had resulted from a negligent bookkeeping error by a police employee other than the arresting officer. In *Herring v. United States*,[479] a police employee had failed to remove from the police computer database an arrest warrant that had been recalled five months earlier, and the arresting officer as a consequence mistakenly believed that the arrest warrant remained in effect. The Court upheld the admission of evidence because the error had been "the result of isolated negligence attenuated from the arrest."[480] Although the Court did "not suggest that all recordkeeping errors by the police are immune from the exclusionary rule," it emphasized that, "[t]o trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. As laid out in our cases, the exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence."[481]

Herring is significant because previous cases applying the good-faith exception to the exclusionary rule have involved principally Fourth Amendment violations not by the police, but by other governmental entities, such as the judiciary or the legislature. Although the error in *Herring* was committed by a police employee other than the arresting officer, the introduction of a balancing test to evaluate police conduct raises the possibility that even Fourth Amendment violations caused by the negligent actions of an arresting officer might in the future evade the application of the exclusionary rule.[482]

For instance, it is unclear from the Court's analysis in *Leon* and its progeny whether a majority of the Justices would also support

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[479] 555 U.S. ___, No. 07–513, slip op. (2009), *Herring* was a five-to-four decision, with two dissenting opinions.

[480] 129 S. Ct. at 698.

[481] 129 S. Ct. at 703, 702. Justice Ginsburg, in a dissent joined by Justices Stevens, Souter, and Breyer, stated that "the Court's opinion underestimates the need for a forceful exclusionary rule and the gravity of recordkeeping errors in law enforcement." Id. at 706. Justice Ginsburg added that the majority's suggestion that the exclusionary rule "is capable of only marginal deterrence when the misconduct at issue is merely careless, not intentional or reckless . . . runs counter to a foundational premise of tort law—that liability for negligence, *i.e.*, lack of due care, creates an incentive to act with greater care." Id. at 708. Justice Breyer, in a dissent joined by Justice Souter, noted that, although the Court had previously held that recordkeeping errors made by a court clerk do not trigger the exclusionary rule, Arizona v. Evans, 514 U.S. 1 (1995), he believed that recordkeeping errors made by the police should trigger the rule, as the majority's "case-by-case, multifactored inquiry into the degree of police culpability" would be difficult for the courts to administer. Id. at 711.

[482] *See Leon*, 468 U.S. 897, 926 (1984) (articulating, in *dicta*, an "intentional or reckless" misconduct standard for obviating "good faith" reliance on an invalid warrant).