

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: ARIZONA, Petitioner v. ISAAC EVANS
CASE NO: No. 93-1660
PLACE: Washington, D.C.
DATE: Wednesday, December 7, 1994
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1 IN THE SUPREME COURT OF THE UNITED STATES

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3 ARIZONA, :
4 Petitioner :
5 v. : No. 93-1660
6 ISAAC EVANS :
7 - - - - -X

8 Washington, D.C.

9 Wednesday, December 7, 1994

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States at
12 11:00 a.m.

13 APPEARANCES:

14 GERALD R. GRANT, ESQ., Deputy County Attorney, Phoenix,
15 Arizona; on behalf of the Petitioner.
16 CAROL A. CARRIGAN, ESQ., Phoenix, Arizona; on behalf of
17 the Respondent.

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1 P R O C E E D I N G S

2 (11:00 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 next in Number 93-1660, Arizona v. Isaac Evans.

5 Mr. Grant.

6 ORAL ARGUMENT OF GERALD R. GRANT

7 ON BEHALF OF THE PETITIONER

8 MR. GRANT: Mr. Chief Justice and may it please
9 the Court:

10 In this case, the Arizona supreme court held
11 that where a police officer arrested respondent based on a
12 police computer report of an outstanding misdemeanor
13 arrest warrant, where that warrant had actually been
14 quashed prior to the arrest, that the exclusionary rule
15 required suppression of the evidence seized pursuant to
16 that arrest, regardless of whether the error that resulted
17 in the warrant's continued presence in the computer system
18 was the responsibility of judicial personnel or police
19 personnel.

20 It's the State's position that this holding of
21 the Arizona supreme court is inconsistent with this
22 Court's decisions in Leon, Massachusetts v. Sheppard, and
23 Krull, and the State of Arizona asks this Court to reverse
24 the Arizona supreme court's judgment.

25 Before I get into what I have stated is the main

1 argument --

2 QUESTION: Now, Mr. Grant, do you take the
3 position that the law enforcement agency, the police or
4 the law enforcement agency have no duty or responsibility
5 to keep computer records up to date?

6 MR. GRANT: No, I don't take that position, Your
7 Honor.

8 QUESTION: In this instance, do we know whether
9 the police had any obligation to update their computer
10 records?

11 MR. GRANT: We had an evidentiary hearing on the
12 motion to suppress. The defense position at that hearing
13 essentially was that it made no difference whether the
14 error was judicial or police. The defense developed no --

15 QUESTION: I guess the courts below never
16 actually made a determination, did they --

17 MR. GRANT: The trial judge --

18 QUESTION: -- as to whose error it was?

19 MR. GRANT: -- did not. I believe a fair
20 reading of the -- of the ruling is that he was willing to
21 assume that the error was judicial rather than police, but
22 he made no specific factual finding.

23 QUESTION: Would it be a different case if this
24 listing had continued for several months and had not been
25 corrected? Would there be some point in time when you

1 would think that the blame could shift to the police, and
2 therefore exclusion could be a remedy?

3 MR. GRANT: I believe it would be a different
4 case, yes. I believe in that sort of situation you'd be
5 getting away from what I think is the clear issue here,
6 that the error was the result of judicial personnel, not
7 police personnel.

8 QUESTION: Although we actually don't know that
9 here?

10 MR. GRANT: Well, I think the evidence is clear
11 that that's -- that's why the warrant was still in the
12 computer system here.

13 QUESTION: Mm-hmm. There was a case that we had
14 that predated Leon. It was that Whiteley v. Warden in
15 1971, that said where an arrest warrant is invalid, so is
16 any arrest that results, and the evidence must be
17 excluded. Do you take the view that Leon altered that
18 case and that holding?

19 MR. GRANT: I think -- I think the -- I'm
20 drawing a blank on the name of the case for the moment,
21 but I do not -- I think the result would have been the
22 same under Leon, because in Whiting, I -- or Whiteley,
23 what the officer presented to the judge in order to obtain
24 the warrant was simply a bare bones affidavit, and in Leon
25 this Court noted that that sort of situation would not be

1 the sort that would be justifiable for the good faith
2 exclusion to the -- exception to the exclusionary rule.

3 I also think there's a distinction between
4 Whiteley and this -- in this case, and I think it's
5 followed through in Leon, in that what the Court should
6 look at, in Whiteley you looked at -- the warrant began
7 with an officer instigating it. He went to the judge and
8 obtained the warrant based on a good faith -- excuse me,
9 based on a bare bones affidavit, which Leon has said is
10 something that the Court will not recognize and not allow
11 the officers to rule on.

12 Here, the warrant was initiated by a justice
13 court. The justice court issued this arrest warrant when
14 Mr. Evans failed to appear before the justice court. The
15 justice court put the warrant into the police system for
16 the purpose of getting police assistance and arresting Mr.
17 Evans and bringing him before the court, and it was the
18 justice court's failure, I think that's clear from the
19 record, to make the call to the sheriff's office and have
20 that warrant removed once it was quashed, that is to blame
21 for Mr. Evans' arrest.

22 In that situation, I think the good faith
23 exception does not require -- the good faith exception
24 applies, and the exclusionary rule should not be applied
25 to suppress the evidence.

1 QUESTION: What do you make of the argument
2 which is suggested at -- toward the end of the
3 respondent's brief, based upon, in effect the peculiar
4 risks that computers bring -- I think the argument
5 essentially runs that because of the great currency which
6 computerized information has, the risk of crime is greater
7 than it used to be when we were just dealing with pieces
8 of paper in local police departments?

9 The police have chosen to use computers. Why
10 shouldn't we recognize the risk involved in using them by
11 saying that if you choose to use them, you are going to be
12 strictly responsible for the accuracy of the information
13 in them?

14 MR. GRANT: I would disagree that this Court
15 ought to fashion a rule that the police ought to be
16 strictly responsible. I think the risk issue is something
17 this Court could consider, what sort of procedures do the
18 police have in place to audit them.

