Powell filed a motion to suppress, arguing against the introduction of the murder weapon on the grounds that the Nevada vagrancy ordinance was unconstitutionally vague. The Superior Court of San Bernardino, California, rejected Powell's suppression motion, and, after conviction, Powell appealed on the same grounds to the California District Court of Appeals. The court of appeals rejected this appeal and affirmed the trial court's conviction of Powell. The court of appeals noted that it was not necessary to rule on the legality of Powell's arrest in Nevada, because, if any error existed in allowing the testimony of the arresting Nevada police officer, such error was harmless under California law.

On appeal to the California Supreme Court, Powell filed a petition for habeas corpus relief; the supreme court subsequently denied Powell's petition. Powell then appealed on a writ of federal habeas
corpus to the United States District Court for the Northern District of California, arguing for exclusion of the murder weapon as fruit of an illegal search based on the unconstitutionality of the Nevada vagrancy ordinance. The district court denied Powell's action, finding that the arresting police officer possessed sufficient probable cause to arrest Powell. The district court agreed with the California court's harmless error ruling and further found that, even if the vagrancy ordinance was unconstitutional, "the deterrent purpose of the exclusionary rule does not require that it be applied to bar admission of the fruits of a search incident to an otherwise valid arrest." Powell appealed to the United States Court of Appeals for the Ninth Circuit; the Ninth Circuit reversed the district court, concluding that the vagrancy ordinance was unconstitutionally vague, and that Powell's arrest was illegal and the evidence seized incident to his arrest was inadmissible. The Ninth Circuit noted that exclusion of the murder weapon would not act to deter the good faith enforcement of laws by police officer's, but rather would deter legislatures from creating unconstitutional statutes.

Powell's prison warden, W.T. Stone, filed a petition for certiorari before the United States Supreme Court to determine "the scope of federal habeas corpus and the role of the exclusionary rule upon collateral review of cases involving Fourth Amendment claims." The Supreme Court reversed, finding that where the state had provided a full and fair opportunity to be heard, a state prisoner could not be granted federal habeas corpus relief based on claims that the evidence used at trial was unconstitutionally obtained. The Court noted that, within this context, the "contribution of the exclusionary rule to the effectuation of the Fourth Amendment is minimal, and the substantial societal costs of application of the rule persist with special force."

**Exceptions to the Exclusionary Rule**

In United States v. Leon, the United States Supreme Court created the first exception to the exclusionary rule. In Leon, Alberto

---

169. Id. (noting that Powell's federal habeas corpus action was commenced under 28 U.S.C. § 2254).
170. Id.
171. Id.
172. Id. at 471.
173. Id.
174. Id. at 474.
175. Id. at 495.
176. Id.
Antonia Leon became a prime suspect after a confidential informant of unproven reliability provided police with a sworn affidavit, describing his knowledge of Leon's drug activities.\textsuperscript{179} A magistrate issued a search warrant for Leon's residence and car after the police presented an affidavit to the magistrate.\textsuperscript{180} The police executed the search warrant on Leon's residence, seized a large quantity of drugs, and arrested Leon.\textsuperscript{181} Prior to trial on the merits, Leon filed a motion to suppress the seized drug evidence, arguing that the search warrant was based on insufficient probable cause.\textsuperscript{182} The United States District Court for the Central District of California granted Leon's motion to suppress, finding that the affidavit was insufficient to establish probable cause.\textsuperscript{183} The United States Government appealed this decision to the United States Court of Appeals for the Ninth Circuit which affirmed the district court's decision, finding insufficient probable cause and refusing to grant the government's argument to recognize a good faith exclusionary rule exception.\textsuperscript{184}

The government then appealed to the United States Supreme Court.\textsuperscript{185} Conceding the warrant lacked sufficient probable cause, the government petitioned for certiorari to determine "whether the Fourth Amendment's exclusionary rule should be modified so as not to bar the admission of evidence seized in reasonable, good-faith reliance on a search warrant that a court subsequently finds defective."\textsuperscript{186}

The United States Supreme Court granted certiorari and held that the exclusionary rule could be modified without jeopardizing the rule's purpose.\textsuperscript{187} The Supreme Court found such modification was proper based on the facts in Leon.\textsuperscript{188} Holding that evidence against Leon could not be excluded due to judicial error, the Court proceeded to articulate its first exception to the exclusionary rule.\textsuperscript{189} The Court

\begin{itemize}
\item \textsuperscript{179} Leon, 468 U. S. at 900.
\item \textsuperscript{180} Id. at 903, n.2.
\item \textsuperscript{181} Id. at 902.
\item \textsuperscript{182} Id. at 903.
\item \textsuperscript{183} Id. The United States District Court for the Central District of California granted Leon's suppression motion at an evidentiary hearing and held that the affidavit was insufficient to establish probable cause. Id. at 904. The district court acknowledged that the officer acted in good faith, relying on the facially valid warrant, but the district court denied the government's suggestion that the Fourth Amendment's exclusionary rule should not apply where evidence was seized in reasonable good faith reliance on a search warrant. Id.
\item \textsuperscript{184} Leon, 468 U.S. at 903.
\item \textsuperscript{185} Id. at 905.
\item \textsuperscript{186} Id.
\item \textsuperscript{187} Id.
\item \textsuperscript{188} Id. (concluding that the Fourth Amendment may be modified somewhat without placing its intended function in jeopardy).
\item \textsuperscript{189} See Gleason, 28 WM. & MARY L. REV. at 746; Diffendal, 68 ST. JOHN'S L. REV. at 221, n.24.
\end{itemize}
determined that an exception to the exclusionary rule was proper when a police officer reasonably relied on a facially valid search warrant later held invalid due to judicial error occurring during the course of the probable cause determination.  

