

THE SEVENTH CIRCUIT ADOPTS A GOOD FAITH, REASONABLE
BELIEF EXCEPTION TO THE EXCLUSIONARY RULE IN
OSHA PROCEEDINGS

Donovan v. Federal Clearing Die Casting Co., 695 F.2d 1020 (7th Cir.
1982)

In *Donovan v. Federal Clearing Die Casting Co.*,¹ the United States Court of Appeals for the Seventh Circuit extended the “good faith exception” to the exclusionary rule² to federal administrative agency proceedings by refusing to suppress evidence obtained from a reasonable and good faith Occupational Safety and Health Administration (OSHA) inspection conducted under authority of a search warrant subsequently declared invalid.³

Following an accident to an employee of Federal Clearing Die Casting Company (Federal) on Federal’s premises,⁴ OSHA compliance officers sought to conduct a safety inspection of the company’s workplace.⁵ Although the officers possessed a search warrant,⁶ Federal

1. 695 F.2d 1020 (7th Cir. 1982).

2. One common definition of the good faith exception reads as follows: “[W]hen an officer acts in the good faith belief that his conduct is constitutional and where he has a reasonable basis for that belief, the exclusionary rule will not operate.” Ball, *Good Faith and the Fourth Amendment: The “Reasonable” Exception to the Exclusionary Rule*, 69 J. CRIM. L. & CRIMINOLOGY 635, 635 (1978).

As enunciated by the Fifth Circuit in *United States v. Williams*, 622 F.2d 830 (5th Cir. 1980) (en banc), *cert. denied*, 449 U.S. 1127 (1981), two basic types of good faith exception exist. *Id.* at 841 (quoting Ball, *supra*, at 635-36). A “good faith mistake” occurs when a police officer errs in determining whether sufficient facts exist to constitute probable cause. *Id.* A “technical violation” occurs when a police officer acts pursuant to a warrant that is later invalidated, a statute that is later declared unconstitutional, or a judicial precedent that is later overruled. *Id.* See also Ball, *supra* at 639-44; Cochell, *The Exclusionary Rule and its Applicability to OSHA Civil Enforcement Proceedings*, 12 U. BALT. L. REV. 1, 14 (1982); *infra* note 31 and accompanying text.

The good faith exception has been the subject of considerable commentary. See, e.g., Ball, *supra*; Mertens & Wasserstrom, *The Good Faith Exception to the Exclusionary Rule: Deregulating the Police and Derailing the Law*, 70 GEO. L.J. 365 (1981); Schlag, *Assaults on the Exclusionary Rule: Good Faith Limitations and Damage Remedies*, 73 J. CRIM. L. & CRIMINOLOGY 875 (1982); Note, *Rethinking the Good Faith Exception to the Exclusionary Rule*, 130 U. PA. L. REV. 1610 (1982).

3. 695 F.2d at 1022-25. The Eleventh Circuit arrived at the opposite conclusion in *Donovan v. Sarasota Concrete Co.*, 693 F.2d 1061 (11th Cir. 1982), issued one week after the Seventh Circuit’s decision in *Federal Die*. See *infra* notes 41-45 and accompanying text.

4. 695 F.2d at 1021.

5. *Id.* Federal statute authorizes OSHA officials to enter private commercial premises for the purpose of conducting inspections to ascertain the existence of safety and health violations. 29 U.S.C. § 657(a) (1982). If an employer refuses to admit OSHA inspectors, the inspectors may procure a search warrant and return to the worksite to conduct the investigation. See 29 C.F.R. § 1903.4 (1983).

refused entry, claiming that the magistrate improperly issued the warrant.⁷ After a federal district court found the warrant valid,⁸ OSHA compliance officers inspected Federal's premises and issued a number of safety citations.⁹ On appeal, the Seventh Circuit invalidated the search warrant,¹⁰ and Federal subsequently moved in administrative proceedings to suppress all evidence obtained through the use of the invalid warrant.¹¹ An administrative law judge of the Occupational Safety and Health Review Commission (OSHRC)¹² granted Federal's motion¹³ and dismissed the proceedings.¹⁴ On appeal, the Seventh Cir-

6. 695 F.2d at 1021. A United States magistrate issued a warrant for the inspection of Federal's workplace upon the application of an OSHA compliance officer. *Id.* The officer supported his warrant application with two newspaper articles describing an industrial accident in which a Federal employee allegedly severed his hands while operating a hydraulic press punch and an OSHA citation and notification of proposed penalty issued to Federal following an inspection of its workplace more than four years earlier. *Donovan v. Federal Clearing Die Casting Co.*, 655 F.2d 793, 795 (7th Cir. 1981).

7. 655 F.2d at 795.

8. After Federal refused to permit OSHA officers onto its premises, OSHA petitioned the district court for an adjudication of civil contempt, and Federal filed a motion to quash the warrant in the same court. *Id.* The district court issued an order of civil contempt against Federal and ordered Federal to cooperate in the inspection of its premises. *Id.*

9. 695 F.2d at 1021. The compliance officers issued four safety citations, alleging sixteen serious, five willful, five repeated, and two minor violations and proposed penalties of \$35,400. *Id.* at 1021 n.2.

10. 655 F.2d at 795-98. The court of appeals found that probable cause did not exist for the issuance of the OSHA inspection warrant because the OSHA officials failed to present to the issuing magistrate "specific evidence" of an existing violation. *Id.* at 795-96. Specifically, the court held that two newspaper articles discussing the accident and an apparently unrelated 1975 OSHA citation did not constitute probable cause. *Id.* at 796.

In the context of administrative search law, courts will issue a warrant under a much more relaxed probable cause standard than that which the criminal law requires. Note, *Admissibility of Illegally Seized Evidence in Subsequent Civil Proceedings: Focusing on Motive to Determine Deterrence*, 51 *FORDHAM L. REV.* 1019, 1032 n.72 (1983). A magistrate may issue an administrative warrant upon a showing that "reasonable legislative or administrative standards for conducting an inspection" have been satisfied. *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 320 (1978) (quoting *Camara v. Municipal Court*, 387 U.S. 524, 538 (1967)).

11. 695 F.2d at 1021.

12. OSHRC adjudicates the validity of all OSHA citations, penalties, and abatement orders. 29 U.S.C. § 661 (1982). See generally *Cochell*, *supra* note 2, at 3 n.12.

