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11-04-1982 Correspondence from Stevens to White

John Paul Stevens
US Supreme Court Justice

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 4, 1982

Re: 81-430 - Illinois v. Gates

Dear Byron:

In connection with the proposed reargument of this case, a problem has occurred to me concerning both the question that I have proposed and the question that you have framed. In both instances, we are inviting the petitioner to seek reversal on a ground not presented to the lower courts. Is this consistent with our prior practice?

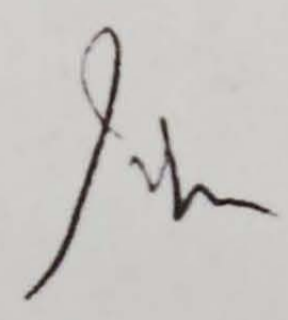
For future reference, you may also be interested in having the citation to the Illinois case holding that Illinois follows an exclusionary rule from which there is no good faith exception. In People v. Castree, 311 Ill. 392 (1924), the Illinois Supreme Court held that evidence obtained by an unlawful search and seizure conducted by State officers must be excluded from Illinois trials. At pages 397-398, the court wrote:

"In People v. Brocamp, 307 Ill. 448, the question was presented for the first time in this court of the admissibility in evidence of stolen property which had been obtained by an unlawful search and seizure conducted by virtue of their office by State officers charged with the prosecution of crime. In that case, without a warrant such officers invaded the defendant's premises and without authority of law searched for and seized certain property alleged to have been stolen. It was a case within the exception mentioned in the Gindrat case, subversive of the defendant's constitutional right, and we held that while the court, on objection to the admission of evidence, will not stop the trial of the case and enter upon the trial of a collateral issue as to the source from which the evidence was obtained, where the defendant makes timely application, before the beginning of the trial, for an order directing the return to him of the property or

papers unlawfully seized, the court should hear and determine the question of the legality of the seizure, and if it erroneously refuses to do so and receives the property in evidence against the defendant over his objection, it is an error for which the judgment of conviction must be reversed." Emphasis added.

Although you have no doubt considered the point, I remain persuaded that the Court would be much better advised to wait for either a federal case or a case in which the issue had been presented at the lower courts before fashioning the good faith exception from the Exclusionary Rule.

Respectfully,



Justice White

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