In defining this good faith exception, the United States Supreme Court set out three reasons justifying the application of the good faith exception to the facts in Leon. First, the Supreme Court stated that the exclusionary rule was created to serve as a judicial remedy to deter police misconduct violative of the Fourth Amendment. The Court stated that the exclusionary rule was not intended to punish the unintentional errors of judges and magistrates. The Court noted that, after a judge signed a search warrant, the police officer executing the warrant was only complying with the law. The Court stated that penalizing the officer for the judge's error failed to achieve the exclusionary rule's purpose of deterring police misconduct because such action would in no way make the police officer less willing to do his duty. 

Second, the Court stated that nothing suggested judges were intentionally disregarding citizens' Fourth Amendment guarantees so as to require exclusionary rule sanctions. The Court could find no evidence implicating that judicial officials were engaged in lawless acts violative of Fourth Amendment rights requiring application of the exclusionary rule.

Third, the Court noted it was unlikely that excluding evidence at trial due to a judicially faulty warrant would be much of a deterrent to judges because judges are not adjuncts to law enforcement and have no particular interest in the outcome of criminal trials.

In establishing the objective reliance standard for police as the grounds for a good faith exception, the Court found that the law enforcement profession as a whole must conduct itself in accordance with the Fourth Amendment. The Court stated that, when a judge

191. *Id.* at 916.
192. *Id.*
193. *Id.*
194. *Id.*
195. *Id.* at 921.
196. *Id.* at 916. The United States Supreme Court did take note of some assertions that magistrates rubber stamp police warrant requests and that still other magistrates may be unable to assess the legality of police conduct. See *id.* at 916, n.14 (citing Yale Kamisar, *Does (Did/Should) the Exclusionary Rule Rest on a "Principled Basis" Rather than an "Empirical Proposition"?*, 16 CREIGHTON L. REV. 565, 569-571 (1983) (discussing the basis of the exclusionary rule's creation and purpose)).
198. *Id.*
issued a warrant in a neutral and detached manner and the police officer's reliance on that warrant was objectively reasonable, then application of the exclusionary rule was not appropriate.\textsuperscript{200} Drawing in part from its decision in \textit{United States v. Calandra},\textsuperscript{201} the Court in \textit{Leon} held that the exclusionary rule was a judicially created remedial device the application of which must be restricted to only those occasions where the deterrence of police misconduct is sought.\textsuperscript{202}

The United States Supreme Court added another exception to the exclusionary rule\textsuperscript{203} in \textit{Illinois v. Krull}.\textsuperscript{204} The Supreme Court found that evidence seized by officers acting in objective reliance on an Illinois statute was admissible, even though the Illinois Supreme Court later determined that the statute was unconstitutional.\textsuperscript{205} In \textit{Krull}, an Illinois statute authorized the warrantless administrative search of the business records of Albert Krull and his partners who were licensees engaged in the sale of motor vehicles, automotive parts, and automotive scrap metals.\textsuperscript{206} During the search, officers discovered four stolen vehicles and arrested Krull for criminal violations.\textsuperscript{207} Prior to trial before the Circuit Court of Cook County, Illinois, Krull filed a motion to suppress the evidence seized.\textsuperscript{208} Krull relied on a ruling issued by the United States Court of Appeals for the Seventh Circuit the day after the search finding that warrantless administrative searches were unconstitutional.\textsuperscript{209} The trial court granted Krull's motion, and the state appealed.\textsuperscript{210}

\begin{itemize}
  \item[200.] \textit{Leon}, 468 U.S. at 926.
  \item[201.] 414 U.S. 338, 348 (1974) (holding that "the [exclusionary] rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved"). For a detailed discussion of the facts and holding in \textit{Calandra}, see supra notes 125-37 and accompanying text.
  \item[202.] \textit{Leon}, 468 U.S. at 908.
  \item[204.] 480 U.S. 340 (1987).
  \item[205.] \textit{Krull}, 480 U.S. at 342. See H.R. Rep. No. 523-3, 104th Cong., 1st Sess. 5 (1995) (discussing the historical background against which to apply the Exclusionary Reform Act of 1995). See Diffendal, 68 St. John's L. Rev. at 225 n.50 (stating that in \textit{Krull}, "the Supreme Court held that the good-faith exception applied to an officer's reasonable reliance on a statute that was later determined to be unconstitutional").
  \item[206.] \textit{Krull}, 480 U.S. at 342-43.
  \item[207.] Id. at 343-44 (relying on \textit{Bionic Auto Parts & Sales, Inc. v. Faher}, 721 F.2d 1072 (7th Cir. 1983). The United States Court of Appeals for the Seventh Circuit noted in \textit{Bionic Auto Parts & Sales, Inc.} that statutes allowing warrantless administrative searches of licensees permitted state officers unbridled discretion and were not a constitutional substitute for a warrant. \textit{Bionic Auto Parts & Sales, Inc.}, 721 F.2d at 1075.
  \item[208.] \textit{Krull}, 480 U.S. at 344.
  \item[209.] Id. at 344 (citing \textit{Bionic Auto Parts & Sales, Inc.}, 721 F.2d at 1075).
  \item[210.] \textit{Krull}, 480 U.S. at 344.
\end{itemize}
On appeal, the Appellate Court of Illinois vacated the trial court's decision and remanded, observing that the trial court, when making a determination of the police officer's good-faith reliance in *Krull*, should consider the Seventh Circuit's ruling on the unconstitutionality of warrantless administrative searches. On remand, the trial court again granted Krull's motion to suppress on the same grounds, and the state appealed to the Illinois Supreme Court. The supreme court affirmed the trial court's ruling that the statute, as the statute existed at the time of the search, was unconstitutional.