13. 695 F.2d at 1021. The administrative law judge relied on OSHRC's ruling in *Secretary of Labor v. Sarasota Concrete Co.*, 9 O.S.H. Cas. (BNA) 1608 (Rev. Comm'n 1981), which held on similar facts that evidence obtained from inspections that failed to meet minimum standards of probable cause should be excluded from consideration in OSHA proceedings. *Id.* at 1612-15. The Secretary of Labor appealed OSHRC's decision, and the Eleventh Circuit's decision in *Donovan v. Sarasota Concrete Co.*, 693 F.2d 1061 (11th Cir. 1982), affirming the administrative law judge's decision, was rendered one week after the Seventh Circuit's decision in *Federal Die*. See *infra* notes 41-45 and accompanying text for an analysis of *Sarasota*.

cuit reversed and *held*: (1) evidence gathered through OSHA's reasonable and good faith inspection pursuant to a warrant upheld by the district court should not be suppressed under the exclusionary rule because a reviewing court subsequently invalidated the warrant; and (2) a good faith, reasonable belief exception to the exclusionary rule is appropriate in OSHA proceedings.¹⁵

The exclusionary rule¹⁶ generally prohibits the use of evidence seized in violation of the fourth amendment¹⁷ in criminal proceedings.¹⁸ To

14. 695 F.2d at 1021.

15. *Id.* at 1021-25.

16. The Supreme Court first employed the exclusionary rule in the seminal case of *Weeks v. United States*, 232 U.S. 383 (1914), in which the Court held that evidence seized in violation of an individual's fourth amendment rights was inadmissible in federal criminal trials. *Id.* at 398. The Court extended the rule to state criminal prosecutions in *Mapp v. Ohio*, 367 U.S. 643 (1961). For a concise history of the rule's development, see *Stone v. Powell*, 428 U.S. 465, 482-83 (1976); Geller, *Enforcing the Fourth Amendment: The Exclusionary Rule and its Alternatives*, 1975 WASH. U.L.Q. 621, 625-40.

Courts historically have advanced three theories justifying the exclusionary rule: (1) the enforcement of a personal constitutional right, (2) the maintenance of judicial integrity, and (3) the deterrence of official misconduct. See generally Trant, *OSHA and the Exclusionary Rule: Should the Employer Go Free Because the Compliance Officer has Blundered?*, 1981 DUKE L.J. 667, 676-87. Presently, courts invoke the exclusionary rule primarily, if not exclusively, to deter government officials from committing fourth amendment violations. See, e.g., *Michigan v. DeFillippo*, 443 U.S. 31, 38 n.3 (1979) ("purpose of exclusionary rule is to deter unlawful police conduct"); *Stone v. Powell*, 428 U.S. 465, 486 (1976) ("the primary justification for the exclusionary rule then is the deterrence of police conduct that violates fourth amendment rights"); *United States v. Janis*, 428 U.S. 433, 446 (1976) ("prime purpose of the rule, if not the sole one, is to deter future unlawful police conduct"); *Brown v. Illinois*, 422 U.S. 590, 599-600 (1975) ("purpose is to deter—to compel respect for the constitutional guarantee").

Under the personal right theory, the exclusionary rule vindicates personal constitutional rights. Note, *supra* note 10, at 1019 n.2. Failure to suppress evidence obtained in violation of the Constitution, according to this theory, is a "denial of the constitutional rights of the accused." *Weeks v. United States*, 232 U.S. 383, 398 (1914); see also *Mapp v. Ohio*, 367 U.S. 643, 656 (1961); *Olmstead v. United States*, 277 U.S. 438, 462 (1928); *Byars v. United States*, 273 U.S. 28, 29-30 (1927); *Gouled v. United States*, 255 U.S. 298, 303-06 (1921).

The essence of the judicial integrity theory is two-fold: the suppression of illegally seized evidence protects the integrity of the courts and safeguards popular trust in governmental institutions. Trant, *supra* at 680; see, e.g., *Terry v. Ohio*, 392 U.S. 1, 13 (1968); *Mapp v. Ohio*, 367 U.S. 643, 659 (1961); *Elkins v. United States*, 364 U.S. 206, 223 (1960); *Weeks v. United States*, 232 U.S. 383, 392 (1914).

17. The fourth amendment provides:

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

U.S. CONST. amend. IV.

The language of the fourth amendment is vague. The amendment neither defines "unreasona-

date, however, the Supreme Court has not directly addressed the issue of whether the exclusionary rule is applicable to civil and administrative proceedings.¹⁹ In the absence of a definitive pronouncement by the Court, lower federal and state courts have reached conflicting results.²⁰

Prior to 1967, courts generally did not extend the fourth amendment's proscriptions against unreasonable searches and seizures to administrative inspections.²¹ In the companion cases of *Camara v.*

ble" nor provides sanctions for its violation. *Trant*, *supra* note 16, at 667. The courts developed the exclusionary rule, at least in criminal cases, to resolve these ambiguities. *Id.* at 667-68.

18. *Weeks v. United States*, 232 U.S. 383, 398 (1914). The Supreme Court has fashioned several exceptions to the rule, narrowing its scope. *See United States v. Havens*, 446 U.S. 620, 628 (1980) (evidence seized in violation of a defendant's fourth amendment rights may be used for impeachment if he takes the stand at trial); *United States v. Janis*, 428 U.S. 433, 454 (1976) (unlawfully obtained evidence may be used in federal civil tax cases); *United States v. Calandra*, 414 U.S. 338, 354 (1974) (unlawfully obtained evidence may be used in grand jury hearings); *Burdeau v. McDowell*, 256 U.S. 465, 476 (1921) (evidence unlawfully obtained by private individuals is admissible in criminal cases).

19. *See United States v. Janis*, 428 U.S. 433, 447 (1976) (the Supreme Court has never applied the exclusionary rule to exclude evidence from a federal or state civil proceeding); *Savina Home Indus. v. Secretary of Labor*, 594 F.2d 1358, 1362 (10th Cir. 1979) (general applicability of the exclusionary rule to noncriminal contexts has not been decided by the Supreme Court).

