Criminal Law - Constitutional Law - Fourth Amendment - Search and Seizure - Valid and Invalid Search Warrant - Redaction

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Criminal Law — Constitutional Law — Fourth Amendment — Search and Seizure — Valid and Invalid Search Warrant — Redaction — The United States Court of Appeals for the Third Circuit has held that evidence seized pursuant to a search warrant which contains both valid and invalid clauses may result in severance of the warrant in order to suppress only that evidence seized pursuant to the invalid clauses, preserving for admissibility the validly seized evidence.

United States v. Christine, 687 F.2d 749 (3d Cir. 1982).

In late November 1979, a federal magistrate for the District of New Jersey received from the United States an affidavit written by Richard Scott, an investigator of the Inspector General’s Office of the Department of Housing and Urban Development (HUD). The affidavit, a result of investigations performed pursuant to fraud provisions in HUD’s Title I Home Insurance Program, alleged that Howard Christine and Perry Grabosky, owners of Landmark Builders, Inc., had fraudulently secured HUD Title I Home Improvement Loans for persons who were not creditworthy. According to the affidavit, Christine and Grabosky intended to operate the company for a short period of time, during which they would increase their credit lines and exhaust their assets, and then eventually abandon the business.

Based on information contained in the affidavit, a warrant was issued which authorized any postal inspector to search the Landmark Builders, Inc. offices and to seize any property de-

1. United States v. Christine, 687 F.2d 749, 751 (3d Cir. 1982).
2. The purpose of the Program is to provide incentive to lending institutions to grant loans to eligible home owners by establishing insurance on bank loans. Such insurance is designed to effectuate improvement of housing in the United States. See Brief for Appellant, app. at 29, Affidavit of Richard Scott.
3. 687 F.2d at 751. The two men allegedly bribed Glenwood Rapf, the loan officer for the Program at Collective Federal Savings and Loan Association to accept loan applications from persons who were not creditworthy. Id.
4. Id. Scott’s allegations were based on information given to him by Phillip Lake, an independent salesman who periodically dealt with Landmark Builders, Inc., and Henry Keiser, an individual who also had had interactions with Christine and Grabosky. Id. See also Brief for Appellant, app. at 29, 30, Affidavit of Richard Scott.
5. 687 F.2d at 751.
6. Id.
7. The offices were located in Absecon, New Jersey. Id.
scribed in the warrant. A search was conducted the following day which resulted in the seizure of numerous documents.

On December 10, 1980, a federal grand jury indicted Christine and Grabosky on ten counts of conspiring to violate and for violation of 18 U.S.C. § 657 (1976). Before the trial, Christine and

8. Id. The warrant provided for seizure of:
(a) All folders and all documents contained therein and all other documents relating to home improvements and home improvement contracts pursuant to the HUD Title I Insured Home Improvement Loan program;
(b) All checks, check stubs and bank statements, deposit slips and withdrawal slips, reflecting the receipt and disbursement of funds through Landmark Builders, Inc. for the period January 1, 1977 to the present;
(c) All general ledgers, general journals, cash receipt disbursement ledgers and journals for the period January 1, 1977 to the present;
(d) All correspondence to and from and submissions to Collective Federal Savings and Loan; and
(e) All other documents, papers, instrumentalities and fruits of the crime of submission of false statements in connection with the HUD Title I Insured Home Improvement Loan program as well as any evidence of a scheme to defraud HUD or Collective Federal Savings and Loan or any other creditor by use of the United States mails.

Id.

9. Id. The items seized included:
prospective, active, and completed job folders; bank statements and check stubs for 1978 and 1979; a customer list; receipts; deposit slips; a job completion summary; two lease agreements and accompanying cover letter; a loan fee receipt; "salesman records"; job summary costs; an income statement; a cash disbursements journal; a writing entitled "Correct Way To Do Business"; a lunch receipt; and a letter to the press.

Id.

10. Id. See 18 U.S.C. § 657 (1976) which provides in pertinent part:
§ 657. Lending, credit and insurance institutions

Whoever, being an officer, agent or employee of or connected in any capacity with the . . . Department of Housing and Urban Development . . . and or any lending, mortgage, insurance, credit or savings and loan corporation or association authorized or acting under the laws of the United States or any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation or by the Administrator of the National Credit Union Administration, or any small business investment company, and, whoever, being a receiver of any such institution, or agent or employee of the receiver, embezzles, abstracts, purloins or willfully misapplies any moneys, funds, credits, securities or other things of value belonging to such institution, or pledged or otherwise intrusted to its care, shall be fined not more than $5,000 or imprisoned not more than five years, or both; but if the amount or value embezzled, abstracted, purloined or misapplied does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Id. The indictment stated that Christine and Grabosky had caused Rapf to knowingly and willfully misappropriate funds with the intent to injure and defraud Collective Federal Savings and Loan Association. In a related claim, Rapf pleaded guilty to the conspiracy charge. There have been no additional charges brought against Christine, Grabosky, or Rapf. 687 F.2d at 751.
Grabosky moved to suppress the property seized.\textsuperscript{11} The District Court for the District of New Jersey held that the authorization scope of the search warrant, permitting a search and seizure of all the corporation's records within several years preceding the time of the search, was improperly broad in relation to the probable cause established.\textsuperscript{12} Inasmuch as the particularity requirement of the fourth amendment\textsuperscript{13} was absent, the district court ruled that all property seized pursuant to the invalid warrant be suppressed.\textsuperscript{14}

The government presented a motion for reconsideration, asserting that the scope of the warrant was not too broad in light of the probable cause presented.\textsuperscript{15} The district court refused to reconsider its decision, stating that the affidavit failed to establish probable cause that bankruptcy fraud had occurred.\textsuperscript{16} In response, the United States appealed the order denying its motion for reconsideration.\textsuperscript{17}

On appeal, the government asserted that the search warrant was not a general warrant, but one which satisfied the particularity requirement of the fourth amendment.\textsuperscript{18} Furthermore, the United States contended that the use of generic words in the search warrant to describe seizable possessions does comply with "constitutionally valid" practices.\textsuperscript{19} Moreover, it argued that the generic