The state appealed to the United States Supreme Court. The Supreme Court granted certiorari and held that evidence seized as a result of an officer's objective reliance on a facially valid statute, later determined to be unconstitutional, was not subject to the exclusionary rule. The Court found that, "unless a statute is clearly unconstitutional, an officer cannot be expected to question the judgment of the legislature that passed the law." The Court stated that the officer's responsibility was to enforce the law as written, and found, as it had in *Leon*, that "penalizing the officer for the legislature's error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations." Three years later, in *Illinois v. Rodriguez*, the United States Supreme Court held that a police officer's reasonable reliance also extended to assertions made by non-official third parties. In *Rodriguez*, Edward Rodriguez's girlfriend, Gail Fischer, approached the police after Rodriguez severely beat her. Fischer told the police that she shared an apartment with Rodriguez and gave the police consent to enter the apartment and arrest Rodriguez. After Fischer unlocked the apartment door and gave consent for the entry, the police entered, seized large quantities of cocaine, and arrested Rodriguez who was sleeping in the bedroom.

Prior to trial on the merits, the Circuit Court of Cook County, Illinois, granted Rodriguez's motion to suppress, finding that when Fischer gave consent she lacked common authority over the apart-

211. Id. at 345.
212. Id.
213. Id. at 346.
214. Id.
215. Id. at 359-61.
216. Id. at 349-50.
217. Id. at 350 (quoting *Leon*, 468 U.S. at 918).
221. Id. at 179-80.
222. Id. at 180.
ment.\textsuperscript{223} On appeal by the state, the Appellate Court of Illinois affirmed the trial court, agreeing that Fischer lacked common authority over the apartment and thus lacked the legal authority to give consent for the officers' entry into the apartment.\textsuperscript{224}

When the Illinois Supreme Court denied the state's petition for leave to appeal, the state petitioned the United States Supreme Court for certiorari.\textsuperscript{225} On appeal, the Supreme Court reversed, finding that the police acted reasonably in relying on Fischer's assertions that she had common authority over the apartment.\textsuperscript{226} The Court held that the police officer's objective reliance on Fisher's verbal consent and assertion of authority over the apartment was reasonable and therefore met the standard for an exclusionary rule exception.\textsuperscript{227}

**EXCLUSION OF EVIDENCE DUE TO CARELESS AND NEGLIGENT HANDLING OF COMPUTER RECORDS BY POLICE**

When a police department's own actions are to blame for computer record errors, Arizona courts, as well as other state courts, have excluded the evidence obtained despite an officer's good faith reliance on such computer records.\textsuperscript{228} Such decisions by Arizona courts and

\begin{itemize}
  \item \textsuperscript{223} Id.
  \item \textsuperscript{224} Id. at 177.
  \item \textsuperscript{225} Id.
  \item \textsuperscript{226} Id. at 185–86 (discussing that the police officer's actions in conducting a search under the exceptions to a warrant requirement are measured, not by the officer always being correct, but by the officer always being reasonable).
  \item \textsuperscript{227} Id.
  \item \textsuperscript{228} See State v. Peterson, 830 P.2d 854, 861 (Ariz. Ct. App. 1991), cert. denied, 113 S. Ct. 465 (1992) (holding that the statutory good faith exception to the exclusionary rule did not permit introduction of evidence obtained through an invalid arrest warrant previously quashed and removed from the police record system in 1982 but re-entered as valid in 1987); State v. Greene, 783 P.2d 829, 830 (Ariz. Ct. App. 1989) (holding that because the South Tucson Police Department deliberately or negligently failed to keep its computer entries up to date and so exposed a person to wrongful arrest, the defendant's motion to suppress should be granted); see also, e.g., People v. Downing, 40 Cal. Rptr. 2d 176 (Cal. Ct. App. 1995) (finding that the exclusionary rule did not apply when a police officer objectively relied in good faith on erroneous computer data generated by a judiciary branch official); Miranda v. People, 16 Cal. Rptr. 2d 858 (Cal. Ct. App. 1993) (finding that where an erroneous police computer report caused by police error served as the basis for a police officer's good faith reliance to search the defendant and seize drug evidence, the evidence must be suppressed under the exclusionary rule's deterrent design); Ott v. State, 600 A.2d 111 (Md. 1992), cert. denied, 113 S. Ct. 295 (1992) (finding that failure of the sheriff's department to remove from the sheriff's department computer system a previously satisfied arrest warrant within seven days of the warrant's service was unreasonable, and thus resulted in the defendant's illegal arrest despite a police officer's good faith reliance on the computer record); State v. Moore, 614 A.2d 1380 (N.J. Super. Ct. App. Div. 1992) (suppressing evidence obtained by a police officer's good faith reliance on an incorrect computer arrest record that failed to reflect that a prior arrest warrant had been vacated, and such error in record keeping was caused by the police department); People v. Ivey, 279 Cal. Rptr. 554 (Cal. Ct. App. 1991) (noting that a police officer could not rely on a good faith exception to the exclusionary rule
other state courts have been based solely on who was responsible for the computer record error.229