20. Courts have held the exclusionary rule applicable to the following noncriminal proceedings. *See United States v. Workman*, 585 F.2d 1205, 1211 (4th Cir. 1978) (probation revocation); *Midwest Growers Coop. Corp. v. Kirkemo*, 533 F.2d 455, 466 (9th Cir. 1976) (private suit against I.C.C.); *Pizzarello v. United States*, 408 F.2d 579, 585-86 (2d Cir.) (IRS jeopardy assessment), *cert. denied*, 396 U.S. 986 (1969); *Knoll Assocs. v. FTC*, 397 F.2d 530, 533-37 (7th Cir. 1968) (FTC order); *Powell v. Zuckert*, 366 F.2d 634, 640-41 (D.C. Cir. 1966) (Air Force discharge); *Rogers v. United States*, 97 F.2d 691, 691-92 (1st Cir. 1938) (action to recover duties on imported liquors); *Smyth v. Lubbers*, 398 F. Supp. 777, 794-95 (W.D. Mich. 1975) (civil rights action); *Lassoff v. Gray*, 207 F. Supp. 843, 846-49 (W.D. Ky. 1962) (civil tax assessment); *Rinderknecht v. Maricopa County Employees Merit Sys.*, 21 Ariz. App. 419, 422, 520 P.2d 332, 335 (1974) (employment disciplinary proceeding). Courts have refused to apply the exclusionary rule in the following non-criminal proceedings. *See United States ex rel. Sperling v. Fitzpatrick*, 426 F.2d 1161, 1163 (2d Cir. 1970) (parole revocation); *Emslie v. State Bar*, 11 Cal. 3d 210, 229, 520 P.2d 991, 1002, 113 Cal. Rptr. 175, 186 (1974) (attorney disciplinary proceeding); *In re Martinez*, 1 Cal. 3d 641, 649-51, 463 P.2d 734, 740-41, 83 Cal. Rptr. 382, 388-89, *cert. denied*, 400 U.S. 851 (1970) (parole revocation); *Governing Bd. of Mountain View School Dist. v. Metcalf*, 36 Cal. App. 3d 546, 551, 111 Cal. Rptr. 724, 727-28 (1974) (employment disciplinary proceeding).

21. Note, *The Applicability of the Exclusionary Rule in Administrative Adjudicatory Proceedings*, 66 IOWA L. REV. 343, 356 (1981).

In *Frank v. Maryland*, 359 U.S. 360 (1959), for example, the Supreme Court refused to set aside the defendant's criminal conviction for not permitting a warrantless inspection of his home by a Baltimore health inspector. In concluding that the search did not violate the fourth amendment, the Court noted that the defendant's privacy interests were on the "periphery" of the fourth amendment protection against official intrusion. *Id.* at 367. The decision in *Frank*, however, was overruled by *Camara v. Municipal Court*, 397 U.S. 523 (1967).

*Municipal Court*²² and *See v. City of Seattle*,²³ the Supreme Court held that the fourth amendment's search warrant requirement applies to administrative searches of private and commercial dwellings.²⁴ Nevertheless, courts continued to assume that the fourth amendment did not apply to OSHA inspections.²⁵ Consequently, they never fully addressed the issue of applying exclusionary sanctions to OSHA inspections.²⁶

In 1978, however, the Supreme Court definitively established that fourth amendment protections apply to OSHA compliance inspections in *Marshall v. Barlow's, Inc.*²⁷ The Court held that the fourth amendment prohibits nonconsensual warrantless inspections of businesses by OSHA compliance officers.²⁸ The Court did not, however, determine the extent to which courts must apply exclusionary sanctions in OSHA proceedings.²⁹ Subsequent judicial and OSHRC decisions similarly failed to delineate the exclusionary rule's applicability to OSHA proceedings.³⁰

22. 387 U.S. 523 (1967).

23. 387 U.S. 541 (1967).

24. *See v. City of Seattle*, 387 U.S. 541 (1967); *Camara v. Municipal Court*, 387 U.S. 523 (1967); *see Cochell, supra* note 2, at 5. In *Camara*, the Supreme Court held that administrative searches of private dwellings must be conducted pursuant to a valid search warrant based on a relaxed showing of probable cause in the absence of voluntary consent. 387 U.S. at 539-40. The Court in *See* extended the *Camara* premise to commercial dwellings, holding that "[t]he businessman, like the occupant of a residence, has a constitutional right to go about his business free from unreasonable official entries upon his private commercial property." 387 U.S. at 543.

25. *See, e.g., Hoffman Constr. Co. v. OSHRC*, 546 F.2d 281, 282-83 (9th Cir. 1976) (evidence discovered in the course of an illegal inspection not suppressed in the absence of fourth amendment prejudice); *Accu-Namics, Inc. v. OSHRC*, 515 F.2d 828, 833-34 (5th Cir. 1975) (minor non-prejudicial violations by OSHA compliance officers do not violate the fourth amendment), *cert. denied*, 425 U.S. 903 (1976).

26. *Trant, supra* note 16, at 687.

27. 436 U.S. 307, 311-13 (1978). In *Barlow's*, an OSHA inspector requested permission to conduct a routine inspection of the work area in Barlow's electrical and plumbing plant to ensure compliance with safety and health regulations. *Id.* at 309-10. When informed that the inspector did not possess a search warrant, Barlow refused to admit him and subsequently sought and obtained injunctive relief against the warrantless search. *Id.* at 310.

28. *Id.* at 312-13.

29. Because no "search" had yet taken place, and because the suit sought to prevent a warrantless search from ever occurring, no "fruits" of a warrantless search could be objected to at the OSHRC hearing.

30. Post-*Barlow's* decisions in which the applicability of exclusionary sanctions to illegal OSHA searches was at issue uniformly held that because the effect of *Barlow's* was prospective only, the question of the exclusionary rule did not require immediate resolution. *See Robberson Steel Co. v. OSHRC*, 645 F.2d 22 (10th Cir. 1980); *Savina Home Indus. v. Secretary of Labor*, 594 F.2d 1358 (10th Cir. 1979); *Todd Shipyards Corp. v. Secretary of Labor*, 587 F.2d 683 (9th Cir.

Although the Supreme Court has not adopted a good faith exception to the exclusionary rule,³¹ a number of Justices have expressed dissatisfaction with the rule's undesirable effects³² and have urged adoption of

1978); *Daniel Int'l Corp.*, 8 O.S.H. Cas. (BNA) 1142 (Rev. Comm'n 1980); *Meadows Indus., Inc.*, 7 O.S.H. Cas. (BNA) 1709 (Rev. Comm'n 1979).