19 QUESTION: How do we -- how do we translate the
20 consideration of that risk into a practical rule? What do
21 you think would be an appropriate rule that would reflect
22 that risk?

23 MR. GRANT: I think in a case unlike this, where
24 I think the error is clearly based on judicial error, not
25 police error, I think that what the Court ought to look at

1 is the objective reasonableness of the arresting
2 officers -- of the arresting officers and whether --

3 QUESTION: What about the position of the
4 Arizona supreme court, that seemed to say in this modern
5 age to try to assign fault to a particular piece of the
6 Government doesn't quite work, because it's manipulable
7 where you lodge the computer. You could do it in a civil
8 agency as distinguished from a police authority, so it
9 should be not strict liability.

10 Someone is careless. That seemed to me the
11 position that the Arizona supreme court was taking. It
12 doesn't quite fit when -- in the days when the police
13 officer could call the court and would have gotten
14 accurate information, the shift from those days to the day
15 when you touch a couple of buttons and you get an answer
16 on the screen.

17 Wasn't the Arizona supreme court telling us the
18 fix on the police station as distinguished for the system
19 is wrong for the computer age?

20 MR. GRANT: I don't -- I think that goes beyond
21 what the Arizona supreme court said, and I think what the
22 Arizona supreme court said is inconsistent with what this
23 Court has said in its recent decisions over the last
24 several years interpreting the exclusionary rule, which
25 is, it doesn't apply whenever there's a Fourth Amendment

1 violation, it only applies when the purpose of it is most
2 effectively served.

3 QUESTION: Well --

4 QUESTION: Isn't the purpose here, though,
5 deterrence, deterrence not of errors that crop up or that
6 take a few days to correct, but of carelessness, and the
7 deterrent purpose is to keep official records updated?
8 Isn't it a powerful deterrent to say, if you don't update
9 within a reasonable time, you can't use the evidence?

10 MR. GRANT: That may well be a powerful
11 deterrent. I don't think it's a reasonable deterrent in
12 this case, however.

13 QUESTION: Well, certainly Sheppard and Leon
14 were -- it's not as if they were decided 50 years ago.
15 They were decided, what, 10 years ago? Certainly that's
16 the computer age, isn't it?

17 MR. GRANT: They didn't involve computers, but
18 yes, computers were available.

19 QUESTION: They were available, but not as
20 widely used.

21 But let me ask you this: your test is the
22 objective reasonableness of the arresting officer's
23 conduct, as I understand it and, therefore, if the officer
24 reasonably believed there was an outstanding warrant, the
25 arrest is okay?

1 MR. GRANT: Well, I think that goes a little
2 beyond my position. I think my basic position is, where
3 the error is the result --

4 QUESTION: Well if --

5 MR. GRANT: -- of judicial personnel, not police
6 personnel.

7 QUESTION: If you describe it broadly, as I did,
8 you would have to agree it would really not matter whether
9 the error was committed by a police officer in the home
10 office or by a judicial officer in the home office --

11 MR. GRANT: If the --

12 QUESTION: -- because in either case the officer
13 acted reasonably.

14 MR. GRANT: I think if you get beyond the
15 situation we have in this case, I think what the Court
16 ought to focus on is the arresting officer and any other
17 officers involved in the investigative team, for lack of a
18 better word.

19 QUESTION: But if you don't acknowledge that
20 there's any reason -- if the deterrence focuses on the
21 arresting officer, there's no difference between the
22 cases, and on the other hand, if the deterrence focuses on
23 trying to be sure people keep their records up to date,
24 again there's no difference between the two cases. Why
25 should we draw a difference between a judicial mistake of

1 this kind an executive mistake of this kind?

2 MR. GRANT: I think -- I think the deterrence --
3 if you look at what happened in this case, an officer was
4 presented with a situation where he witnesses one
5 violation of a traffic law.

6 QUESTION: Right.

7 MR. GRANT: He then had a person who admitted a
8 second violation of a Class 1 misdemeanor. He then went
9 to a police computer and obtained confirmation of that
10 violation of the Class 1 misdemeanor, and also obtained
11 information showing that there was an outstanding
12 misdemeanor arrest for his warrant.

13 QUESTION: So his information would be exactly
14 the same whether the misinformation about the warrant,
15 regardless of who was responsible for that misin --

16 MR. GRANT: I agree, and I think his conduct --

17 QUESTION: Well then, my question is, why do you
18 draw a distinction?

19 MR. GRANT: Well, I think the distinction I draw
20 here between judicial and police is that it's -- there's
21 no need to go beyond that in the facts of this case.

22 If the Court wanted to go beyond that, I think
23 the distinction ought to lie with -- where the Court ought
24 to draw the line is with the investigating officers and
25 any other officers involved in the investigative team.

1 QUESTION: Well, Mr. Grant, I thought in U.S. v.
2 Hensley, decided in 1985, that we specifically said the
3 rule is what the police department as a whole knows or
4 doesn't know that counts in determining the Fourth
5 Amendment violation.

6 MR. GRANT: I don't --

7 QUESTION: We expressly said it doesn't rest on
8 what the arresting officer knew or didn't know.

9 MR. GRANT: True.

10 QUESTION: And you're asking us to alter that, I
11 gather.

12 MR. GRANT: No, I'm not. I think what I'm
13 saying is consistent with Hensley.

14 QUESTION: Well, I don't think what you say --
15 at least what you have been saying is consistent with that
16 at all.

17 MR. GRANT: I think in Hensley the Court was
18 faced with a situation where the officer who made the stop
19 did not have the personal knowledge, which is similar to
20 this case. What the Court then looked at in Hensley was
21 the instigating officer, the officer who had the
22 knowledge, and if he -- if the knowledge he had was
23 sufficient to justify the stop, then the stop by the
24 arresting officer was good.

25 In this case, you have an arresting officer who

1 had no knowledge. You don't have an instigating officer.
2 The instigating event came from a judicial --

3 QUESTION: Yes, but you have a system that the
4 police department has invoked to enable it to function
5 that involves using a computer system so that they can
6 punch out the information right there in their vehicles
7 and find out if there's an outstanding arrest warrant. I
8 mean, that's something the police department itself has
9 made use of for their own purposes, so presumably they
10 have some responsibility for how it functions.