**Arizona Courts Exclude Evidence when Computer Error is Attributable to Police**

The Arizona Court of Appeals, in *State v. Greene*,230 affirmed the trial court's holding excluding narcotics evidence seized incident to the arrest of the defendant.231 In *Greene*, a South Tucson police officer initially pulled over Cecil Bobby Greene for a minor traffic violation and subsequently arrested Greene when a computer records check revealed the existence of an outstanding arrest warrant for fictitious plates and for failure to appear.232 The police arrested and searched Greene.233 During the search, the police discovered illegal narcotics in Greene's pockets.234 Prior to trial before the Pima County Superior Court, Greene filed a motion to suppress the drug evidence seized, arguing that the search was the result of an illegal arrest because the warrant relied upon by the arresting officer had been previously quashed.235 The trial court granted Greene's motion, and the state appealed, relying on the United States Supreme Court decision in *United States v. Leon*.236

Appealing to the Arizona Court of Appeals, the state conceded that the Tucson City Court quashed the previously issued warrant, but the state argued that the arresting police officer's objective reliance on the computerized arrest warrant was a good faith exception to the exclusionary rule and paralleled the United States Supreme Court's decision in *Leon*.237 The Arizona Court of Appeals held that culpability for the computer error rested with the South Tucson Police

---

229. See supra note 228 and accompanying text.
232. *Greene*, 783 P.2d at 829.
233. Id.
234. Id.
235. Id.
236. 468 U.S. 897 (1984); *Greene*, 783 P.2d at 829 (concluding that the trial court erred by failing to properly apply the United States Supreme Court holding in *Leon*).
237. Id. at 829-30 (distinguishing *Leon*, 460 U.S. at 897).
Department. The court of appeals found that no evidence was presented to the trial court that established who, other than the Tucson Police Department, could be blamed for the computer error and found that the department alone caused the error. The court of appeals concluded that the exclusionary rule's goal of deterring the deliberate or negligent misconduct of the Tucson Police Department was served by excluding the evidence illegally seized by its officer.

Two years later, in State v. Peterson, the Arizona Court of Appeals again faced the issue of whether "the good faith exception to the exclusionary rule permitted the introduction of evidence obtained through an invalid arrest warrant." In Peterson, a Coconino

Admissibility of evidence obtained as a result of unlawful search or seizure; definitions

A. If a party in a criminal proceeding seeks to exclude evidence from the trier of fact because of the conduct of a peace officer in obtaining the evidence, the proponent of the evidence may urge that the peace officer's conduct was taken in a reasonable, good faith belief that the conduct was proper and that the evidence discovered should not be kept from the trier of fact if otherwise admissible.

B. The trial court shall not suppress evidence which is otherwise admissible in a criminal proceeding if the court determines that the evidence was seized by a peace officer as a result of a good faith mistake or technical violation.

C. In this section:

1. "Good faith mistake" means a reasonable judgmental error concerning the existence of facts which if true would be sufficient to constitute probable cause.

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

D. This section shall not be construed to limit the enforcement of any appropriate civil remedy or criminal sanction in actions pursuant to other provisions of law against any individual or government entity found to have conducted an unreasonable search or seizure.

E. This section does not apply to unlawful electronic eavesdropping or wiretapping.

Id. The Arizona Court of Appeals upheld the validity of the statute in State v. Coats, 797 P.2d 693, 697 (Ariz. Ct. App. 1990). In Coats, Carl Bennett Coats appealed to the Arizona Court of Appeals his felony conviction for the sale of marijuana after the trial court denied his motion to suppress. Coats, 797 P.2d at 694. Coats claimed the search warrant: "(1) incorrectly identified his address, (2) . . . contained insufficient indicia of the informant's reliability, and (3) . . . was based on stale information from the informant." Id. at 695. The Arizona Court of Appeals affirmed the trial court's holding that
County Sheriff's detective isolated Floyd Orville Peterson as a possible suspect in a 1987 theft of personal property from a residence Peterson had earlier visited with a real estate agent. A subsequent computer check on Peterson with the Arizona Criminal Information Center showed that Peterson was wanted by the Flagstaff Police Department on a 1982 arrest warrant. During the process of arresting Peterson at his residence, the officer observed the stolen personal property in plain view. Based upon these observations, the police obtained a search warrant, searched Peterson's residence, and seized the stolen personal property.

At the suppression hearing before the Superior Court, Coconino County, Arizona, Peterson contended that the evidence seized was the fruit of an unlawful search. Peterson claimed that the search violated his Fourth Amendment rights, because police relied on a computer arrest warrant that not only had been previously quashed but was also removed from the police computer system and subsequently erroneously re-entered in 1987. The trial court denied Peterson's

---

243. Peterson, 830 P.2d at 855.
244. Id. at 856.
245. Id.
246. Id.
247. Id.
248. Id. at 857-59. The police department did not know who re-entered the warrant into the computer system. Id. at 859.
motion to suppress, stating that the good faith exception to the exclu-
sionary rule allowed the submission of the evidence.249

Peterson then appealed to the Arizona Court of Appeals, challen-
ging the trial court's application of the exclusionary rule exception.250
On appeal, the court of appeals reversed and remanded the trial court
decision.251 The court of appeals found that the mistake of re-entry of
Peterson's 1982 arrest warrant rested exclusively with the police de-
dpartment.252 The court of appeals stated that the police department's
mistake effectuated the exclusionary rule's command and thus pre-
vented the introduction of evidence obtained through a good faith but
still illegal arrest.253

Other State Courts Exclude Evidence when Computer Error is
Attributable to Police

Reaching decisions similar to decisions of the Arizona courts,
other state courts have also found that, where a police department is
responsible for the computer error, regardless of good faith reliance
by an individual officer, the exclusionary rule operates to suppress the
evidence illegally obtained.254 In applying the exclusionary rule to
computer record error by police departments, other state courts have
been motivated to do so based upon the exclusionary rule's deterrent
design.255