While these courts reached similar results, their analyses of related issues often varied considerably. Compare *Todd Shipyards Corp. v. Secretary of Labor*, 586 F.2d 683, 689 (9th Cir. 1978) ("[because] the Supreme Court has never applied the exclusionary rule in a civil proceeding . . . the rule should not be applied to OSHA proceedings.") (citing *United States v. Janis*, 425 U.S. 433, 447 (1976)) with *Savina Home Indus. v. Secretary of Labor*, 594 F.2d 1358, 1363 (10th Cir. 1979) ("the exclusionary rule would be applicable to OSHA proceedings involving inspections violative of the warrant requirements announced in *Barlow's*").

31. See *Taylor v. Alabama*, 457 U.S. 687, 692 (1982) (Court has not "to date" recognized a good faith exception to the exclusionary rule). The Supreme Court recently declined to adopt a good faith, reasonable belief exception to the exclusionary rule in *Michigan v. Clifford*, 104 S. Ct. 641 (1984), and *Illinois v. Gates*, 103 S. Ct. 2317 (1983). This term, the Court has heard arguments in two criminal cases which raise the good faith issue. See *United States v. Leon*, 701 F.2d 187 (9th Cir. 1983), cert. granted, 103 S. Ct. 3535 (U.S. June 27, 1983) (No. 82-1771), argued, 52 U.S.L.W. 3560 (U.S. January 17, 1984); *Massachusetts v. Sheppard*, 387 Mass. 488, 441 N.E.2d 725 (1982), cert. granted, 103 S. Ct. 3534 (U.S. June 27, 1983), argued, 52 U.S.L.W. 3560 (U.S. January 17, 1984).

In certain instances, the Supreme Court has recognized a "technical good faith" exception to the exclusionary rule in criminal proceedings. See *Michigan v. DeFillippo*, 443 U.S. 31, 37-40 (1979) (evidence seized in good faith reliance on an ordinance later declared unconstitutional should not be suppressed); *United States v. Peltier*, 422 U.S. 531, 532-33 (1975) (fourth amendment violation does not require application of the exclusionary rule where officers rely on a statute subsequently declared unconstitutional); *Michigan v. Tucker*, 417 U.S. 433, 436-47 (1974) (exclusionary rule not applied where police questioned a criminal suspect in violation of fifth amendment rights subsequently announced in *Miranda v. Arizona*, 384 U.S. 436 (1966)).

Express support for a "good faith mistake" exception to the exclusionary rule in criminal cases has appeared in three Court opinions. In *Brown v. Illinois*, 422 U.S. 590 (1975), Justice Powell argued that the courts should not suppress reliable evidence which is not the product of willful or negligent police misconduct. *Id.* at 611-12 (Powell, J., concurring). Similarly, in *Stone v. Powell*, 428 U.S. 465 (1976), Justice White argued in dissent that police officers cannot be expected to conform to fourth amendment requirements when they are not aware that their actions are unlawful. *Id.* at 537-40 (White, J., dissenting). Finally, in *Illinois v. Gates*, 103 S. Ct. 2317 (1983), Justice White reiterated his concerns first expressed in *Stone* and argued that the exclusionary rule is inappropriate where government officials act in the reasonable belief that a search and seizure is consistent with the fourth amendment. *Id.* at 2336 (White, J., concurring). See generally Note, *Is it Time for a Change in the Exclusionary Rule?* *United States v. Williams and the Good Faith Exception*, 60 WASH. U.L.Q. 161, 169-71 (1982).

32. See, e.g., *Illinois v. Gates*, 103 S. Ct. 2317, 2336-51 (1983) (White, J., concurring). Justice White, the Court's most outspoken critic of the exclusionary rule, observed that the primary cost of the rule is its interference with the "truthseeking function of a criminal trial by barring relevant and trustworthy evidence." *Id.* at 2342 (White, J., concurring). He noted that the rule discourages police from reasonable and proper investigative actions and places an extreme burden on state and federal judicial systems. *Id.* (White, J., concurring). In addition, Justice White found that indiscriminate application of the exclusionary rule generates disrespect for the law and undermines public confidence in the criminal justice system. *Id.* (White, J., concurring).

such an exception.³³ In the absence of definitive Supreme Court action, however, courts and legislatures have joined in a growing movement toward acceptance of some form of good faith exception to the exclusionary rule in criminal cases.³⁴ In *United States v. Williams*,³⁵ the Fifth Circuit held that it would not apply the exclusionary rule in criminal proceedings where officers mistakenly, though reasonably and in good faith, believed that they acted lawfully.³⁶ Several other federal and state courts have similarly adopted good faith exceptions to the exclusionary rule.³⁷ In addition, several bills have been introduced in

33. Four current members of the Supreme Court, Chief Justice Burger and Justices Rehnquist, Powell, and White, have openly supported adoption of a good faith exception to the exclusionary rule in criminal cases. See *Stone v. Powell*, 428 U.S. 465, 501 (1976) (Burger, C.J., concurring); *id.* at 538-39 (White, J., dissenting); *Brown v. Illinois*, 422 U.S. 606, 616 (1975) (Powell, J., concurring); *Peltier v. United States*, 422 U.S. 531, 531-42 (1975) (Rehnquist, J.); *supra* note 31; see also *United States v. Williams*, 622 F.2d 830, 841 (5th Cir. 1980) (en banc), *cert. denied*, 449 U.S. 1127 (1981); *Ball*, *supra* note 2, at 635, 652-53; Note, *supra* note 2, at 1617. In addition, Justices O'Connor and Blackmun seem in favor of reducing the scope of the exclusionary rule. *Id.*

34. See Note, *supra* note 2, at 1617; see also *infra* notes 35-39 and accompanying text.

35. 622 F.2d 830 (5th Cir. 1980) (en banc), *cert. denied*, 449 U.S. 1127 (1981). In *Williams*, the Fifth Circuit refused to suppress two packets of heroin seized illegally by drug enforcement officials who thought that they had conducted a lawful search and arrest. *Id.* at 833-36.

36. *Id.* at 840.