11 MR. GRANT: I agree --

12 QUESTION: You would agree with that.

13 MR. GRANT: I agree they have some
14 responsibility, yes.

15 QUESTION: Well, would you lose your case if you
16 said that the responsibility is not just that of the
17 investigating officer but also of the entire police
18 department, but not for mistakes on the judicial side?

19 MR. GRANT: In this case, no, I would not lose
20 my case.

21 QUESTION: -- Arizona supreme court, though, to
22 have taken a different line. I read that court to say,
23 it's the legal system that installed these computers, and
24 it doesn't matter whether the slip -- there must be a
25 slip, but the question of where the slip is in the court,

1 in the police office, should not be dispositive.

2 MR. GRANT: I think that's what the Arizona
3 supreme court said, and I think that's inconsistent with
4 what this Court said in Leon and other cases, that there
5 are --

6 QUESTION: But maybe they were right and we were
7 wrong. I mean, this case is dealing specifically with the
8 problems of computers and our prior cases were not, and I
9 think as Justice Ginsburg has suggested, the point was
10 that the deterrence factor is being, at least in Arizona,
11 tailored to what it sees to be the problem, and it's a
12 problem that cannot be limited just to police departments,
13 it's a problem of the governmental system. Why isn't that
14 a better view than the view that may have been implicit in
15 Leon?

16 MR. GRANT: Because I don't think applying that
17 broad brush with the exclusionary rule is going to change
18 reasonable actions by officers in the street. This
19 officer essentially had no choice but to do --

20 QUESTION: Well, then you're right back --

21 MR. GRANT: -- other than what he did.

22 QUESTION: -- to the problem that you admit that
23 your rule cannot be that narrow. You -- at least I assume
24 you do, because if you don't do that, then it seems to me
25 you're going to have to take the bitter with the sweet.

1 And if we were going to say the only person to
2 whom we look is the officer in the street, then I would
3 suppose on the legality of a warrantless arrest and the
4 lawfulness of a warrantless search, and so on, we would
5 not look beyond what happened to be in the mind of the
6 officer who made the search.

7 So if we're going to have a broad rule that we
8 impute all knowledge of the police to all members of the
9 department in your benefit, then I suppose you've got to
10 take the same -- the burden of that same rule, too.

11 MR. GRANT: I don't think Whiteley and Hensley
12 go as broad as Your Honor is drawing them. I think
13 Whiteley and Hensley can be more narrowly drawn to focus
14 on the arresting officer and anyone involved in the
15 investigation.

16 QUESTION: Well, you in any event, leaving the
17 question of where the line is drawn, you accept the view
18 that the mind of someone other than the one officer doing
19 the search or making the arrest may be relevant to the
20 determination of what is reasonable.

21 MR. GRANT: Yes.

22 QUESTION: You accept that.

23 MR. GRANT: Yes.

24 QUESTION: All right. Then why do we draw the
25 line between the police on the one hand and the larger

1 Government on the other?

2 MR. GRANT: Because, as this Court has said, the
3 exclusionary rule exists to deter police misconduct.

4 QUESTION: Well, I realize that, but the Arizona
5 argument said there's somebody else whom you'd better
6 deter, because if you don't include the Government more
7 broadly within your deterrent objective, you have no way,
8 as a practical matter, of inducing care in the use of
9 these computers.

10 MR. GRANT: I think, first of all, we're beyond
11 far what the facts of this case are, but I think if what
12 you want to deter is officers acting unreasonably, you're
13 not going to accomplish that by --

14 QUESTION: But that's the -- that is the very
15 denial of the premise upon which I think Arizona was
16 arguing. Arizona was saying, we want to deter more than
17 the officer, because if we don't do that, there's never
18 going to be an effective way of deterring inaccuracy in
19 computers.

20 MR. GRANT: I don't think Arizona could go
21 beyond what this Court has said, which is I feel what they
22 have in this --

23 QUESTION: Well, this Court perhaps can, and why
24 shouldn't it?

25 MR. GRANT: I think it -- I do not think it's

1 wise to go beyond it.

2 QUESTION: Why?

3 MR. GRANT: I think the --

4 QUESTION: Why?

5 MR. GRANT: -- exclusionary rule is a narrow --

6 QUESTION: Why?

7 MR. GRANT: -- procedural remedy --

8 QUESTION: Why should it be kept that way? Why

9 should we not consider it relevant that the system

10 maintains computers and therefore a deterrent rule, which

11 is meant to make computer information accurate, should

12 consider the entire system and not just the police?

13 MR. GRANT: I think --

14 QUESTION: Mr. Grant, it's not just a problem of

15 what you want to deter, it's also a problem of how

16 effective the deterrent will be, and I would think that

17 part of your argument is that it is very effective when

18 it's applied to the arresting officer, it's a little less

19 effective when it's applied to the entire investigating

20 team, but it is infinitely less effective when you trace

21 it all the way back to somebody who's not even on the

22 police force but in a court who's punching in something in

23 a computer. That person's not going to be very much

24 deterred, is he?

25 MR. GRANT: I agree the weighing process, the

1 farther away -- the weighing process that is engaged in
2 between deterrence --

3 QUESTION: In all of these cases, the price
4 we're paying is letting the criminal off, isn't it?

5 MR. GRANT: Yes.

6 QUESTION: And sometimes it's worth a deterrent
7 where the deterrent is likely to be very effective, but
8 it's not worth it when it isn't.

9 MR. GRANT: I agree.

10 QUESTION: Why do you say it would not be
11 effective? Would it not be true that if you let -- took
12 your view, it would be in the interests of the police
13 department -- this was a 17-day period between the time
14 the warrant was taken out of the system. Why wouldn't it
15 be wise for the State, then, to adopt a system, just leave
16 the warrants in the system for 6 months? It might be
17 helpful in an arrest. Whereas, if you use the deterrent,
18 they would take steps to get them out of the system
19 promptly.