249. Peterson, 830 P.2d at 859.
250. Id. at 855.
251. Id. at 861.
252. Id.
253. Id. at 861-62.
that the exclusionary rule did not apply when a police officer objectively relied in good
faith on erroneous computer data generated by a judiciary branch official); Miranda v.
People, 16 Cal. Rptr. 2d 858 (Cal. Ct. App. 1993) (finding that where an erroneous police
computer report caused by police error served as the basis for a police officer's good faith
reliance to search the defendant and seize drug evidence, the evidence must be sup-
pressed under the exclusionary rule's deterrent design); State v. Moore, 614 A.2d 1360
faith reliance on an incorrect computer arrest record that failed to reflect that a prior
arrest warrant had been vacated, and such error in record keeping was caused by the
police department); Ott v. State, 600 A.2d 111 (Md. 1992), cert. denied, 113 S. Ct. 295
(1992) (finding that the failure of the sheriff's department to remove from the sheriff's
department computer system a previously satisfied arrest warrant within seven days of
its being served was unreasonable, and thus resulted in the defendant's illegal arrest
despite a police officer's good faith reliance on the computer record); People v. Ivey, 297
Cal. Rptr. 554 (Cal. Ct. App. 1991) (noting that a police officer could not rely on a good
faith exception to the exclusionary rule when the arrest of a defendant was based on
police dependence on incorrect information contained in police computer data banks);
incident to an illegal arrest due to a police officer's good faith reliance on inaccurate
information under police control within the police computer).
255. See supra note 254 and accompanying text.
In *People v. Joseph*, the Appellate Court of Illinois held unreasonable as a matter of law the arrest of Carlos Joseph on the basis of a warrant that had been recalled eleven days earlier. Joseph moved to suppress drug evidence seized incident to the arrest, asserting that the police arrest was unreasonable because the arrest warrant had been quashed. The Cook County Illinois Court, denied Joseph's motion to quash and the motion to suppress, noting that the police officer acted in reasonable reliance on the computer record when arresting Joseph for the outstanding arrest warrant. Joseph appealed his conviction to the Illinois Court of Appeals which reversed the decision of the trial court. The court of appeals distinguished the facts in *Joseph* from the good faith exception articulated by the United States Supreme Court in *United States v. Leon*. The court of appeals noted that, unlike the officer's reliance in *Leon*, the arresting officer's good faith reliance in *Joseph* was on a computer error committed by and within the exclusive control of the police department. The court of appeals stated that the arresting officer may have relied on the computer record in good faith, but the court of appeals concluded that this reliance could not overcome the Fourth Amendment violation caused by such police error.

The exclusionary rule has also been applied to misconduct by other members of a community's law enforcement team. In *People v. Fields*, the Colorado Supreme Court applied the exclusionary rule where police acted in reliance on an erroneous computer entry made by a parole officer. When parolee Charles Fields allegedly violated the terms of his parole, his parole officer prematurely entered an arrest warrant notation on Fields in the National Crime Information Computer System ("NCIC"). The parole officer then filed a complaint with the Colorado State Board of Parole for an arrest warrant on Fields; however, the parole board never issued the arrest war-

259. *Id.* at 1304.
260. *Id.* at 1304, 1306.
263. *Id.* The court of appeals found that the arrest was based solely on an arrest warrant that had been recalled eleven days earlier but was still erroneously retained in the police computer. *Id.*
264. See infra notes 265-76 and accompanying text.
265. 785 P.2d 611 (Colo. 1990).
Colorado law provided the parole board authority to issue an arrest warrant upon a showing of probable cause that Fields violated his parole. Acting on the NCIC computer data that erroneously reflected a valid arrest warrant as well as an informant's tip, the police arrested Fields in a Denver motel and, during a search, discovered crack cocaine in his possession. In granting Fields' motion to suppress the drug evidence, the City and County District Court of Denver, Colorado, found that the police had no authority to arrest Fields because the NCIC arrest warrant was erroneous and the police lacked any independent probable cause grounds.

The state appealed to the Colorado Supreme Court, asserting that the police reliance on the erroneous arrest warrant was a good faith mistake. The supreme court affirmed the trial court's suppression of the evidence. In reaching its decision, the supreme court found that the police officers lacked authority to arrest Joseph during his probationary period because the parole board never issued the arrest warrant. Additionally, the supreme court found that when police relied on a non-existent NCIC arrest record for Joseph's actual arrest, his original parole term had already expired. The supreme court held that the police officers had no authority to arrest Fields for parole violations, and the assertion of a good faith mistake could not cure the officers' lack of authority.

ANALYSIS

In Arizona v. Evans, the United States Supreme Court continued the trend it began in the seminal case of United States v. Leon. The Supreme Court in Leon carved out the first exclusionary rule exception. Since the Leon decision, the Court continued expansion of exclusionary rule exceptions with its 1987 decisions in Illinois v.

268. Id. The record does not indicate why the parole board failed to issue such a warrant on Fields. Id.
270. Fields, 785 P.2d at 612.
271. Id. at 613.
272. Id. at 612.
273. Id. at 615. The Colorado Supreme Court noted that the police officer's actions in reliance on the erroneous NCIC record did not meet the Colorado standard that defined "good-faith mistake or technical violations" for exclusionary rule exceptions. Id. at 613.
274. Fields, 785 P.2d at 611.
275. Id. at 614.
276. Id.
279. See United States v. Leon, 468 U.S. 897, 898-99 (1984) (stating that a police officer's reasonable reliance on a search warrant as an exception to the Fourth Amendment exclusionary rule requires a standard of objective reasonableness, and that stan-
Krull, Illinois v. Rodriguez, and, most recently, with its decision in Evans. Once again, in Evans, the Supreme Court expanded the exception to the Fourth Amendment's exclusionary rule.