\textsuperscript{11} 687 F.2d at 752.
\textsuperscript{12} \textit{Id}. The court held that the showing of probable cause in the affidavit only indicated that Christine and Grabosky had bribed one person at a specific savings institution to approve particular loan applicants of specific uncreditworthy individuals and that the relevant evidence was obtainable in records at appellee's office. See United States v. Christine, Crim. No. 80-416, slip op. at 3 (D.N.J. March 12, 1981), motion for reconsideration denied, slip op. at 3 (D.N.J. May 13, 1981), 687 F.2d 749 (3d Cir. 1982).
\textsuperscript{13} \textit{See} U.S. Const. amend. IV which 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.
\textsuperscript{14} \textit{Id}. See also 687 F.2d at 752. See also Crim. No. 80-416, slip op. at 3.
\textsuperscript{15} 687 F.2d at 752. The government argued that the affidavit's content "established probable cause to believe that appellees were engaged in the Federal crimes of conspiracy, bankruptcy fraud, and aiding and abetting the misapplication of savings and loan institution funds." \textit{Id}.
\textsuperscript{16} \textit{Id}. Continuing, the court stated that even if one were to concede that such probable cause was present, it did not give the executing officer carte blanche to seize all of the business records of the corporation spanning a four year period. Crim. No. 80-416, slip op. at 3; see also 687 F.2d at 752.
\textsuperscript{17} 687 F.2d at 752.
\textsuperscript{18} \textit{Id}.
\textsuperscript{19} \textit{Id}. \textit{See supra} note 8. Appellant's contention concerned the use of such words in the warrant as "folders," "general ledgers," and "checks." 687 F.2d at 752.
terms were curtailed by language in the warrant which referred to the alleged crimes.\textsuperscript{20} The government further emphasized that even if the court were to find that fourth amendment requirements were absent due to the warrant being overly expansive, total suppression of the evidence was improper because portions of it were indeed valid.\textsuperscript{21} Appellant's final argument was that the affiant had established sufficient probable cause to justify seizure of all the records of Landmark Builders, Inc..\textsuperscript{22} In response, Christine and Grabosky stated that the district court was correct in holding that the search warrant was improperly broad. In addition, they asserted that the affidavit lacked probable cause, thus rendering the search warrant invalid as being a general warrant.\textsuperscript{23}

Writing for the majority,\textsuperscript{24} Judge Becker first addressed the issue of whether the search warrant was a general warrant,\textsuperscript{25} con-
including that the warrant was not. The court based its finding on the fact that the warrant did not place with the executing officers unrestrained discretion in their search for evidence.\(^6\) Rather, by instructing that all described items be seized, the magistrate determined what was to be taken.\(^7\)

In reviewing the lower court's holding, Judge Becker indicated that the district court had not examined the case in terms of a general warrant but had correctly addressed it by balancing the degree of probable cause created by the affidavit against the breadth of the search and seizure authorized by the warrant.\(^8\) He stated that, in accordance with the fourth amendment, a magistrate may not authorize a search and seizure which exceeds the degree of probable cause exhibited to him.\(^9\) Judge Becker noted that although the district court rejected the premise that the war-

26. 687 F.2d at 753. The court noted that the wording in the warrant was both of a specific and inclusively generic nature, thus controlling the inspector's discretion. Id. Accord In Re Application of Lafayette Academy, Inc., 462 F. Supp. 767 (D.R.I. 1978), aff'd on other grounds, 610 F.2d 1, 5-6 (1st Cir. 1979) (the court found that only some of the material had been particularly described, and, thus, the district judge suppressed all of the items seized pursuant to the warrant; this holding was affirmed on appeal, the issue of severability not addressed by the court).

27. 687 F.2d at 753. The court also stated that the last clause in the warrant, "all other documents, papers, instrumentalities and fruits of the crime," was not indicative of a general warrant. Id. See supra note 8. See also Andresen v. Maryland, 427 U.S. 463, 470-77, 479 (1976) (the Court found that the phrase "together with other fruits, instrumentalities, and evidence of crime at this [time] unknown" was not general as it related to the particular crime of false pretenses).

28. 687 F.2d at 753.

29. Id. "[A]n otherwise unobjectionable description of the objects to be seized is defective if it is broader than can be justified by the probable cause upon which the warrant is based." See 2 W. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 4.6, at 97 (1978) [hereinafter cited as LaFave]. See also Lo-Ji Sales, Inc. v. New York, 442 U.S. 319 (1979) (reversing a denial of motion to suppress evidence which had been seized pursuant to a warrant akin to a general warrant); United States v. Roche, 614 F.2d 6, 7 (1st Cir. 1980) (finding a warrant permitting a search and seizure for all "records" too broad in nature); Montilla Records of Puerto Rico, Inc. v. Morales, 575 F.2d 324, 327-28 (1st Cir. 1978) (Cambell, J., concurring) (holding that a search warrant which authorized seizure of "sound recordings including but not limited to records, cartridges and cassettes" protected under the Copyright Act did not satisfy the particularity requirement of the fourth amendment and, thus, the seizure was not a valid one); VonderAhe v. Howland, 508 F.2d 364, 368-70 (9th Cir. 1974) (directly comparing the seized evidence against the probable cause established, the court suppressed those items which exceeded the established probable cause); United States v. Adler, 393 F. Supp. 707 (E.D. Pa. 1975) (concluding that the information contained in the affidavit failed to establish the requisite probable cause upon which a warrant could be properly issued). See generally S. SALTZBURG, AMERICAN CRIMINAL PROCEDURE: CASES AND COMMENTARY, 56-57 (1980) [hereinafter cited as SALTZBURG]; Mascolo, Specificity Requirements for Warrants under the Fourth Amendment; Defining the Zone of Privacy, 73 DICK. L. REV. 1, 4-6 (1968).
rant was general in nature, it held that the warrant was, nevertheless entirely invalid. In reiterating the district court's treatment of the case, Judge Becker suggested that had the district court considered redacting the search warrant in order to preserve the valid clauses and to permit submission of the evidence seized under those clauses, it may have reached a different conclusion. Judge Becker noted, however, that the district court's findings were understandable given that there existed no concise rule in the Third Circuit concerning redaction at the time of the hearing.

Judge Becker explained that redaction permits a court to sever a search warrant, striking those clauses which are invalid due to lack of probable cause, while preserving those valid clauses of the warrant which satisfy the fourth amendment. Items seized pursuant to valid sections, therefore, need not be suppressed, while evidence seized pursuant to invalid sections is necessarily suppressed.

Addressing precedent in the Third Circuit, the court stated that this was the first time it had evaluated the principle of redaction in depth. In two prior conflicting district court opinions, United States v. Burch and United States v. Giresi, which provided the only discussion on redaction in the Third Circuit, the court of appeals affirmed both by judgment order. Contrary to Burch, in Giresi, Judge Coolahan stated that, as a matter of law, redaction was an acceptable principle. Therein, the court acknowledged that Burch and two other district courts held otherwise, but factually distinguished those cases on the basis that the warrants in question there were dangerously similar to general warrants.