20 MR. GRANT: Well, I think --

21 QUESTION: Why doesn't it have a deterrent
22 effect on the system as a whole?

23 MR. GRANT: I think the system here, if you look
24 at what actually happened in this case, once the system,
25 in this case the justice court personnel, found out that

1 there was a problem with the warrant, that Mr. Evans had
2 been arrested pursuant to a warrant that had been quashed,
3 the justice court personnel immediately took steps to
4 remedy it.

5 They called the police department, told them
6 that the warrant had been quashed and that he should no
7 longer be held pursuant to it, and they then searched
8 their own system through all the cases that were handled
9 on that same day as Mr. Evans, and found out that there
10 were three other cases where warrants had been quashed by
11 that same --

12 QUESTION: So incidents that happen on the
13 street do have an impact on what's done with this computer
14 information --

15 MR. GRANT: Well, I think -- I think what the
16 evidence in this --

17 QUESTION: And the rule that we've been -- that
18 the Arizona court applied would support making sure they
19 took action of that kind, whereas your view would tolerate
20 saying, well, it's just too bad this fellow got arrested,
21 but we don't really care about those things.

22 MR. GRANT: No, I think my -- I think my view
23 shows is the deterrent, and based on the record in this
24 case, is that the deterrence of the sort of personnel
25 involved here is not necessary.

1 QUESTION: Well, if it's not necessary --

2 MR. GRANT: Justice court personnel are not --

3 QUESTION: -- it would be totally costless to
4 the State if you lose, because you have already taken
5 steps to avoid the recurrence of this kind of mistake, so
6 what are we fighting about?

7 MR. GRANT: Well --

8 QUESTION: That's what you're telling me.

9 MR. GRANT: I'm --

10 QUESTION: Isn't that what you're saying, that
11 you've now made sure this will never happen again, which
12 seems to me to suggest that maybe it shouldn't have
13 happened in the first place.

14 QUESTION: Well, we're fighting about whether
15 evidence against this guy which would have shown him
16 guilty of a crime should be admitted in trial, isn't that
17 it?

18 MR. GRANT: Correct.

19 QUESTION: What is -- I guess I'm not clear on
20 one thing. The answer that Justice Scalia gave for you
21 said, it's not effective, and now you're saying it's not
22 even necessary. Which is your position?

23 MR. GRANT: Well, I'm not saying it's not
24 necessary. I'm saying that --

25 QUESTION: I'm sorry, I thought you --

1 MR. GRANT: -- the effectiveness of it becomes
2 less the further away you move from the arresting officer
3 and the people involved in the investigative team, and in
4 those cases the balancing that is required, the cost that
5 is incurred by suppressing relevant and reliable evidence,
6 becomes greater, and the deterrence value becomes less.

7 QUESTION: If we say that there's a difference
8 between judicial personnel and police personnel, if that's
9 the line we draw, is it plausible that we might also
10 remand this case because it's not clear what the Arizona
11 court would have done based on that hypothesis, or based
12 on that principle?

13 MR. GRANT: I think that's plausible. I think
14 the evidence in this case strongly supports the finding
15 that there was a judicial error here and not a police
16 error.

17 QUESTION: Well, but then it's plausible and
18 perhaps possible that you would not get the reversal that
19 you seek if we establish that principle. There would
20 still have to be further proceedings, correct?

21 MR. GRANT: That's possible, yes.

22 QUESTION: I don't see why, then, you're not
23 addressing whether or not police clerical error might also
24 be excused. You don't seem to want to address that.

25 MR. GRANT: Well, I think I -- I think I have

1 addressed that in part of the answers to the questions. I
2 think what -- if we get beyond the issue of judicial
3 error, I think where the line ought to be drawn is with
4 the arresting officers and anyone else involved in the
5 particular investigation that led to the arrest --

6 QUESTION: Well --

7 MR. GRANT: -- and here you don't have that.
8 You have -- it was initiated by a justice court --

9 QUESTION: If you have a warrant division in a
10 large metropolitan police department and the investigation
11 officers are routinely checking with them is the warrant
12 division involved in the arrest or in the investigation?

13 MR. GRANT: I don't think that sort of
14 involvement suffices to justify application of the
15 exclusionary rule. I think that is too far removed --

16 QUESTION: How do you --

17 MR. GRANT: -- from the strong deterrence value
18 of the actual arresting officer and those closely involved
19 in the investigation.

20 QUESTION: How do you deal with the Hensley case
21 that Justice O'Connor mentioned, if you say it doesn't go
22 all the way back through the police department?

23 MR. GRANT: Well, I think it goes back -- first
24 of all, Hensley, we didn't get to an exclusionary
25 determination because there was no finding of a Fourth

1 Amendment violation in Hensley, and what Hensley did was
2 go back to the initiating officer, the officer who felt
3 there was reason to stop the defendant, and examined what
4 he knew, the officer who started the whole procedure by
5 asking -- by putting the flier, the stop flier into the
6 system.

7 Here you don't have that. It was started by a
8 justice court, and the justice court was responsible for
9 its continued presence in the system after it had been
10 quashed.

11 QUESTION: Is there anything else you'd like to
12 say about the problem of the computer? I mean, as -- are
13 there any facts or any indication about whether the
14 exclusionary rule would or would not lead people to be
15 more careful about these things?

16 I mean, to be specific, it is bad to let the
17 guilty person off, we all know that, but there's a rule
18 which says if it's unconstitutional the evidence doesn't
19 come in.

20 Then there's an exception to that rule, is if
21 the officers were in good faith, and I guess that
22 exception rests on the theory that putting that pressure
23 on the officers in a Leon-type case doesn't make any
24 difference, but here, obviously, people are thinking that
25 putting pressure on the system in this kind of case might

1 make a difference because everybody's name might be in a
2 computer, and it's a pressure that would lead people to be
3 careful about that computer generating false arrest
4 warrants which aren't true.