In Evans, the United States Supreme Court reaffirmed that the exclusionary rule's sole purpose is deterrence; specifically, deterrence of police misconduct that violates an individual's Fourth Amendment right to be protected from unreasonable searches and seizures. The Supreme Court also reaffirmed that a police officer's actions must be objectively reasonable and not attributable to any police error in order to meet the standard for an exclusionary rule exception. The Court has granted exclusionary rule exceptions when a police officer objectively relies on a facially valid warrant, statutes, and assertions by citizens, which courts subsequently held erroneous or unconstitutional. In Evans, the Court added to the Leon rationale by expanding exclusionary rule exceptions to include a police officer's objective reliance on erroneous computer records caused by the negligence of a court clerk.

Given the United States Supreme Court's past precedent, the Supreme Court in Evans announced another good faith exception to the exclusionary rule. The Court's reaffirmation of exceptions based on a police officer's good faith objective reliance on information outside of police control was consistent with the exclusionary rule's purpose of deterring police misconduct.

The United States Supreme Court Reaffirms the Exclusionary Rule's Purpose

In Evans, the United States Supreme Court once again reinforced the principle that the primary function of the exclusionary rule is to deter future police misconduct that would violate Fourth Amendment
exclusionary rule protections against unreasonable searches and seizures. The Supreme Court in Evans, drawing from Leon, held that the Fourth Amendment did not preclude using evidence gathered in violation of its provisions; rather, such exclusion was the function of the judicially created exclusionary rule. In reiterating the exclusionary rule's purpose, the Court emphasized that the exclusionary rule exists to deter police misconduct; the exclusionary rule does not serve as an individual's remedy under the Fourth Amendment. This distinction was addressed by the Court in United States v. Calandra. From Calandra, the exclusionary rule emerged as a judicially created remedy whose singular purpose was to deter police misconduct violative of Fourth Amendment protections.

Justice John Paul Stevens dissented in Evans. Justice Stevens argued that the Court's definition of the exclusionary rule as deterring future police misconduct was too narrow in scope. Rather, Justice Stevens characterized the exclusionary rule's purpose as "a more majestic conception" designed to prevent intrusions by the entire sovereign into Fourth Amendment protections. Finding no distinction between negligence by individual police officers, police departments, or officials of the sovereign, Justice Stevens argued that the exclusionary rule's purpose and potential penalties should apply to any individual acting under the authority of the sovereign. In support of this view, Justice Stevens stated that the exclusionary rule's application to the entire sovereign motivated the sovereign "to train all of its personnel to avoid future violations."

Justice Stevens rejected the Court's

290. Evans, 115 S. Ct. at 1193 (citing United States v. Leon, 468 U.S. 897, 916 (1984)).
291. Evans, 115 S. Ct. at 1196. The Fourth Amendment states that [t]he 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.
292. Evans, 115 S. Ct. at 1191 (citations omitted).
294. United States v. Calandra, 414 U.S. 338, 348 (1974). The United States Supreme Court noted that the exclusionary rule was not created to satisfy claims of Fourth Amendment rights violations by aggrieved individuals. Id.
295. Evans, 115 S. Ct. at 1195 (Stevens, J. dissenting).
296. Id. (Stevens, J., dissenting).
297. Id. (Stevens, J., dissenting).
298. Id. (Stevens, J., dissenting).
characterization of exclusionary rule application as an “extreme sanction,” especially when its non-application resulted in the constitutionally prohibited warrantless arrest of Evans. Justice Stevens distinguished the Court's decision in Leon, which assumed the existence of a facially valid search warrant, from the facts of Evans, in which there was no outstanding arrest warrant. Justice Stevens concluded that the Court's reliance on Leon was wholly inapplicable to Evans' warrantless search and arrest, and, therefore, Justice Stevens stated that the Court erred in its decision.

Justice Stevens failed, however, to take into consideration past United States Supreme Court decisions identifying the sole purpose of the exclusionary rule as one deterring the behavior of police officers who do not act within constitutional constraints. The exclusionary rule is designed to penalize police for unreasonable searches and seizures and this design is illustrated by the Supreme Court's decisions in Boyd v. United States, Weeks v. United States, Mapp v. Ohio, United States v. Calandra, Stone v. Powell, and United States v. Janis. The Court's decision in Boyd, for example, laid the foundation for the exclusionary rule, holding certain actions of law enforcement as unreasonable and as repugnant to the Fourth Amendment. In Weeks, the Court extended the Boyd rationale to the specific actions of a federal agent acting under color of federal office. In doing so, the Court defined the exclusion of evidence illegally seized, not as a remedy to the aggrieved party, but to address the constitutional wrongs committed by federal agents. In Mapp, the Court extended the exclusionary rule's purpose to a contemporary application by applying it to state law enforcement misconduct under the premise of the Due Process Clause of the Fourteenth Amendment.