30. 687 F.2d at 753.
31. Id. at 753-54.
32. Id. at 754. The court noted that each section of the warrant must be examined individually in order to evaluate whether it is unjustified given the probable cause established or whether it is improperly general. Id.
33. Id.
34. Id.
35. 432 F. Supp. 961 (D. Del. 1977), aff’d mem., 577 F.2d 729 (3d Cir. 1978). Therein, the court refused to accept the government’s argument for partial suppression. See infra notes 109-10 and accompanying text.
37. 687 F.2d at 755.
38. Id. See In Re Application of Lafayette Academy, Inc., 462 F. Supp. 767 (D.R.I. 1978), aff’d on other grounds, 610 F.2d 1 (1st Cir. 1979), supra note 26; United States v. Hatfield, 461 F. Supp. 57 (E.D. Tenn. 1978), rev’d on other grounds, 599 F.2d 759 (6th Cir. 1979) (holding that the warrant was overbroad in character and, therefore, all evidence seized must be suppressed).
39. See Giresi, 488 F. Supp. at 460. See also supra note 25.
In *Christine*, Judge Becker stated, however, that factual distinctions would not justify avoiding the criticisms concerning redaction made by the *Burch* court and that the two holdings in the Third Circuit concerning the constitutional validity of redaction were directly contradictory to each other. Judge Becker also noted that despite the acceptance of redaction in numerous state court proceedings, support and usage of the principle have generally been absent in federal courts. As such, he emphasized the significance of the issue to the "administration of criminal justice" in the Third Circuit, hence necessitating an examination of the constitutionality of redacting warrants.

The court prefaced its discussion by noting that an historical analysis revealed that indiscriminate searches and seizures conducted in the colonies were the motivating force behind the promulgation of the fourth amendment. The court indicated that the presence of the warrant clause reflected the necessary balance between the government's need to enforce its laws and the colonists' disdain for general searches and seizures.

Judge Becker wrote that courts have distinguished at least five separate, but related, purposes utilized by the warrant clause. First, a requisite showing of probable cause as a precedent to a warrant's issuance creates a symmetry between the privacy rights of the citizen against unfounded accusations of crime and the community's interest in upholding the law. Second, the clause protects individual privacy by precluding law enforcement officers from acting capriciously in their efforts to impede crime, and by requiring an independent and neutral judicial officer to weigh the citizen's privacy right against the needs of the law. Third, the

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40. 687 F.2d at 755. The court again noted the decision in *VonderAhe*, 508 F.2d 364 (9th Cir. 1974), wherein the court did not redact the warrant but instead matched the material seized directly against the scope of probable cause established. See infra notes 74-77 and accompanying text.

41. 687 F.2d at 755.

42. *Id.* See *infra* notes 93-100 and accompanying text.

43. 687 F.2d at 756.

44. *Id.* See *Brinegar v. United States*, 338 U.S. 160 (1949). The court therein stated that the warrant clause protects an individual's interest "in being safeguarded from rash and unreasonable interferences with privacy and from unfounded charges of crime" while permitting "fair leeway for enforcing the law in the community's protection." *Id.* at 176.

45. See *Johnson v. United States*, 333 U.S. 10 (1948) (officers' search on their own volition and without a warrant in their attempt to stop crime was unconstitutional as an individual's right to privacy may be abridged only by an impartial judicial officer, not a police officer).

46. See *McDonald v. United States*, 335 U.S. 451, 455 (1948) (search conducted by police without a warrant violated fourth amendment rights as a magistrate's approval is
warrant’s provisions act as a limitation on the extent of the intrusion, with the particularization requirement rendering general warrants impossible. Fourth, the warrant acts as a notification device that the citizen’s privacy right must yield to the public’s need to have the law enforced. In addition, the terms of the warrant serve to inform the individual that the officer’s actions are lawful, and the extent to which the officer may search and seize. Finally, the procedure for obtaining a warrant provides a valuable transcript for subsequent judicial review as the viability of using a warrant is dependent upon the information given to the magistrate. Absent such a condition precedent, the warrant requirements of the fourth amendment would be useless.

necessary to “weigh the need to invade that privacy in order to enforce the law”).

47. See Walter v. United States, 447 U.S. 649 (1980) (the Court stated that search warrant’s provisions determine and limit the scope of the officer’s search). See also United States v. Poller, 43 F.2d 911, 913 (2d Cir. 1930) (the searching officer’s powers to search are limited given that it is “unreasonable to suppose that an arrest should give wider latitude of search than a search warrant itself”).

48. See Marron v. United States, 275 U.S. 192 (1927). The Court therein found that the requisite particularity requirement renders general searches impossible, thus preventing an officer from seizing one item when the warrant particularly describes another. Id. at 196. See also United States v. Jacob, 657 F.2d 49, 52 (4th Cir. 1981), cert. denied, 102 S. Ct. 1435 (1982), where the court stated, “we think [the warrant] was sufficiently particularized with respect to the items to be seized. We are further of the opinion that the challenged phrase should properly be treated as merely superfluous . . . .” 657 F.2d at 52. See also United States v. Torch, 609 F.2d 1088 (4th Cir. 1979), cert. denied, 446 U.S. 957 (1980) (a warrant permitting seizure of items relating to the distribution or promotion of “lewd, lascivious, and filthy films” was found to be sufficiently specific and, therefore, constitutional).

49. See Steagald v. United States, 451 U.S. 204, 226 (1981) (Rehnquist, J., dissenting) (the warrant “assures the occupant that the police officer is present on official business”); In Re Application of Lafayette Academy, Inc., 610 F.2d 1, 5 (1st Cir. 1979) (the warrant notifies “the person subject to the search and seizure what the officers are entitled to take”); United States v. Johnson, 541 F.2d 1311, 1315 (8th Cir. 1976) (the individual is provided with notification that the officer’s presence is lawful); United States v. Marti, 421 F.2d 1263, 1268 (2d Cir. 1970), cert. denied, 404 U.S. 947 (1971) (a search warrant functions to inform an individual that the officer is empowered to search and seize); United States v. LaMonte, 455 F. Supp. 952, 960 (E.D. Pa. 1978) (the search warrant provides the subject with the knowledge that the executing officer is legally permitted to search).

50. See United States v. Chadwick, 433 U.S. 1 (1977) (citing Camara v. Municipal Court, 387 U.S. 523 (1967)). In Chadwick, the Court found that a warrant provides insurance to the person whose property is searched or seized that the officer executing the warrant is authorized to search, that there exists a need for his actions, and that his powers to search are limited. Id. at 9.