37. In *United States v. Nolan*, 530 F. Supp. 386, 396-400 (W.D. Pa. 1981), the Western District of Pennsylvania refused to suppress evidence gathered in an illegal house search where the police officer acted in a manner consistent with the law, the intrusion on the defendant's right was minimal, and no deterrent effect existed for future police conduct. In *United States v. Wyler*, 502 F. Supp. 959, 973-74 (S.D.N.Y. 1980), the Southern District of New York refused to suppress documents found in a good faith, but unlawful, house search that led to the identity of a victim in a previously undiscovered crime, holding that neither the purposes of the exclusionary rule nor the public interest would benefit from exclusion of the evidence. In *State v. Mincey*, 130 Ariz. 389, 402, 636 P.2d 637, 650 (1981), *cert. denied*, 455 U.S. 1003 (1982), the Arizona Supreme Court applied a *Williams*-type test when a police officer illegally seized photographs of a murder scene in good faith reliance on state law as he understood it on the advice of a legal expert. In *People v. Eichelberger*, 620 P.2d 1067, 1071 n.2 (Colo. 1980) (en banc), the Colorado Supreme Court cited *Williams* and noted that the exclusionary rule penalizes willful or flagrant police actions, not reasonable actions. In *People v. Pierce*, 88 Ill. App. 3d 1095, 1110, 411 N.E.2d 295, 307 (1980), the police obtained a confession in a search pursuant to a quashed warrant. The Illinois Appellate Court refused to exclude the confession because it found that the police officers satisfied the *Williams* test of "reasonable and good faith belief . . . in the propriety of their conduct." *Id.* In *Richmond v. Commonwealth*, 50 U.S.L.W. 2162, 2162-63 (Ky. Ct. App. 1981), *aff'd*, 637 S.W.2d 642 (Ky. 1982), the Kentucky Court of Appeals held that evidence seized in good faith reliance on an invalid warrant should not be suppressed when suppression would have no deterrent effect. Finally, in *People v. Adams*, 53 N.Y.2d 1, 9-11, 422 N.E.2d 537, 541-42, 439 N.Y.S.2d 877, 881-82 (1981) the New York Court of Appeals found that when officers rely in good faith on the apparent capability of an individual to consent to a warrantless search, and the circumstances reasonably indicate that the individual possesses the authority to consent, evidence obtained as the result of such a search should not be suppressed because the individual lacked authority to consent.

Congress to modify or eliminate the exclusionary rule.³⁸ At least one state has specifically enacted legislation creating a good faith exception to the exclusionary rule.³⁹

No parallel movement toward adoption of a good faith, reasonable belief exception to the exclusionary rule in civil and administrative proceedings had begun until *Donovan v. Federal Clearing Die Casting Co.*⁴⁰ One week after the decision in *Federal Die*, the Eleventh Circuit explicitly refused to adopt such an exception to the exclusionary rule in OSHA proceedings in *Donovan v. Sarasota Concrete Co.*⁴¹ In *Sarasota*, an administrative law judge invalidated a search warrant that had served as the basis for a good faith OSHA business inspection⁴² and suppressed evidence seized by OSHA officials under the invalid war-

38. *E.g.*, S. 1764, 98th Cong., 1st Sess., 129 CONG. REC. 11,713 (1983); H.R. 2239, 98th Cong., 1st Sess., 129 CONG. REC. 1560 (1983). The Exclusionary Rule Limitation Act of 1983 provides: Section 3505. Limitation of the Fourth Amendment Exclusionary Rule

Except as specifically provided by statute, evidence which is obtained as a result of a search or seizure and which is otherwise admissible shall not be excluded in a proceeding in a court of the United States if the search or seizure was undertaken in a reasonable, good faith belief that it was in conformity with the Fourth Amendment to the Constitution of the United States. A showing that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of such a reasonable, good faith belief, unless the warrant was obtained through intentional and material misrepresentation.

Id.

The Department of Justice has similarly advocated modification of the exclusionary rule. See ATTORNEY GENERAL'S TASK FORCE ON VIOLENT CRIME, U.S. DEPARTMENT OF JUSTICE, FINAL REPORT 55 (1981). Recommendation 40 provides that "evidence should not be excluded from a criminal proceeding if it has been obtained by an officer acting in the reasonable, good faith belief that it was in conformity to the Fourth Amendment to the Constitution." *Id.* See also *Hearings on the Report of the Attorney General's Task Force on Violent Crime Before the Subcomm. on Crime of the House Comm. on the Judiciary*, 97th Cong., 1st Sess. 8 (1981) (statement of William French Smith, Attorney General of the United States) (evidence obtained by officers in the good faith belief that they were acting in accordance with the fourth amendment should not be excluded from a criminal proceeding).

39. COLO. REV. STAT. § 16-3-308(1) (1981). The statute provides that [e]vidence which is otherwise admissible in a criminal proceeding shall not be suppressed by the trial court if the court determines that the evidence was seized by a peace officer . . . as a result of a good faith mistake or of a technical violation.

40. 695 F.2d 1020 (7th Cir. 1982); see *infra* notes 46-73 and accompanying text.

41. 693 F.2d 1061 (11th Cir. 1982).

42. *Id.* at 1063-64. A former employee of Sarasota alleged that the company improperly maintained its cement trucks. *Id.* Six months after the original complaint was issued, a United States magistrate granted a warrant authorizing an inspection of Sarasota's entire workplace. *Id.* OSHA compliance officers sought, received and executed the search warrant in good faith. *Id.* As a result of the investigation and inspection, OSHA cited Sarasota for twelve "non-serious" violations of OSHA regulations. *Id.* at 1064. None of the violations cited, however, related to Sarasota's cement trucks. *Id.*

rant.⁴³ On appeal, the Eleventh Circuit distinguished *United States v. Williams*, a criminal case,⁴⁴ and held that the exclusionary rule is generally available in OSHA proceedings.⁴⁵

In *Donovan v. Federal Clearing Die Casting Co.*, the Seventh Circuit accepted a good faith, reasonable belief exception to the exclusionary rule in civil proceedings.⁴⁶ The court devoted its entire analysis to a consideration of the good faith exception in OSHA proceedings.⁴⁷ The majority of the court looked to *United States v. Williams*⁴⁸ as its primary source of authority.⁴⁹ Recognizing that the *Williams* court relied on the exclusionary rule's underlying purpose of deterring unlawful police conduct,⁵⁰ the Seventh Circuit reasoned that the rule does not serve

43. *Id.* The administrative law judge held that the employee's complaint concerning the company's cement trucks did not constitute sufficient probable cause to support an investigation of the company's entire workplace. *Id.*

44. *Id.* at 1070-73. The Eleventh Circuit refused to extend the good faith exception enunciated by the Fifth Circuit in *United States v. Williams*, 622 F.2d 830 (5th Cir. 1980) (en banc), *cert. denied*, 449 U.S. 1127 (1981), to OSHA proceedings. The court of appeals argued that *Williams* was factually dissimilar and concluded that OSHRC was not bound to adhere to the *Williams* analysis. *Id.* at 1072. In particular, the Eleventh Circuit noted that the *Williams* court prefaced its discussion of the good faith exception with a clear statement that its holding would not apply to situations involving a search warrant. *Id.* (citing *United States v. Williams*, 622 F.2d at 840 n.1).