5 MR. GRANT: As far --

6 QUESTION: That seems to be what people are
7 driving at, and I just wondered, you're familiar with the
8 operations of these things, and is there any light you can
9 shed on whether the pressure that would be put on computer
10 operators and all those associated with it to be careful
11 not to arrest people where there is no arrest warrant, why
12 that pressure wouldn't be meaningful, or significant, or
13 the same as normal in an exclusionary rule case, or maybe
14 the opposite?

15 MR. GRANT: I think the need to keep information
16 current, and correct, is demonstrated in this case by what
17 the justice court personnel did when they found out about
18 the error. They took care of it, and they found that
19 there were other errors, and they took care of those as
20 well. I don't think that that justifies application of
21 the exclusionary rule to those sort of people.

22 QUESTION: But that was in an environment where
23 the Arizona supreme court excluded the evidence. Why are
24 you so sure that these corrective measures were not taken
25 under threat of the exclusionary rule being applied?

1 MR. GRANT: The justice court personnel took
2 the -- well, the Arizona supreme court had not made its
3 ruling when the justice court employees did their job.

4 QUESTION: How about the trial court --

5 MR. GRANT: They did it because of their
6 professional responsibilities as part of the judicial
7 system to make sure that the system they -- the
8 information they put into the police computer system was
9 accurate as possible.

10 QUESTION: They did not have it wrong --

11 MR. GRANT: Correct.

12 QUESTION: -- but they had slipped --

13 MR. GRANT: Yes.

14 QUESTION: -- and my question, Mr. Grant, is
15 that the Arizona supreme court is going off on something
16 new, and they're very candid about it, so I'm -- I listen
17 to your argument, and it's true that you are putting this
18 case in the Leon frame. The Arizona supreme court told us
19 that Leon is not helpful as it sees the case, and it was
20 very clear what it was about.

21 It said, it's repugnant to the principles of a
22 free society that a person should be taken into police
23 custody because of a computer error precipitated by
24 Government carelessness. As automation increasingly
25 invades modern life, the potential for Orwellian mischief

1 grows. Under such circumstances, the exclusionary rule is
2 a cost we cannot afford to be without.

3 Now, you may say, that's a new tack, it
4 shouldn't be taken, but at least deal with this opinion on
5 its own terms. It's not talking about deterring the
6 policeman, it's talking about keeping the computer system
7 up to date.

8 MR. GRANT: Well, I disagree with the
9 characterization of the Arizona supreme court opinion as
10 saying Leon is not helpful. I think what the Arizona
11 supreme court simply said was, Leon doesn't apply because
12 that was a case where an officer obtained a warrant, and
13 here there was an invalid warrant. I think they simply
14 distinguished Leon on that basis and then went on to say
15 that --

16 QUESTION: Well, that's pretty powerful
17 language, and I don't think it's at all ambiguous. What
18 he --

19 MR. GRANT: I don't -- I don't think Leon is
20 limited in the manner that the Arizona supreme court
21 suggested, that it was limited to searches with warrants
22 authorized by a judge. Illinois v. Krull by this Court
23 demonstrated that that wasn't the case.

24 It wasn't limited to warrants authorized by
25 judges. It extended the good faith rule adopted in Leon

1 to warrantless searches authorized by a statute, and I
2 think when the Arizona -- the Arizona's supreme court's
3 attempt to distinguish Leon by saying that it simply
4 involved a warrant and this didn't doesn't hold up. I
5 think this Court is -- this case is consistent --

6 QUESTION: My concern is this court seems to be
7 saying, we're getting to the 21st Century, and the old
8 kind of errors are not going to be the ones that will be
9 of major concern. This is what will be a major problem.

10 MR. GRANT: I don't think --

11 QUESTION: Computers that have misinformation.

12 MR. GRANT: I don't think this situation is as
13 far removed from Leon as that. I think Leon analysis
14 regarding the particular deterrent effects of the
15 exclusionary rule on other than police actors is still
16 valid.

17 QUESTION: May I ask you one other question
18 about the curative steps that the county took? You said
19 they were well before the Arizona supreme court's
20 decision. Were they before the trial court's order
21 excluding the evidence?

22 MR. GRANT: Yes.

23 QUESTION: They were.

24 MR. GRANT: They were -- the arrest was on
25 January 5th. On January 7th, the -- and the trial court's

1 order wasn't until April. On January 7th, the justice
2 court personnel learned of the error, and on January 7th
3 they took care of it and also did the additional
4 investigation to find three other cases that same day --

5 QUESTION: I see.

6 MR. GRANT: -- that had not been quashed -- that
7 had not been removed from the system, excuse me.

8 QUESTION: What was the curative action, that
9 they just checked the computer entries for that one day,
10 or they completely changed their system? What's the
11 curative action that was taken?

12 MR. GRANT: It was that they took -- well, first
13 of all, they took the curative action of calling the
14 police department, or the sheriff's office, and telling
15 them to remove that warrant from the system, and also to
16 release any hold on Mr. Evans based on that warrant. The
17 additional step they took was, they went back and examined
18 the files that had been handled by this pro tem justice of
19 the peace on that day --

20 QUESTION: On that one day?

21 MR. GRANT: Yes.

22 QUESTION: But there were no other systemic
23 changes made in the --

24 MR. GRANT: No, there were no other --

25 QUESTION: -- basic routine where one person

1 calls the other and tells them to remove it from the
2 warrant list?

3 MR. GRANT: No. There's no evidence that
4 anything else was done.

5 QUESTION: So that's the curative action you
6 rely on?

7 MR. GRANT: Yes.

8 QUESTION: Thank you, Mr. Grant.

9 Ms. Carrigan, we'll hear from you.

10 ORAL ARGUMENT OF CAROL A. CARRIGAN

11 ON BEHALF OF THE RESPONDENT

12 MS. CARRIGAN: Mr. Chief Justice, may it please
13 the Court:

14 The exception that the Government seeks is not
15 warranted by any of this Court's decisions, including
16 Leon, and it's not justified.