51. 687 F.2d at 756-57.

52. See Whiteley v. Warden, 401 U.S. 560 (1971). See also SALTZBURG, supra note 29 at 57. Therein, the author stated: [P]robable cause is to be shown by persons willing to swear or affirm the truth of their statements and, thus, to be held accountable for their presentations. In addition, the applicant for the warrant is committing to a public record the information
The majority indicated that despite the availability of a civil
damages action to individuals whose fourth amendment rights
have been violated, the predominant mode for effectuating one's
rights is via the judicially created exclusionary rule. The majority
relied on the approach presented in Stone v. Powell, wherein the
court stated that the foremost justification for the rule is its deter-
rent effect on police action which violates the fourth amendment.
They pointed out that the rule has continually been utilized by
federal appellate courts to suppress only that evidence illegally
seized in instances in which an officer, acting pursuant to a val-
didly issued warrant, seizes an item which is not authorized. Hence, the exclusionary rule acts as an effective balancing tool by

that is known before the search so that, after the search takes place, there is no con-
fusion between the ex-post and ex-ante positions of the applicant.

*Id.*

53. 687 F.2d at 757. See Monell v. Dep't of Social Services, 436 U.S. 658 (1978) (local governing bodies could be subject to damages actions under section 1983 as "persons" where constitutional deprivations are being alleged against them); Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971) (federal agents' unconstitutional conduct in engaging in an unlawful search and seizure gave rise to an action for damages by the injured party); Monroe v. Pape, 365 U.S. 167 (1961), overruled on other grounds, 436 U.S. 658 (1978) (police officers' performance in an illegal search and seizure entitled petitioners to a damages action).

54. 687 F.2d at 757.


56. 687 F.2d at 757. An additional consideration which the Court observed in Dunaway v. New York, 442 U.S. 200 (1979), was that convictions which were based on illegally secured evidence could "compromise the integrity of the courts." *Id.* at 218.

57. 687 F.2d at 757. Defendants in such cases have continually argued that all evidence seized under the warrant should be suppressed. *Id.* It is noteworthy that some courts have allowed submission of evidence not described in the warrant based on the "plain view" exception. *Id.* at n.10. See United States v. Scarfo, 685 F.2d 842, 845 (3d Cir. 1982) (Gibbons, J., dissenting) (the plain view exception may be employed when the officer is lawfully on the property, "the discovery must have been inadvertent, and the incriminating nature of the item must have been immediately apparent"); United States v. Crouch, 648 F.2d 932, 934 (4th Cir.), cert. denied, 454 U.S. 952 (1981) (officers' reading of letters in the process of conducting their search and subsequent seizure thereof was proper as the perusal of the letters "revealed no more than would have been evident to anyone else with normal powers of observation"); United States v. Ochs, 595 F.2d 1247 (2d Cir.), cert. denied, 444 U.S. 955 (1979) (the court held that a police officer was entitled to search defendant's car on the basis of probable cause which existed at the time of the arrest).

58. 687 F.2d at 757. See, e.g., United States v. Dunloy, 584 F.2d 6, 11 n.4 (2d Cir. 1978) (noting that items seized outside the scope of the warrant are subject to suppression); United States v. Forsythe, 560 F.2d 1127, 1134 (3d Cir. 1977) (holding that officers' seizure of materials not described in the warrant did not render the whole search illegal and that partial suppression was appropriate); United States v. Mendoza, 473 F.2d 692, 696 (5th Cir. 1972) (finding that seizure of evidence not within the boundaries of the warrant did not affect the admissibility of legally seized evidence). See also Andresen v. Maryland, 427 U.S. 463, 482 (1976).

59. 687 F.2d at 757. In Stone v. Powell, 428 U.S. at 488-89, the Court viewed the
weighing the heavy cost to the community when illegally seized evidence is suppressed against the goal of deterring police misconduct. 60

Distinguishing the exclusionary rule from situations in which a general warrant is present, the court emphasized that any evidence seized pursuant to a general warrant must be suppressed, 61 as such a warrant, clearly in contradiction to fourth amendment objectives, would result in an intolerable cost to society. 62 Similarly, a warrant which contains particular descriptions but which lacks prior showing of probable cause must also be invalid given the necessary interdependency between the two. 63

Addressing the issue at bar, the majority ruled that redaction of a warrant which contains valid severable portions is compatible with all five purposes of the warrant requirements. 64 First, a search and seizure performed pursuant to the warrant’s valid clauses is supported by the underlying probable cause which justifies the public need for law enforcement. 65 Second, as the warrant to be redacted is one which was properly issued, the goal of placing a neutral magistrate between the citizen and the enforcing officer has

“pragmatic analysis of the exclusionary rule’s usefulness” as being one in which a balancing occurs between the private interests protected by the exclusion against the public interest accomplished by admission of the evidence. Id. See also United States v. Calandra, 414 U.S. 338 (1974) (a witness in a grand jury proceeding was not permitted to refuse to answer questions based on illegally seized evidence because the public benefit outweighed any potential deterrent effects which may occur by excluding evidence); Alderman v. United States, 394 U.S. 165 (1969) (only those whose rights are violated by an unlawful search and seizure may obtain benefits of the rule as the public interest in prosecuting criminals outweighs the possible deterrence achieved by extending the rule’s benefits to those who are not directly injured by the search); Walder v. United States, 347 U.S. 62 (1954) (allowing illegally seized evidence to impeach only collateral testimony of the criminally accused, but not admissible to impeach testimony made in denial of the offense with which the defendant was charged).

60. 687 F.2d at 757. Looking to United States v. Russo, 250 F. Supp. 55 (E.D. Pa. 1966), the court pointed out that if a search was merely a general, exploratory one and not pursuant to the search warrant, the entire search would seem to be invalid. Id. at 758.


62. 687 F.2d at 758. The court stated that there exist no criminal cases which hold to the contrary. Id.

63. Id. As Justice Stevens stated in Marshall v. Barlow’s, Inc., 436 U.S. 307 (1978) (dissenting opinion), “[t]he requirement that a warrant only issue on a showing of particularized probable cause was the means adopted to circumscribe the warrant power.” Id. at 328 (Stevens, J., dissenting). See 687 F.2d at 758 n.12.

64. 687 F.2d at 758. See United States v. Doe, 703 F.2d 745, 750 (3d Cir. 1983) (the court approvingly referred to the five functions reviewed by the Christine court).