The United States Supreme Court's post-Mapp decisions in Calandra, Powell, and Janis all added to defining the scope of the exclusionary rule application. In Calandra, for example, the Supreme

---

300. Id. at 1195-96 (Stevens, J., dissenting).
301. Id. at 1196 (Stevens, J., dissenting).
302. Id. (Stevens, J., dissenting).
303. See supra notes 89-176 and accompanying text.
304. 116 U.S. 616 (1886).
305. 232 U.S. 383 (1914).
309. 428 U.S. 433 (1976); see supra notes 89-176 and accompanying text.
312. Weeks, 232 U.S. at 398
314. See supra notes 121-76 and accompanying text.
Court refused to apply the exclusionary rule to grand jury proceedings, finding that the minimal deterrent effect to future police misconduct did not outweigh the potential injury to the purpose of the grand jury system.315 In Powell, the Court again reasoned that the exclusionary rule should not be applied to federal habeas corpus actions.316 The Court found that the societal benefit from application of the exclusionary rule as an individualized constitutional remedy did not outweigh the substantial societal costs incurred by its application.317 Finally, in Janis, the Court allowed the prosecution in a federal civil trial to present evidence seized by a state police officer based on a search warrant that was later proven defective.318 The Court reasoned that, if the evidence was excluded, it would only marginally act as a deterrent to the state police officer’s future conduct, but would greatly punish the federal sovereign who was not culpable in the illegal search.319 In balancing the rule’s deterrent effect against societal cost, the Court refused to apply the exclusionary rule.320 The Court’s decision in Evans once again acknowledged that application of the exclusionary rule is unwarranted unless appreciable deterrence of police misconduct results.321 The decision in Evans thus follows the Court’s long line of precedent reaffirming the exclusionary rule application only when the likely deterrence of future police misconduct outweighs the social costs of applying the rule.322

The Court’s decision in Evans is also logically aligned with established state court precedent that consistently applied the exclusionary rule when a police department error resulted in a computer error upon which a police officer placed good faith reliance.323 Justice Stevens’ dissent and the Arizona Supreme Court decision in Evans failed to integrate or even recognize such consistent state court precedent.324

**THE COURT REAFFIRMS THE EXCLUSIONARY RULE EXCEPTIONS**

In Evans, the United States Supreme Court reaffirmed its consistent position articulating when an exclusionary rule exception is created.325 Beginning with its decision in United States v. Leon,326 the

---

317. *Powell*, at 495.
320. *Id.* at 453-54.
322. See supra notes 89-227 and accompanying text.
323. See supra, notes 230-76 and accompanying text.
325. See supra notes 177-227 and accompanying text.
United States Supreme Court found that a modification of the exclusionary rule should be allowed for good faith error. The Supreme Court in Leon created the good faith exception to the exclusionary rule despite a Fourth Amendment violation; the Court did not exclude the evidence from introduction at trial. In defining the scope of allowable error for the Leon exception, the Court held that remedial punishment of police for errors of judges fell outside the exclusionary rule's purpose. Applying the Leon framework to the facts in Evans, the Court in Evans held that the error was caused by the misconduct of judicial officers, not police. The Court's decision in Evans held that the exclusionary rule's purpose of deterrence of future police misconduct did not apply because the police did not err, and Evans was thus similar to the Court's decision in Leon. Central to the Court's application of a new exception to the exclusionary rule in Evans was the conclusion by the Arizona State Court that the error in Evans was most likely the result of court employees' actions. As such, the Court's decision in Evans falls directly in line with its Leon holding — the deterrent effect of the exclusionary rule for error resulting in Fourth Amendment violations is not applicable to court error.

The United States Supreme Court's decision in Evans is also consistent with its decision in Illinois v. Krull. In Krull, like Evans, the Supreme Court created an exclusionary rule exception based on a police officer's objective good faith reliance. In deciding Krull, the Court found that its decision in Leon controlled, much like the Court applied the rationale of Leon to its analysis in Evans. Both the cases of Leon and Krull involved a non-police official's commission of error upon which good faith police reliance resulted in searches purportedly violating a citizen's Fourth Amendment protections.

329. Id. at 897.
330. Evans, 115 S. Ct. at 1187.
331. Id. at 1191.
332. Id. at 1194. Although not definitively known whether the error in Evans was caused by a court clerk or sheriff's office personnel, the United States Supreme Court followed the presumption of the Arizona courts and decided its opinion based upon the error being committed by a court clerk. Id. at 1194 (O'Connor, J. concurring). See id. at 1194, n.5 (noting that the Court declined to address the issue of whether the same judicial analysis would apply if police personnel committed the Evans computer error).
333. Evans, 115 S. Ct. at 1194. See Leon, 468 U.S. at 1187.
334. 480 U.S. 340 (1987); see supra notes 203-17 and accompanying text.
337. Leon, 468 U.S. at 897; Krull, 480 U.S. at 349.
The United States Supreme Court's decision in *Evans* is also consistent with the dissenting justices' opinions in *Krull*, wherein Justices Sandra Day O'Connor, William J. Brennan, Thurgood Marshall, and John Paul Stevens all agreed with the Supreme Court's opinion in *Leon* that an exception based on a police officer's objective reliance should exist when judicial error, not attributable to the police officer, created the Fourth Amendment violation. The decisions in *Leon, Krull, Rodriguez*, and *Evans* demonstrate the Court's adherence to the principle that judicial and legislative error non-attributable to police misconduct fell outside the purpose of the exclusionary rule. The Court in *Evans* found that the police acted in good faith objective reliance on a court clerk's error and applied the tenets of a police officer's objective belief and good faith reliance as announced in *Leon, Krull*, and *Rodriguez* to create another exclusionary rule exception.

Justice Stevens' dissenting opinion in *Evans* aligns with the Arizona Supreme Court's holding which distinguished *Leon* from *Evans*. Both Justice Stevens' dissent and the Arizona Supreme Court decision in *Evans* failed to recognize the Court's long history of precedent that identified the sole purpose of the exclusionary rule as that of deterring police misconduct. In arguing that *Leon* did not control the facts in *Evans*, Justice Stevens and the Arizona Supreme Court emphasized the absence of a facially existing warrant. This argument is logically inconsistent because, in *Leon*, police possessed a judicially signed search warrant; in *Evans*, the police officer relied on a computer screen as the probable cause basis of the search.