17 QUESTION: Well, may I ask you a preliminary
18 question, Ms. Carrigan, and that is this: do we take this
19 case on the assumption that the error that occurred here
20 occurred within the justice court and its personnel? Is
21 that --

22 MS. CARRIGAN: No, Your Honor.

23 QUESTION: Is that the assumption?

24 MS. CARRIGAN: No, Your Honor, I don't think
25 that is at all clear from the record, and if -- and the

1 joint appendix has the entire suppression hearing in it,
2 in which the Government had the burden of proving that the
3 police were blameless. This they did not do.

4 If you care to go back to that, you will find
5 that they called as a witness the chief clerk of the
6 justice court, who did not have the responsibility for any
7 of this procedure, so it's not at all clear that the
8 justice court employees were responsible.

9 QUESTION: The supreme court of Arizona decided
10 the case on the basis that it didn't matter, didn't it --

11 MS. CARRIGAN: That's correct.

12 QUESTION: -- whether it was the police
13 employees or the justice court employees?

14 MS. CARRIGAN: That's correct.

15 QUESTION: So if we were to accept the State's
16 submission here, presumably the supreme court of Arizona
17 or some other Arizona court would have to make a factual
18 determination?

19 MS. CARRIGAN: I believe so, Your Honor.

20 The -- the State is relying on Leon and Sheppard
21 and Gates, all of which are search warrant cases, and
22 they're relying on Krull and Peltier, which are statute
23 cases, but in all of those cases, the police action was
24 directed by someone other than the police themselves, and
25 it was based upon an independent assessment that the

1 police action was constitutional. Contrast that with what
2 we have here -- I'm sorry, Your Honor.

3 QUESTION: No, go on, finish your thought, what
4 you were --

5 MS. CARRIGAN: I'd like to hear your question.

6 (Laughter.)

7 QUESTION: My problem, Ms. Carrigan, is more
8 fundamental than that. I really don't see the
9 slightest -- the slightest deterrent effect that will be
10 achieved by the exclusion of this evidence.

11 Where you are dealing with the people who are in
12 the business of making an arrest, who are at least on the
13 team, you are telling them, unless you do things right,
14 this arrest and whatever you get from it is going to be
15 inadmissible. That causes them to be careful.

16 But when you're dealing with somebody who's made
17 a negligent mistake, who doesn't even expect an arrest to
18 occur, how does it possibly deter anybody to say, if you
19 punch a wrong thing into the computer, the mistaken
20 arrests for these traffic tickets -- not showing up for
21 traffic tickets. That's the misdemeanor that the arrest
22 was for, wasn't it?

23 MS. CARRIGAN: That's correct.

24 QUESTION: If this person is picked up
25 wrongfully for this misdemeanor violation, anything found

1 on him will not be admissible in evidence. I mean, the
2 person punching it in doesn't want him to be picked up
3 anyway, rightfully or wrongfully.

4 I mean, I don't see the slightest -- I'm trying
5 to put myself in the position of the person in the judge's
6 office who's punching it in --

7 MS. CARRIGAN: I --

8 QUESTION: -- and if somebody wagged a finger at
9 me and said, if you punch in an arrest that shouldn't be
10 in there, anything that's found in the course of that
11 arrest will not be admissible in court. I don't see how
12 that would make me more careful at all.

13 MS. CARRIGAN: I think the answer is found in
14 Leon itself. First, I think we need to understand that
15 the good faith exception is a misnomer. That's not really
16 what it's all about. It's about objectively reasonable
17 reliance on an independent assessment, and by objectively
18 reasonable, and not subjectively reasonable, we're not
19 focusing on the arrest, we're focusing on law enforcement
20 as a whole, and that's the phrase that appears in Leon.

21 QUESTION: You're not relying -- you're not
22 answering my -- I mean, my question goes to deterrence,
23 and you're not answering that. You're relying instead on
24 the language of Leon. Now, that's fine. If you say, I
25 don't rely on deterrence, I rely on the language of Leon,

1 that's okay, but my question was, how would anyone
2 conceivably be deterred by the rule that you ask us to
3 adopt? I truly do not see the slightest deterring effect
4 upon somebody's carelessness in the judge's office.

5 MS. CARRIGAN: I believe that in our brief, Your
6 Honor, on pages 24 and 25, we suggest what -- some
7 alternatives to what should have been done in order to
8 have this be a cleaner computer procedure. The problem
9 that exists here is that no citizen --

10 QUESTION: Ms. Carrigan, maybe you can clarify
11 this. You are not talking about deterring the policeman
12 who goes into his car and pushes some buttons, you are
13 talking about deterring, not even a particular clerk,
14 you're talking about the Government system of keeping
15 records --

16 MS. CARRIGAN: That's --

17 QUESTION: -- do I understand you correctly?

18 MS. CARRIGAN: That's correct, Your Honor, and
19 what we're saying is that the ordinary citizen who is
20 arrested, has his liberty deprived by a wrongful arrest,
21 doesn't know or care which Government employee is
22 responsible.

23 The problem is in wedding the high tech of the
24 computer with the horse-and-buggy of the written word, and
25 the problem that exists in this particular case is that

1 you have a system where only the police themselves can get
2 that information, whether it's wrong or right, out of that
3 computer, and you have a procedure where the only time
4 they go back and take something out is under this horse-
5 and-buggy, let's write this down, let's call here, let's
6 call there.

7 But the problem for all of us is that there is
8 so much inaccurate information going into computers, and
9 there's no housekeeping going on. Nobody is sweeping the
10 store.

11 QUESTION: Deterrence, Ms. Carrigan. How is the
12 system as a whole deterred? Never mind the policeman,
13 never mind the clerk in the judge's office, how is the
14 system as a whole deterred from being careless if you tell
15 the system, somebody whom you would not get anyway had
16 this thing been kept off of the computer entirely, if you
17 do get him, we're not going to let you get him? I don't
18 see how that deters the system as a whole.

19 MS. CARRIGAN: Well, I --

20 QUESTION: If the political process doesn't
21 cause the system to be careful, if people in the
22 municipality don't get enraged against their Government
23 that allows these things to happen, I don't see how the
24 Government is going to be any more careful if it says, you
25 know, people who shouldn't be arrested, if they are

1 arrested, it'll do no good to arrest them. I don't see
2 how that deters the Government.