45. 693 F.2d at 1070-71.

46. 695 F.2d 1020, 1022-25 (7th Cir. 1982).

47. The Seventh Circuit reached, but did not resolve, the issue of the exclusionary rule's applicability to OSHA inspections conducted pursuant to search warrants subsequently declared invalid. *Cf. Donovan v. Sarasota Concrete Co.*, 693 F.2d 1061 (11th Cir. 1982); *supra* notes 40-45. In its haste to discuss the good faith, reasonable belief exception to the exclusionary rule, the court of appeals failed to devote any of its analysis to the problem of the rule's general availability in OSHA proceedings. This oversight is especially surprising because the court realized that the issue before it was "one of first impression." 695 F.2d at 1021. This omission is also curious given that logic dictates that a court must first establish a general rule before testing a specific exception to it.

The court's failure to consider the rule's applicability renders its holding ambiguous because it is not apparent whether the court tacitly recognized the rule's general availability in this area or merely refused to apply the rule within the circumstances of the instant case. Arguments can be made to support both positions. The court prefaced its discussion of the good faith exception by suggesting that the exclusionary rule should not be applied. *Id.* at 1023 (citing *Todd Shipyards Corp. v. Secretary of Labor*, 586 F.2d 683, 689 (9th Cir. 1978)). In contrast, the court twice stated that its holding was limited to the "circumstances of this case," 695 F.2d at 1023 & n.6, suggesting that the court did not intend to establish a general rule.

48. 622 F.2d 830 (5th Cir. 1980) (en banc), *cert. denied*, 449 U.S. 1127 (1981); *see supra* notes 35-36 and accompanying text.

49. 695 F.2d at 1023-24.

50. The deterrence theory is based upon the common sense notion that the suppression of illegally seized evidence deters official misconduct. Note, *supra* note 10, at 1020 n.3; *see supra* note 16. The court in *United States v. Williams*, 622 F.2d 830 (5th Cir. 1980) (en banc), *cert. denied*,

its basic deterrent purpose when applied to evidence that was gathered mistakenly, but in good faith and on reasonable grounds.⁵¹ A good faith, reasonable belief exception to the exclusionary rule in civil proceedings, the court argued, would not detract from the rule's deterrence function.⁵² Moreover, the court noted that employers have access to remedial deterrents other than the exclusionary rule when they believe OSHA has violated their constitutional rights.⁵³

In further support of its position, the *Federal Die* court relied upon two Tenth Circuit cases, *Robberson Steel Co. v. OSHRC*⁵⁴ and *Savina Home Industries v. Secretary of Labor*.⁵⁵ Noting that in both cases the Tenth Circuit refused to apply the exclusionary rule to warrantless searches where the rule's deterrent purpose could not be served,⁵⁶ the *Federal Die* majority concluded that the Tenth Circuit recognized a reasonable, good faith exception to the exclusionary rule.⁵⁷

The court argued additionally that suppression of the evidence uncovered by the OSHA inspection would result in "substantial societal harm."⁵⁸ In particular, the court contended that application of the exclusionary rule to the facts of the case would preclude OSHRC from issuing an order requiring prompt abatement of hazardous working conditions at Federal and would preclude the issuance of subsequent citations with enhanced penalties to ensure Federal's compliance with OSHA provisions.⁵⁹ The court concluded that because the OSHA compliance officers acted both reasonably and in good faith in inspect-

449 U.S. 1127 (1981), like most modern courts, followed the deterrence theory, holding that the exclusionary rule deters willful or flagrant police misconduct, not reasonable, good faith actions. *Id.* at 840.

51. 695 F.2d at 1023.

52. *Id.*

53. *Id.* at 1024. The court specifically mentioned two such deterrents. First, an OSHA official must obtain the approval of a neutral magistrate before conducting an inspection over an employer's objection. *Id.* Second, an employer may still move to quash a warrant prior to its execution or refuse entry pursuant to a warrant unless the OSHA official prevails in civil contempt proceedings. *Id.*

54. 645 F.2d 22 (10th Cir. 1980).

55. 594 F.2d 1358 (10th Cir. 1979).

56. Though both cases dealt with the applicability of the exclusionary rule to OSHA proceedings involving warrantless inspections occurring prior to *Marshall v. Barlow's Inc.*, 436 U.S. 307 (1978), the court in *Robberson* noted that the reasoning of the Fifth Circuit in *United States v. Williams*, 622 F.2d 830 (5th Cir. 1980) (en banc), *cert. denied*, 449 U.S. 1127 (1981), is "equally applicable to civil OSHA enforcement proceedings." 645 F.2d at 22.

57. 695 F.2d at 1024.

58. *Id.*

59. *Id.* The court also expressed concern that an OSHA official would not be able to rein-

ing Federal's workplace, evidence gathered pursuant to that inspection should not be suppressed.⁶⁰

Judge Pell in dissent criticized the majority's reliance on *Williams*.⁶¹ He noted that the *Williams* good faith exception requires both objective reasonableness and subjective good faith⁶² and concluded that the OSHA officials did not act reasonably or in good faith in their inspection of Federal's premises.⁶³ Judge Pell argued that the majority's reliance on *Robberson* and *Savina* was similarly unfounded. Both cases involved only the retroactive application of the *Barlow's* warrant requirement;⁶⁴ the Tenth Circuit therefore did not decide the issue of the good faith exception to the exclusionary rule in either case.⁶⁵

Judge Pell cited legislative sources⁶⁶ and OSHRC decisions⁶⁷ in sup-

spect an employer's business because of the lack of probable cause to obtain a second search warrant. *Id.*

60. *Id.* at 1025. The majority noted that the inspection of Federal's premises did not commence until after the district court issued an order of civil contempt against Federal and ordered Federal to cooperate in the inspection of its premises. *Id.* The majority concluded that the district court's approval of the OSHA officials' actions demonstrated that they acted reasonably, cautiously, and in good faith in executing the search warrant. *Id.* See *supra* note 8.