The United States Supreme Court's precedent in defining exclusionary rule exceptions, however, never required the physical existence of a legal instrument, but rather found a police officer's good faith belief that such instrument or law existed determinative of whether the officer acted in objective reliance. Thus, the Supreme Court's holding in *Evans* distinguished the cause of the error and police good faith reliance on that error from police misconduct. This same ra-

---

338. Compare *Evans*, 115 S. Ct. at 1187 (holding that a police officer's objective good faith reliance on an invalid warrant did not trigger the exclusionary rule) with *Krull*, 480 U.S. at 361 (O'Connor, J.; Brennan, J.; Marshall, J.; and Stevens, J. dissenting) (stating that the exclusionary rule is inapplicable when a police officer's error is not attributable to the officer's bad faith).

339. See supra notes 15-76, 177-227 and accompanying text.

340. *Evans*, 115 S. Ct. at 1193; see supra notes 177-227 and accompanying text.


342. See supra notes 80-81, 89-176, 331-33 and accompanying text.


344. *Leon*, 468 U.S. at 897; *Evans*, 115 S. Ct. at 1189.

345. See supra notes 177-227, 230-76 and accompanying text.

tionale also formed the basis for lower courts’ rulings in State v. Greene, State v. Peterson, People v. Joseph, and People v. Fields. Each of these cases involved a police officer’s good faith reliance on computer based warrants that trial courts subsequently deemed invalid or nonexistent. Each of these state courts did not apply the exclusionary rule’s good faith exception, because each court found that the police department negligently or carelessly caused the computer errors that formed the foundation for their own officer’s reliance. Central to these decisions, and consistent with the exclusionary rule’s purpose as reaffirmed in Evans, were the courts’ findings that the sole responsibility of error fell squarely on the respective police departments. The Court’s opinion in Evans reaffirmed exclusionary rule exceptions based upon the deterrence rationale. Only when a police officer’s actions or a police department’s negligent or careless misconduct violates Fourth Amendment rights will the remedial design of the exclusionary rule prevail. The Court’s decision in Evans logically extends this purpose by creating another exception to the exclusionary rule.

CONCLUSION

The United States Supreme Court’s decision in Arizona v. Evans reaffirmed the Supreme Court’s willingness to continue expan-

350. 785 P.2d 611 (Colo. 1990); see supra notes 230-76 and accompanying text.
351. See supra notes 230-76 and accompanying text.
352. See State v. Peterson, 830 P.2d 854, 861 (Ariz. Ct. App. 1991) cert. denied, 113 S. Ct. 465 (1992) (holding that the statutory good faith exception to the exclusionary rule did not permit introduction of evidence obtained through an invalid arrest warrant previously quashed and removed from the police record system in 1982, but re-entered as valid in 1987); People v. Fields, 785 P.2d 611, 614 (Colo. 1990) (suppressing evidence obtained by police as a result of an arrest based on an inaccurate computer arrest warrant issued on the defendant for parole violation); State v. Greene, 783 P.2d 829, 830 (Ariz. Ct. App. 1989) (holding that the South Tucson Police Department deliberately or negligently failed to keep its computer entries up to date, exposing persons to wrongful arrest and thus granting the defendant’s motion to suppress); People v. Joseph, 470 N.E.2d 1303, 1306 (Ill. App. Ct. 1984) (holding that an eleven day delay in reflecting the quashed warrant in the police computer was not good faith error, and intruded on the defendant’s Fourth Amendment rights).
353. Compare notes 230-76 and accompanying text (discussing Greene, Peterson, Joseph, and Fields and the courts’ application of the exclusionary rule to deter police misconduct that results in illegal searches or arrests) with Evans, 115 S. Ct. at 1193 (reaffirming the exclusionary rule’s deterrent design).
354. See supra notes 80-81, 179-86 and accompanying text.
355. See supra notes 89-276 and accompanying text.
356. See supra notes 9-11, 177-227 and accompanying text.
sion of the exclusionary rule's good faith exceptions.\textsuperscript{358} The Court's decision restated past case precedent, defining the exclusionary rule's sole purpose as deterrence of police misconduct violative of Fourth Amendment protections.\textsuperscript{359} In reaffirming the exclusionary rule's narrow purpose, the Court held that error by ministerial court officers fell outside of the scope of the exclusionary rules.\textsuperscript{360} The Court correctly held that the penalizing of police officers for errors of such court officers would fail to achieve the deterrent effect the Court intended the exclusionary rule to have.\textsuperscript{361}

The United States Supreme Court's decision in \textit{Evans} sends a strong message that the Supreme Court is looking beyond "hypertechnicalities" in the criminal justice system and is perhaps beginning a more conservative trend toward law and order. The Court's decision in \textit{Evans} implies that the Court will not allow "hypertechnicalities" to determine whether a defendant has been deprived of his or her Fourth Amendment rights. The decision in \textit{Evans} may well create the atmosphere in which to frame a new evolution of exclusionary rule exceptions grounded in both case law and statute that balance Fourth Amendment protections against the criminal justice system's desire to punish the guilty.

\textit{Joseph H. Palmer Jr.—'97}

\textsuperscript{359} See supra notes 80-81, 179-86 and accompanying text.
\textsuperscript{360} \textit{Evans}, 115 S. Ct. at 1193-94.
\textsuperscript{361} Id.