3 MS. CARRIGAN: I think the problem is in the
4 word deter, then, because whether you say, deterring
5 negligent maintenance, or encouraging housekeeping, that
6 is what we are asking for.

7 What we are saying is, the system as it exists
8 today, law enforcement as a whole with its police
9 computers, which are accessible, Your Honor, only by
10 criminal justice agencies, if I want to find out if
11 there's incorrect information in the system about me, if
12 there is unfortunately something in there that says, Carol
13 Carrigan should be arrested, I can't find that out and I
14 can't correct it because I'm not a criminal justice
15 agency.

16 QUESTION: Well, that addresses the evil that
17 you wish to cure, but Justice Scalia, and I think perhaps
18 some others of us, would like to hear your comments on why
19 the remedy you propose will cure that evil. The question
20 has been put to you whether or not computer operators will
21 be deterred by the exclusionary rule, and you -- I think
22 perhaps you can answer that yes, perhaps no, but I'd like
23 to hear your answer.

24 MS. CARRIGAN: What I am --

25 QUESTION: Why would the computer operator be

1 deterred by imposing the exclusionary rule for the
2 computer operator's mistake? By your not saying that
3 there would be deterrence, I assume you think there would
4 be none.

5 MS. CARRIGAN: What I'm saying, Your Honor, is,
6 we're not asking that the sheriff's clerks work faster,
7 and we're not saying that somehow justice court employees
8 should make their phone calls in the morning.

9 What we're saying is, possibly, since the
10 authority to arrest comes from a magistrate, the
11 magistrate who issued that warrant issued it because Mr.
12 Evans didn't show up for his traffic tickets. Possibly,
13 that magistrate, when he quashes the warrant, should be
14 able to push his own button and eliminate that warrant
15 from the system, but he can't because he's not a criminal
16 justice agency.

17 QUESTION: Well, then, as the record of the
18 argument stands now, you do not contend that any
19 deterrence will be achieved by the exclusionary rule.
20 You're still not answering that question.

21 MS. CARRIGAN: Oh, we do indeed, Your Honor,
22 because --

23 QUESTION: Well, can we finally get to that, you
24 can tell us why?

25 MS. CARRIGAN: Because what we're arguing is

1 that if the police are aware that they are relying on
2 inaccurate information in their systems, then they're
3 going to do something about the procedure for maintaining,
4 housekeeping, cleaning, however you want to put it, to
5 make their systems, and they are their systems --

6 QUESTION: Why?

7 MS. CARRIGAN: -- and they have responsibility
8 to make them more accurate.

9 QUESTION: Why would they do that, because then
10 they won't be able to arrest the person at all?

11 MS. CARRIGAN: Well, I think that --

12 QUESTION: They still will not get the bad guy.

13 MS. CARRIGAN: -- that if the police could put
14 more in the computer and they could get away with it, why,
15 then they would have access to all of us and all of our
16 homes, so let's do away with --

17 QUESTION: They wouldn't be able --

18 QUESTION: And that would be a very bad thing.

19 MS. CARRIGAN: Yes.

20 QUESTION: And maybe you want to say, two wrongs
21 make a right. This person's a criminal, but you have
22 violated his rights by arresting him when he shouldn't
23 have been arrested, and since you have, even though it
24 doesn't deter anybody or anything, we're going to say, the
25 slate is even, but that's not how I understood we have

1 adopted the exclusionary rule in the past. It's not
2 punishing society for doing a bad thing by letting the
3 criminal walk the streets.

4 MS. CARRIGAN: Your Honor --

5 QUESTION: No, but isn't it true that you impose
6 a cost on society every time you let a person free, and in
7 order to avoid -- just like when you have negligence,
8 there's costs involved, and that if the cost is imposed on
9 the entire society, the entire society will take steps to
10 hire computer operators who are efficient and honest and
11 so forth.

12 You're not going to deter the individual
13 computer operator, but you're -- it's a systemic thing,
14 and there is a cost, whenever you suppress a warrant, on
15 society as a whole, and the remedy is that society should
16 make sure these mistakes don't happen.

17 MS. CARRIGAN: That's correct, Your Honor.

18 QUESTION: Isn't that the most obvious,
19 elementary kind of deterrence that's all through the tort
20 system, where you impose costs by making people respond --
21 liable for the negligence of their agents if they harm
22 somebody?

23 MS. CARRIGAN: I recall the words that Justice
24 Scalia wrote in Arizona v. Hicks when he said that the
25 criminality of the few sometimes must be insulated to

1 protect the privacy of us all.

2 QUESTION: I agree with that. It's --

3 (Laughter.)

4 QUESTION: In fact, it was very well put.

5 (Laughter.)

6 QUESTION: But the difficulty I am having is
7 identifying the cost which you are agreeing with Justice
8 Stevens that is being imposed upon the society.

9 It seems to me there is zero cost. The criminal
10 who previously would not be incarcerated because the
11 evidence would be excluded at his trial will now not be
12 incarcerated because the warrant will never be in the
13 system. What cost have you imposed upon anybody?

14 MS. CARRIGAN: If we are doing --

15 QUESTION: None.

16 MS. CARRIGAN: If we are doing a cost analysis,
17 Your Honor, what we are comparing is the cost of having
18 Mr. Evans tried on a possession of marijuana case and the
19 cost to the rest of us of very real possibility of
20 wrongful arrest without probable cause.

21 It's important to remember that Mr. Evans was in
22 jail for 2 days before the police learned, oh, he
23 shouldn't have been there under this warrant. What
24 happened was, the initial appearance papers were sent over
25 to the justice court and they realized that this man

1 shouldn't have been --

2 QUESTION: But in fact he had narcotics in his
3 possession.

4 MS. CARRIGAN: That's correct.

5 QUESTION: It's not as though you're dealing
6 with somebody who hadn't committed an offense.

7 MS. CARRIGAN: But the implication for the rest
8 of us, Your Honor, is that we could be arrested without
9 probable cause and we could be incarcerated for hours.