61. *Id.* at 1030 (Pell, J., dissenting).

62. *Id.* (Pell, J., dissenting). "[I]n addition to being held in subjective good faith, [the officer's belief] must be grounded in objective reasonableness. It must therefore be based upon articulable premises sufficient to cause a reasonable, and reasonably trained, officer to believe that he was acting lawfully." *Id.* (Pell, J., dissenting) (quoting *United States v. Williams*, 622 F.2d 830, 841 n.4a (5th Cir. 1980) (en banc), cert. denied, 449 U.S. 1127 (1981)).

63. 695 F.2d at 1026-27, 1029-31 (Pell, J., dissenting). Judge Pell explained that OSHA regulations require an OSHA inspector to make a "thorough evaluation of all complaints" of OSHA violations prior to deciding whether or not to inspect. *Id.* at 1031 (Pell, J., dissenting). Judge Pell stated that an OSHA official could not reasonably believe that an OSHA violation existed on the basis of two newspaper articles describing a work accident and an old citation of dubious reliability. *Id.* (Pell, J., dissenting). He expected a conscientious OSHA official to make preliminary inquiries regarding a newspaper account of an accident before seeking a search warrant. *Id.* (Pell, J., dissenting). Furthermore, Judge Pell noted that the inspection of Federal's premises was plant-wide and not concerned merely with the operation which caused the employee's injury. *Id.* at 1029 (Pell, J., dissenting). He therefore concluded that the actions of the OSHA inspectors in *Federal Die* "could hardly be regarded as objectively reasonable." *Id.* at 1031 (Pell, J., dissenting).

64. See *supra* note 30.

65. 695 F.2d at 1032 (Pell, J., dissenting).

66. *Id.* at 1028 (Pell, J., dissenting). Judge Pell noted that Congress provided numerous requirements for the conduct of a lawful inspection, specifying that OSHA citations may only be issued "upon inspection or investigation" conducted pursuant to law. See, e.g., 29 U.S.C. §§ 657(a), 658(a) (1982). In addition, he observed that the legislative history makes clear that "in carrying out inspection duties under this act, the Secretary, of course, would have to act in accordance with applicable constitutional protections." 116 CONG. REC. 38,709 (1970) (statement of Rep. Steiger).

port of his contention that courts should suppress evidence obtained by OSHA compliance officers during an illegal inspection of an employer's workplace. He alleged, contrary to the majority's opinion, that the suppression of unlawfully obtained evidence would have an "appreciable deterrent effect" on the subsequent conduct of OSHA officials.⁶⁸

In addition, Judge Pell denied the majority's assertion that the exclusion of evidence uncovered by an illegal OSHA inspection would result in "substantial societal harm."⁶⁹ Administrative searches differ fundamentally from criminal searches, he argued, in that the object of the administrative search does not disappear without some affirmative action.⁷⁰ Because no specific time limits govern OSHA inspections,⁷¹ OSHA officials may reinspect business premises upon the issuance of a second valid warrant.⁷² If OSHA officials return to a work site to find that alleged hazardous conditions have disappeared, the agency has achieved its statutory purpose of abating such conditions.⁷³

67. 695 F.2d at 1028 (Pell, J., dissenting); *see, e.g.*, *Secretary of Labor v. Genesee Valley Indus. Packaging*, 8 O.S.H. Cas. (BNA) 1509, 1510 (Rev. Comm'n 1980) (remedy for fourth amendment violation is suppression of evidence gained by that violation); *Secretary v. Hendrix*, 2 O.S.A.H.R.C. 1005, 1022 (1973), *aff'd on other grounds sub nom. Brennan v. OSHARC*, 511 F.2d 1139 (9th Cir. 1975) (OSHA citation must be vacated where not preceded by valid inspection).

68. 695 F.2d at 1028 (Pell, J., dissenting).

69. *Id.* at 1032-33 (Pell, J., dissenting).

70. *Id.* at 1033 (Pell, J., dissenting). Judge Pell found that the exclusion of evidence has a lesser impact in administrative hearings than in criminal cases:

There is less impact from evidence suppression in such administrative hearings than in criminal cases because the inspector can return and reinspect, employing proper procedures. The Secretary argues that return inspections impose an unreasonable strain on the agency's already limited manpower. . . . The best solution is to follow proper procedures the first time, but lack of personnel certainly should be no justification for riding rough shod over employer rights. The fault for delay lies with the agency; the remedy lies there also.

Id. at 1032 (Pell, J., dissenting) (quoting *Marshall v. C.F. & I. Steel Corp.*, 576 F.2d 809, 819 (10th Cir. 1978) (McKay, J., dissenting)).

71. 695 F.2d at 1032 (Pell, J., dissenting). Judge Pell rejected the majority's contention that in certain instances OSHA may not be able to obtain a second warrant because of staleness: "[T]he statutory provision governing time of *inspections* sets no specific time limits. Rather, it requires the Secretary to inspect 'at reasonable times' . . . or 'as soon as practicable' after receipt of a complaint . . ." *Id.* at 1032-33 (Pell, J., dissenting) (emphasis original) (quoting *Donovan v. Metal Bank of America*, 516 F. Supp. 674, 679 (E.D. Pa. 1981)).

72. 695 F.2d at 1032 (Pell, J., dissenting). The warrant requirement of *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978), governs subsequent inspections of business premises. *See supra* notes 27-29 and accompanying text.

73. 695 F.2d at 1033 (Pell, J., dissenting). If hazardous conditions have not been improved, of course, OSHA may issue citations.