65. 687 F.2d at 758.
been satisfied.66 Third, although the terms of the warrant may outweigh the probable cause established, redaction serves to preserve that evidence seized pursuant to the valid particularly described portions of the warrant without ratifying those invalid general phrases.67 Fourth, with respect to the valid clauses in the warrant preserved by redaction, the individual is notified that the executing officer is acting within his lawful authority, that there is a need for the search, and that his powers are limited.68 Last, redaction does not impede the existence of a record susceptible to later judicial review.69

Applying the logical analysis motivating the exclusionary rule to the issue of redaction, the court ruled that redaction not only satisfies the warrant clause and law enforcement objectives, but it also evades the social cost incurred in suppressing validly seized evidence.70 Furthermore, suppressing such evidence results in a high societal cost so that the lesser benefits derived by the fourth amendment are outweighed, thus rendering total suppression unjustifiable.

In its analysis, the court reviewed the Delaware district court's opinion in United States v. Burch,71 where the district court refused to treat the search as two separate ones.72 Judge Becker suggested that the Burch court's disdain for redaction may have been partially grounded in the second reason behind the exclusionary rule, that redaction will impair the integrity of the courts. This

66. Id.
67. Id.
68. Id.
69. Id.
70. Id. The majority noted that other courts have recognized that use of redaction is analogous to situations in which evidence has been seized because of overreaching of a warrant's authorization. In both situations, only the items seized under clauses unsupported by probable cause have been suppressed. Id. See United States v. Cook, 657 F.2d 730 (5th Cir. 1981), supra note 25; United States v. Giresi, 488 F. Supp. 445 (D.N.J. 1980), aff'd mem., 642 F.2d 444 (3d Cir. 1981), cert. denied, 452 U.S. 939 (1981), supra notes 36-39 and accompanying text; People v. Mangialino, 75 Misc. 2d 698, 348 N.Y.S.2d 327 (1973), infra note 102.
72. 687 F.2d at 759. The Burch court's reasoning, according to Judge Becker, would require either that all evidence be suppressed or that illegal seizures be ignored. Judge Becker reasoned that neither approach is acceptable as the former renounces the pragmatic basis found in the exclusionary rule, while the latter needlessly forsakes the individual's rights for those interests of the law enforcement. He concluded, therefore, that the solution is to apply redaction principles. Id.
fear, Judge Becker asserted, is more fictional than real.\textsuperscript{73}

The majority found that the \textit{Burch} court's concern with a fiction which would cause courts to ignore fourth amendment principles was more accurately associated with the position stated in \textit{VonderAhe v. Howland}.\textsuperscript{74} Therein, the Court of Appeals for the Ninth Circuit found that a reviewing court need not consider the warrant, and, thus, the probable cause established by the magistrate and the scope of the search and seizure thereby authorized. Rather, the court should review \textit{de novo} the government's case for a search and seizure.\textsuperscript{75} This stance, the majority asserted, causes the magistrate's mediation between the citizen and the state, to act merely as a formality.\textsuperscript{76} In addition, the majority emphasized that in its failure to require that a warrant be significantly valid, as is demanded by redaction, the \textit{VonderAhe} approach was inconsistent with the notification principle of the warrant clause because it failed to insure the individual that the executing officer was empowered to search.\textsuperscript{77}

Concluding that redaction is an effective constitutionally viable principle,\textsuperscript{78} the court stated that this was an appropriate case to apply principles of redaction. Although it had both the warrant and affidavit in its possession, thereby enabling it to redact the warrant, the court ruled that such a task should be undertaken by the district court.\textsuperscript{79} The court opined that the lower court should

\textsuperscript{73} \textit{Id.} The \textit{Burch} court emphasized that redaction does not condone the admission of illegally seized evidence. In addition, if the warrant as a whole is general in nature or is an abuse of the prospective use of redaction, the entire search and seizure may be deemed illegal. \textit{Id.}

\textsuperscript{74} \textit{Id.} In \textit{VonderAhe}, 508 F.2d 364 (9th Cir. 1974), the court matched the evidence seized against the underlying probable cause in the warrant, ignoring the terms of the warrant and, thus, the import of the warrant clause to the scheme of the fourth amendment. \textit{Id.}

\textsuperscript{75} 687 F.2d at 759.

\textsuperscript{76} \textit{Id.} This intervention is designed to assess the state intrusion on the privacy of the citizen. \textit{Id.}

\textsuperscript{77} \textit{Id.} Stressing the flaws in the \textit{VonderAhe} decision, the majority stated that a person could be served with an entirely invalid warrant and yet illegally seized evidence may be admitted on the basis of an affidavit which the individual never saw until after the completion of the search. \textit{Id.}

\textsuperscript{78} \textit{Id.} The court further indicated that the district court's failure to consider redaction as an alternative to suppressing all the evidence was because it lacked clear direction on the issue. Had it reviewed the principle, the district court might have ruled differently. \textit{Id.}

\textsuperscript{79} \textit{Id.} The court reasoned that the appeal was not a post-conviction one and that the case had to be remanded in any event for further proceedings. \textit{Id.} The majority also held that, although it did not address all the issues raised on appeal, appellee's contention that the warrant was invalid based on a test established in \textit{Spinelli v. United States}, 393 U.S. 410 (1969), was without merit. In \textit{Spinelli}, the Court held that an informant's tips must be tested for creditability and trustworthiness. The \textit{Christine} court held that Lake and Keiser
not direct its attention to the sum of the materials authorized by the warrant to be seized, but should instead review each severable clause in order to evaluate if each is supported by probable cause. The court thus stated that only those clauses which lack such support should be invalidated.\(^{80}\)

The court further suggested that the district court, in its review of the suppression motion, should bear in mind that the warrant herein authorized a search and seizure of mere evidence.\(^{81}\) Therefore, probable cause must be reviewed in terms of cause to believe that the desired evidence will assist in obtaining a particular apprehension or conviction.\(^{82}\) In addition, the court observed that the reviewing court must not approach the case in a "hypertechnical manner," and affidavit and warrant are to be tested in a logical and realistic manner.\(^{83}\) Indeed, the fourth amendment neither prohibits a search because it cannot be executed with surgical exactness, nor does it forbid seizure of evidence because it may contain additional information not within the purview of the warrant.\(^{84}\)

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\(^{80}\) See United States v. Newman, 685 F.2d 90, 92 (3d Cir. 1982) (the warrant's authorization to search for a shotgun, ammunition, and papers concerning the gun permitted a search of containers in which the items might reasonably have been placed).

\(^{81}\) Id. See Warden v. Hayden, 387 U.S. 294, 307 (1967) (the value of the probable cause must be examined in order to determine if the evidence sought will assist in the apprehension and conviction of criminals and, thus, police purposes must be considered).

\(^{82}\) Id. See United States v. Beusch, 596 F.2d 871 (9th Cir. 1979) (the court stated that the affiant's information was of sufficient detail to permit the magistrate to infer the source's identity, explicit identification being unnecessary to sustain the affidavit's validity). The Christine court noted that this flexibility is useful in cases concerning complex schemes extending over many years that can be disclosed only by scrutinizing intricate financial records. 687 F.2d at 760. In addition, the majority referred to the Supreme Court's recognition of the accompanying problems of white collar crime which must be accommodated in Andresen v. Maryland, 427 U.S. 463, 480 n.10 (1976). In Andresen, the Court disagreed with petitioner's assertion that the warrant was a general one. It found that the illegal real estate scheme was so complex that it required a piecing together of many bits of evidence in order to prove its existence. Displayed singly, the evidence would have been of little worth; the Andresen Court concluded that the intricacy of an illegal scheme may not act as a barrier to detection when the state has established probable cause to believe that a
Hence, generic descriptions in a warrant are acceptable when specific classifications are not practical.\textsuperscript{86} Similarly, in the course of the search, some innocuous documents will undoubtedly be examined in order to evaluate whether they are among those items authorized to be seized.\textsuperscript{86} Advising the lower court to bear in mind the content of its opinion, the court ruled that the district court’s order be vacated and the cause remanded for reconsideration.

In his concurring opinion, Judge Gibbons stated that although he generally agreed with the court, he was hesitant about portions of the majority’s analysis.\textsuperscript{87} He skeptically agreed that deterrence of police misconduct as a rationale for the exclusionary rule is relevant when evidence is seized pursuant to a search and seizure which lacks merit. He asserted, however, that when a judicially authorized warrant is duly executed, this deterrence rationale is completely illogical.\textsuperscript{88} Judge Gibbons further recognized that when a court suppresses evidence,\textsuperscript{89} in effect, it is wielding appellate review over the judicial function of the issuing magistrate. Thus, the fourth amendment provides the courts with the affirmative obligation to prohibit the dissemination of information which is entitled to remain private. He further found that the majority’s use of re-daction was entirely compatible with his stance that illegally seized evidence is a fourth amendment violation independent of and distinct from any violation committed by the police.\textsuperscript{90}

In conclusion, Judge Gibbons proposed that on remand the district court’s analysis concerning what evidence should be suppressed should extend beyond that of matching the seized evidence

\textsuperscript{85} 687 F.2d at 760. See, e.g., United States v. Cook, 657 F.2d 730 (5th Cir. 1981); United States v. Cortellesso, 601 F.2d 28, 31 (1st Cir. 1979), \textit{cert. denied}, 444 U.S. 1072 (1980) (the court found that two tests must be satisfied before generic descriptions will be sustained in a warrant: “the evidence presented \ldots must establish that there is reason to believe that a large collection of similar contraband is present on the premises to be searched, and \ldots the evidence \ldots must explain the method by which the executing agents are to differentiate the contraband from the rest of defendant’s inventory”).

\textsuperscript{86} 687 F.2d at 760.

\textsuperscript{87} Id. (Gibbons, C.J., concurring).

\textsuperscript{88} Id. at 761 (Gibbons, C.J., concurring). Judge Gibbons stated that when a police officer obtains a warrant from a magistrate and acts in accordance with its terms, he has reasonably performed his duties. \textit{Id}.

\textsuperscript{89} Id. A suppression occurs either because the items to be searched for were inadequately particularized or because the affidavit prompting the warrant was insufficient. \textit{Id}.

\textsuperscript{90} Id. The Scott affidavit permitted entry to the property and seizure of some property which lost its shield of privacy and, therefore, to this extent there was no invasion of privacy. Conversely, if property is seized absent underlying probable cause, there has been an invasion of privacy; an act the court cannot condone. \textit{Id}.
against the probable cause showing. In addition, he maintained, it should evaluate whether additional evidence seized was permissible under the plain view doctrine.

Historically, the oppressive nature of searches and seizure conducted in England and the colonies motivated the founding fathers to frame the fourth amendment as a constitutional safeguard against invasions of privacy. In 1662, the English Parliament authorized writs of assistance in order to decrease the smuggling which was occurring in England. The writs did not require a showing of probable cause prior to their issuance, nor was there any limitation placed on the extent to which an officer could conduct a search.

Thirty-four years later, the writs were ordered for use in the colonies. Pervasive use of such searches and seizures effectively caused judicial control to be replaced by police control. Resistance by the colonists against the writs was evidenced in 1761 when James Otis, an attorney, denounced the hated writs of assistance, a disdain which was further exemplified by several colonies.

91. Id. He noted that the executing officers were acting lawfully in performing their duties of perusing the company's books and records pursuant to the valid portions of the warrant. Id.

92. Id. The plain view doctrine was reviewed in Coolidge v. New Hampshire, 403 U.S. 443 (1971), where Justice Stewart found that items not mentioned in a search warrant which were found by an officer in the course of his search may, under certain circumstances, be admissible.

93. See W.E. RINGEL, SEARCHES & SEIZURES ARRESTS AND CONFESSIONS, § 1 at 2 (1972) where it is stated:

The adoption of this Amendment, it was held, was inspired by the desire of the founding fathers and their constituents to establish real safeguards against a recurrence of the arbitrary searches and seizures that occurred in the Colonies prior to the Revolution and which even continued in England after that time.

Id.


95. Id.

96. Id. See Payton v. New York, 445 U.S. 573 (1980) (such warrants, akin to general warrants, were known in the Colonies as "writs of assistance"); Boyd v. United States, 116 U.S. 616 (1886) (the writs were easily issued and provided customs officials with unlimited authority to search for goods imported in violation of British tax laws).

97. See Henry v. United States, 361 U.S. 98, 100 (1959) ("the general warrant . . . and the writs of assistance . . . both perpetuated the oppressive practice of allowing the police to arrest and search on suspicion"); Boyd v. United States, 116 U.S. at 625 (the writs caused "the liberty of every man [to be] in the hands of every petty officer").

98. Bloom, supra note 94, at 694. Otis asserted that the writs were a violation of "one of the most essential branches of English liberty [which] is the freedom of one's house. A man's house is his castle . . . . This writ, if it should be declared legal, would totally annihilate this privilege." Id. at 695.
adopting amendments proscribing these general warrants. In 1791, the founding fathers remedied this flagrant abuse of power and the fourth amendment became an integral component of the United States Constitution.