In *Federal Die*, the Seventh Circuit improvidently extended the good faith exception to the exclusionary rule from the criminal setting, where courts dispute the applicability of the exception,⁷⁴ to the administrative setting, where courts question the applicability of the exclusionary rule itself.⁷⁵ As Judge Pell explained in dissent, basic distinctions exist between criminal and administrative searches and seizures.⁷⁶ In a criminal case, the loss of important evidence may seriously impair the ability of the prosecution to proceed against the defendant.⁷⁷ In an administrative hearing, however, suppression of evidence under exclusionary sanctions results in minimal cost to society.⁷⁸ The only conceivable harm to society in requiring a second inspection of an employer's workplace is in terms of delay and increased burdens on OSHA officials.⁷⁹

The Supreme Court requires a careful balancing of the potential benefits of exclusion against the potential harm of losing relevant evidence in all fourth amendment exclusionary rule decisions.⁸⁰ The Court has refused to apply the exclusionary rule on several occasions where it determined that the social costs of suppressing relevant evidence outweighed the deterrent effect of exclusionary sanctions.⁸¹ *Fed-*

74. See *supra* notes 31-39 and accompanying text.

75. See *supra* notes 19-20 and accompanying text.

76. See *supra* notes 69-73 and accompanying text. Important distinctions between criminal and administrative searches and seizures include the subject of the government search and the site of the search. Cochell, *supra* note 2, at 32-33. The target of a criminal search is generally an individual whose constitutional rights to privacy and liberty are threatened by unwarranted governmental action. *Id.* at 33. The victim of an administrative search, on the other hand, is usually a business entity whose individual interests are not endangered by the illegal seizure and subsequent use of evidence. *Id.* The location of an administrative inspection is generally a semi-public business workplace, whereas the site of a criminal search is often the suspect's home. *Id.* Courts generally recognize that an individual's expectations of privacy, and thus constitutional protections, in his home are greater than those in his place of business. *Id.*

77. See *supra* note 32.

78. See *supra* notes 69-73 and accompanying text.

79. 695 F.2d at 1032 (Pell, J., dissenting).

80. See, e.g., *United States v. Caceres*, 440 U.S. 741, 754-55 (1979) (rule rests primarily on the judgment that deterring police conduct that may invade the constitutional rights of individuals outweighs importance of securing conviction of specific defendant); *United States v. Calandra*, 414 U.S. 338, 348 (1974) (application of the exclusionary rule is restricted to those areas where its remedial objectives are thought most efficaciously served). See generally 1 W. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 1.5 (1978); Note, *supra* note 10, at 1020 n.5.

81. See *Michigan v. DeFillippo*, 443 U.S. 31 (1979) (evidence seized in good faith reliance on statute subsequently held unconstitutional not excluded); *United States v. Caceres*, 440 U.S. 741 (1979) (evidence seized in violation of a voluntarily promulgated administrative regulation not excluded); *Stone v. Powell*, 428 U.S. 465 (1976) (habeas corpus review of fourth amendment

eral Die does not present, however, as strong a case for refusing to apply the exclusionary rule; the social costs of exclusion are negligible,⁸² and the deterrent effect of the exclusionary rule on reasonable and good faith administrative inspections remains uncertain.⁸³ In the absence of a strong inclination against suppression of illegally obtained evidence, the Seventh Circuit improperly adopted, with minimum explanation, a good faith exception which is controversial in the criminal context and unestablished in the administrative context.

The Supreme Court has euphemistically described the judicial debate over the exclusionary rule and its good faith exception as "warm."⁸⁴ The conflict between the Seventh and Eleventh Circuits resulting from the *Federal Die* and *Sarasota* decisions should intensify the debate and place added pressure on the Supreme Court to resolve the good faith issue.

[Just prior to the publication of this Comment, the Supreme Court held in *United States v. Leon* and *Massachusetts v. Sheppard* that the fourth amendment does not require exclusion of evidence seized by police officers in objectively reasonable reliance on a search warrant that is subsequently invalidated by a reviewing court.

In adopting an objective good faith exception to the exclusionary rule, the Court addressed two distinct forms of invalid search warrants. In *Leon*, a district court found that probable cause did not support a search warrant issued by a magistrate. The Ninth Circuit affirmed the district court's finding and accordingly suppressed all evidence ob-

claims that had been reviewed fully in state courts eliminated); *United States v. Janis*, 428 U.S. 433 (1976) (evidence illegally seized by state criminal law enforcement agency not excluded in federal civil proceedings).

82. See *supra* notes 69-73 and accompanying text.

83. The *Federal Die* majority believed that the exclusionary rule could not deter OSHA officials acting in good faith and on reasonable grounds, albeit illegally. 695 F.2d at 1023; see *supra* notes 48-57 and accompanying text. Judge Pell argued, contrary to the majority, that the exclusion of unlawfully obtained evidence would have an "appreciable deterrent effect" on the conduct of OSHA officials. 695 F.2d at 1026, 1028 (Pell, J., dissenting).

In general, the extent of the exclusionary rule's deterrent effect is unknown. Empirical studies have been unsuccessful in determining the rule's actual deterrent value. See, e.g., Andenas, *The Morality of Deterrence*, 37 U. CHI. L. REV. 649 (1970); Kamisar, *Does the Exclusionary Rule Affect Police Behavior?*, 62 JUD. 70 (1978); Oaks, *Studying the Exclusionary Rule in Search and Seizure*, 37 U. CHI. L. REV. 665 (1970). "Notwithstanding Herculean efforts, no empirical study has been able to demonstrate that the rule does in fact have any deterrent effect." *Stone v. Powell*, 428 U.S. 465, 499 (1976) (Burger, C.J., concurring).

84. *United States v. Janis*, 428 U.S. 433, 446 (1976).

tained pursuant to the invalid warrant. The Supreme Court reversed, refusing to suppress this “inherently trustworthy tangible evidence.” The Court employed the same balancing test it has espoused on numerous occasions in recent years, carefully weighing the “costs and benefits” of suppression. Justice White, writing for the majority, concluded that the benefits of suppressing evidence obtained in objective reliance on a subsequently invalidated search warrant are “marginal or nonexistent” and that the suppression of such evidence will not deter future police misconduct.

In *Sheppard*, the Court held that evidence gathered in objectively reasonable reliance on a defective warrant may be admissible in the prosecution’s case-in-chief. Justice White observed that the failure of the search warrant in question to specify with particularity the items to be seized was the fault of the issuing judge, not the police officers. In Justice White’s opinion, the suppression of evidence merely because a judge failed to make necessary clerical corrections to a search warrant does not serve the exclusionary rule’s deterrent function.

The Court in *Leon* and *Sheppard*, two criminal cases, did not specifically address the applicability of the good faith exception to the exclusionary rule to federal administrative agency proceedings. The language of the two decisions is vague in this regard and could support extension of the good faith exception to OSHA proceedings.]

R.H.S.