The historical concern with an individual's right to privacy has been a persistent preoccupation of the courts. Unlike situations in which a search warrant was valid on its face and evidence obtained exceeded that described in the warrant, Christine involved evidence that was seized pursuant to a search warrant which contained both valid and invalid portions. Although state courts have favorably applied redaction in these instances, historically, federal courts have generally not utilized this alternative to total suppression.

99. See W. E. Ringel, supra note 93, § 2 at 3. One such provision was included in the Massachusetts Constitution of 1780 which provided that:

Every subject has a right to be secure from all unreasonable searches, and seizures, of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath of affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure: and no warrant out to be issued but in cases, and with the formalities prescribed by the laws.


100. See Dunaway v. New York, 442 U.S. 200, 213 (1979) (the colonists' disdain for the general warrants was "a prime motivation for the adoption of the fourth amendment"). See generally N. Lasson, The History and Development of the Fourth Amendment to the United States Constitution, 13-78 (1937).

101. This distinction is important because in the former situation courts have had little difficulty in suppressing evidence which exceeded the warrant's boundaries. See In Re Search Warrant Dated July 4, 1977, 667 F.2d 117 (D.C. Cir. 1981) (search warrant held valid, with only evidence seized outside of the warrant illegal and, therefore, suppressed).

102. See Aday v. Superior Court of Alameda County, 55 Cal. 2d 789, 362 P.2d 47, 13 Cal. Rptr. 415 (1961). Therein, the court (in the leading state case) held that defective portions of the search warrant should not render the entire warrant invalid. Instead, only evidence seized pursuant to such invalid clauses should be suppressed. Emphasizing that redaction would not compromise fourth amendment requirements, the court wrote that "an abuse of the warrant procedure of course could not be tolerated." 55 Cal. 2d at 797, 362 P.2d at 52, 13 Cal. Rptr. at 420. See also People v. Mangialino, 75 Misc. 2d 698, 348 N.Y.S.2d 327 (1973) (no reason existed to totally suppress illegally seized evidence when severance can save a partially valid warrant); Walthall v. State, 594 S.W.2d 74 (Tex. Crim. App. 1980) (holding that evidence seized pursuant to unconstitutionally general clauses warranted partial suppression). But see Kinsey v. State, 602 P.2d 240 (Okla. Crim. App. 1979) (finding that although some items were specifically named in the warrant, it was general in nature, and, therefore, all items were suppressed, even those specifically mentioned in the warrant).

In 1975, the Ninth Circuit, in *VonderAhe v. Howland*,\(^1\) was presented with a situation similar to that in *Christine*.\(^2\) Although the court suppressed only part of the evidence,\(^3\) it declined to sever the warrant. Rather, it balanced the seized evidence directly against the probable cause established, excluding any evidence which exceeded the probable cause.\(^4\) The court emphasized that allowing total suppression would result in inequity and, therefore, partial suppression was a viable solution.\(^5\) Two years later, the District Court for the District of Delaware denied the government’s request for redaction in *United States v. Burch*,\(^6\) finding that such an application would violate those interests protected by the fourth amendment; accordingly, all the items seized were suppressed.\(^7\)

In 1981, *Burch*, which had been affirmed by the Third Circuit, was rejected by the same circuit in *United States v. Giresi*.\(^8\) In *Giresi*, the Third Circuit found that invalid portions of a search warrant did not warrant total suppression of seized evidence unless a warrant was facially general.\(^9\) Instead, the court concluded, as a

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\(1\) 508 F.2d 364 (9th Cir. 1975).
\(2\) In *VonderAhe*, a warrant was issued to search a dentist’s office after a former employee of the doctor informed the Internal Revenue Service that two sets of records were kept by the office and that only one set had been submitted for a recent audit. Although the Service specifically knew which records it needed, the search warrant contained clauses which were overbroad and non-specific. *Id.* at 369.

\(3\) *Id.* at 372.

\(4\) It is important to emphasize that the *VonderAhe* court’s approach of directly comparing the seized material against the probable cause differs from the practice of redaction. Redaction occurs when a court first examines the warrant, severing the valid and invalid portions, thereafter categorizing the seized items in accordance with the warrant’s clauses, suppressing only that evidence seized pursuant to invalid portions. 687 F.2d at 754.

\(5\) 508 F.2d at 372. The court stated, “if the facts are . . . that the taxpayers . . . deliberately concealed income and failed to pay taxes thereon, it would seem to be the height of inequity for the courts to enable them to profit thereby.” *Id.*

\(6\) 488 F. Supp. 961 (D. Del. 1977), aff’d mem., 577 F.2d 729 (3d Cir. 1978). In *Burch*, the warrant authorized a search and seizure of “automobile tires . . . and other unknown articles which [were] believed and reported to be stolen from Penn Central Railroad.” *Id.* at 962. The government sought admittance of the tires only and suppression of the rest. *Id.* at 964.

\(7\) *Id.* Therein, the government requested the court to find that there had been two searches: one pursuant to the specific item mentioned in the warrant (the tires), and the other an invalid search for “other unknown items.” *Id.* Judge Stapleton rejected this approach, holding, “there was only one search, that search [which] unlimited in its scope as it was, violated the fourth amendment.” *Id.*


\(9\) 488 F. Supp. at 459. Although the court distinguished *Burch* by asserting that the
matter of law, that the practice of redaction was fully consistent with the spirit and purpose of the fourth amendment.\textsuperscript{113}

In the same year, the Fifth Circuit, in \textit{United States v. Cook},\textsuperscript{114} affirmatively addressed the issue of redaction, finding that the district court had erred in failing to sever the search warrant. The court emphasized that partial suppression not only effectuated fourth amendment aims, but also acted as an effective deterrent to the improper government practice of failing to particularly describe the terms of a warrant.\textsuperscript{115}

The accepted practice that the existence of a general warrant necessarily prohibits invoking redaction was illustrated by a recent Ninth Circuit decision.\textsuperscript{116} In \textit{United States v. Cardwell}, the court acknowledged that although alternatives to total suppression of wrongfully seized evidence did exist, the warrant therein was not salvageable as it was general in nature.\textsuperscript{117}

The very same day that \textit{United States v. Christine} was decided, The Fifth Circuit, in \textit{United States v. Freeman},\textsuperscript{118} held that a search warrant may, in proper instances, be severed so as to preserve the valid clauses and evidence seized pursuant thereto.\textsuperscript{119}

\begin{footnotes}
\item \textit{Burch} warrant was general in nature and, therefore, redaction was inappropriate, the \textit{Giresi} court did state that the \textit{Burch} court disagreed with the severance doctrines. \textit{Id.} at 460.
\item Id. Judge Coolahan referred to the redaction practice as "severance," stating that it did not contradict "the implied fourth amendment prohibition against general warrants." \textit{Id.}
\item \textit{Id.} 657 F.2d 730 (5th Cir. 1981). In \textit{Cook}, the search warrant authorized a search and seizure of "cassettes onto which . . . copyrighted films . . . ha[d] been electronically transferred and recorded." \textit{Id.} at 732.
\item \textit{Id.} at 735. The court stated:

Items that were not described with the requisite particularity in the warrant should be suppressed, but suppression of all the fruits of the search is hardly consistent with the purpose underlying exclusion. Suppression of only the items improperly described prohibits the government from profiting from its own wrong and removes the court from considering illegally obtained evidence.

\textit{Id.}
\item \textit{Id.} at 78-79. The court premised its stance in support of severability upon a footnote in \textit{Andresen v. Maryland}, 427 U.S. 463 (1976). Although the Supreme Court did not directly address the issue of redaction, in dicta the Court stated, "we observe that to the extent such papers were not within the scope of the warrants or were otherwise improperly seized, the State was correct in returning them voluntarily and the trial judge was correct in suppressing others." \textit{Id} at 482 n.11. It is noted that although the \textit{Christine} court agreed with the \textit{Cardwell} ruling, it did not agree with the Ninth Circuit's view that \textit{Andresen} approved of redaction. United States v. Christine, 687 F.2d at 754 n.5. \textit{See also} United States v. Dunloy, 584 F.2d 6, 11 n.4 (2d Cir. 1978) (interpreting the \textit{Andresen} footnote to mean that partial suppression was an acceptable practice).
\item 685 F.2d at 942 (5th Cir. 1982). Both cases were decided on August 30, 1982.
\item \textit{Id.} at 952. Judge Randall emphasized the logic of applying principles of redac-
\end{footnotes}
Recent Decisions

The warrant in *Freeman* contained portions which were defective on the basis of insufficient probable cause to support a search for items described therein, thus rendering those clauses invalid.\textsuperscript{120} Similar to earlier decisions, the *Freeman* court prefaced its support for redaction by stating that the warrant itself must be compatible with fourth amendment interests, thereby permitting severance to occur while preserving the valid clauses of the warrant.

Most recently, the Third Circuit affirmed the *Christine* court's decision condoning redaction in *United States v. Johnson*.\textsuperscript{121} While acknowledging that redaction is a viable practice, the court again cautioned against its use when a general warrant is present.\textsuperscript{122}

The novelty of redaction as a viable alternative to total suppression is evidenced by the fact that there appears to be scant critique of and commentary concerning the practice. It is noteworthy that redaction has been condoned by Professor LaFave, the often cited commentator of scholarly works concerning the fourth amendment.\textsuperscript{123} In one of his treatises,\textsuperscript{124} he asserted that total suppression was a severe procedure to invoke when a search warrant contained clauses in accordance with fourth amendment requirements as well as clauses which were not.\textsuperscript{125}

It is clear, therefore, that this alternative to total suppression is a recent and conservatively invoked practice. Unlike prior court holdings concerning redaction, the *Christine* decision carefully analyzed and justified its decision by analogizing redaction with the

\textsuperscript{120} Id. The *Freeman* court factually distinguished the prior Fifth Circuit decision in *United States v. Cook*, 657 F.2d 730 (5th Cir. 1981), from the facts in *Freeman*, finding that the warrant used in *Cook* was partially defective because portions offended the particularity requirement of the fourth amendment. Id. Nevertheless, the *Freeman* court found *Cook* to be controlling precedent and, in addition, cited *Aday v. Superior Court of Alameda County*, 55 Cal. 2d 789, 362 P.2d 47, 13 Cal. Rptr. 415 (1961), as being instructive, as well. Id.

\textsuperscript{121} 690 F.2d 60 (3d Cir. 1982).

\textsuperscript{122} Id. at 68 (citing *Christine*, 687 F.2d at 758, for the proposition that general warrants are not tolerable to society, the court stated that use of redaction "makes it more important than ever that general warrants be identified as such").

\textsuperscript{123} See 2 W. LaFAvE, supra note 29, § 4.6, at 111-12 (1978).

\textsuperscript{124} Id.

\textsuperscript{125} Id. The author stated, "it would be harsh medicine indeed if a warrant which was issued on probable cause and which did particularly describe certain items were to be invalidated in toto merely because the affiant and magistrate erred in seeking and permitting a search for other items as well." Id.
exclusionary rule as well as reviewing the compatibility of redaction with the functions of the fourth amendment’s warrant clause. Judge Becker’s review of the exclusionary rule’s goals, that of deterring improper police action as well as upholding the integrity of the judicial system by preventing a conviction based upon illegally seized evidence, well illustrated that partial suppression may be employed without compromising fourth amendment interests. His discussion convincingly showed that the same goals may be effectuated when a warrant is severed pursuant to principles of redaction. The court’s analysis that redaction is consistent with the warrant clause’s five functions is somewhat weak, however, as redaction does not precisely conform to the clause’s fourth function. According to this aim, the warrant is intended to notify the individual, at the time of the search, as to the limits of the officer’s power to search. However, the individual does not know that the warrant contains valid and invalid portions and, hence, he or she believes the limits of the officer’s power to search are greater than they actually are.

The court’s finding that principles of redaction are compatible with the Constitution and are economically beneficial to society illustrates the natural development of redaction as a useful tool in the criminal justice system. The court’s strong support for this practice is tempered when, as had his predecessors, Judge Becker stressed that a search warrant must first satisfy fourth amendment requirements in order to invoke severance as an alternative to total suppression. To this end, the Christine decision is a sound one. Future courts, however, must expound guidelines in order to refine the application of redaction. This is necessary to maintain a balance between societal interests inherent in the criminal justice system and fundamental rights sought to be protected by the fourth amendment.

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126. 687 F.2d at 757.
127. Id. For a discussion of the purposes of the exclusionary rule, see LaFave, The Fourth Amendment In An Imperfect World: On Drawing “Bright Lines” and “Good Faith,” 43 U. PIRRS L. Rev. 307, 316 (1982). Therein, the learned scholar enumerated three aims: (1) the courts do not want to be an accomplice to unconstitutional behavior; (2) by excluding evidence, the public is assured that illegal conduct by the government will not be rewarded, thus, reducing the danger of distrust toward the government; (3) exclusion acts as a deterrent to future illegal searches and seizures. Id. at 316-17. It is because of these purposes that the aforementioned balancing is necessary. Id.
128. 687 F.2d at 756. See supra notes 44-52 and accompanying text.