10 QUESTION: Let me ask you this: suppose a
11 police officer relies on an informant to obtain the facts
12 to go get an arrest warrant, and the policeman reasonably
13 believes and reasonably relies on this informant and gets
14 an arrest warrant, makes the arrest, and it turns out
15 later that the informant was lying.

16 MS. CARRIGAN: I think --

17 QUESTION: Now, that evidence would not be
18 suppressed, I assume, under Leon, at all.

19 MS. CARRIGAN: The court would look -- you were
20 referring earlier to Hensley. The court would look to the
21 lawfulness of the underlying arrest, but there is a
22 quality --

23 QUESTION: No, the court would look to see
24 whether objectively the policeman made -- took reasonable
25 action, and if it's determined that he did, we wouldn't

1 keep the evidence out of court, would we?

2 MS. CARRIGAN: No, Your Honor, you would not.

3 QUESTION: No, and I don't see how this is
4 materially different. I mean, it's just as terrible for
5 the person who is arrested on the basis of that false
6 information as it is to be arrested for a computer error,
7 isn't it?

8 MS. CARRIGAN: I -- perhaps I didn't understand
9 your example. The informant was wrong?

10 QUESTION: Yes, right.

11 MS. CARRIGAN: But it was a confidential,
12 reliable informant and that is why it passed muster?

13 QUESTION: Uh-huh.

14 MS. CARRIGAN: That would, indeed, be terrible,
15 and it would be one of the things that happens all too
16 often, unfortunately, but the problem here is, we're not
17 just arguing for exclusion to correct the Fourth Amendment
18 invasion of Mr. Evans, because we know from Leon and
19 Calandra that exclusion is directed, through deterrence,
20 at protecting the rights of other citizens in future
21 encounters with the police, and that's really what this
22 argument is all about.

23 QUESTION: All right, but then what is the --
24 let me go back to that. What -- look, I take it in
25 general, not in the Leon cases, the law thinks that if you

1 say to policemen, hey, watch what you're doing, get your
2 act together, because if you don't and find you really
3 have cause to, they'll throw out the whole conviction, the
4 whole thing will get mixed up. That makes policemen get
5 their act together.

6 Informants won't get their act together, but
7 what about computer operators? That is to say, is it
8 plausible to think that telling the computer operator,
9 hey, get your act together, otherwise, when the policeman
10 arrests somebody the whole thing's going to get thrown
11 out, and probably he could have arrested him for some
12 other reason if only he'd gotten his act together.

13 So you tell that to the computer operator. Is
14 it plausible to think the computer operator is more like
15 the informant, or more like the policeman? In other
16 words, is this case distinguishable from Leon?

17 MS. CARRIGAN: Well, I don't think in the
18 example that we are deterring informants, Your Honor, but
19 what we do have here is a very shoddy procedure, if you
20 will, that was set up by the police themselves in order to
21 maintain their control of their own computer, and that's
22 fine, but if they have sole control, then they have sole
23 responsibility.

24 QUESTION: Okay. Leave that. Is this case
25 different from Leon? Why? In both cases there's a -- in

1 Leon, there's an arrest warrant. It's invalid, in fact --
2 a search warrant, I guess, invalid. Here they think
3 there's a warrant and it's not valid. There is none. In
4 both cases somebody else made the mistake. It wasn't the
5 policeman. And so, is there actually a way to distinguish
6 this from Leon? What is it?

7 MS. CARRIGAN: Well, in Leon -- Leon was
8 decided, I believe, because there was a preference for
9 warrants, and in Leon, the exception was created. I don't
10 think that this Court has any problem with the idea that
11 their -- that the power of the police cannot be unleashed
12 without any controls, and ordinarily, when the police
13 invade someone's Fourth Amendment rights, that evidence
14 can't be introduced against him at trial.

15 In Leon, what the Court did was say, we would
16 prefer to have officers go for search warrants because
17 there is a measure of control there and there is an
18 assurance that they are at least trying to act in accord
19 with the Fourth Amendment.

20 What we have here is a decision, 17 days
21 later -- 17 days earlier by a magistrate that there was no
22 probable cause for this warrant to be outstanding because
23 Mr. Evans had appeared, so the difference is that we don't
24 have an independent judicial determination, as we had in
25 Leon, or in Krull it was a statute.

1 Have I answered your question?

2 QUESTION: I'm not sure, because I mean, in
3 here, all the people who went to apply for a warrant did
4 go to apply for a warrant. The process worked out just as
5 it was supposed to work out. It turned out that there was
6 no warrant, just as in Leon it turned out that the warrant
7 was fatally defective.

8 I mean, the policeman in -- was there something
9 else the policeman should have done here, or anyone should
10 have done? There's a mistake here. So was there a
11 mistake in Leon.

12 MS. CARRIGAN: Precisely. That is what we're
13 saying, is that --

14 QUESTION: Is it a different kind of mistake?

15 MS. CARRIGAN: -- this kind of procedure --

16 QUESTION: What's the difference? What's the
17 difference in the kind of mistake, that's what's worrying
18 me. Is there a difference in the kind of mistake here?

19 MS. CARRIGAN: The police action in Leon was
20 directed by a magistrate who issued a search warrant. The
21 police action in this case was directed by a police
22 computer. We see that as a very real difference.

23 QUESTION: Well, if it's determined by the
24 courts below that it resulted from an error made by the
25 justice court, then how do you answer the question? Let's

1 say that's the determination, that this error arose and
2 occurred solely in the justice court. Make that
3 assumption.

4 MS. CARRIGAN: If I made that assumption, Your
5 Honor, I would try to sit where the trial court judge was
6 sitting, and he said it made no difference, it was still
7 the Government, and the Government had caused this person
8 to be arrested without probable cause.

9 QUESTION: Well, that's the issue, of course,
10 and Leon spoke in different terms, and so we have to ask
11 why that doesn't control, because we have said that where
12 the error arises in the judicial branch, we don't think
13 the deterrence is such that it justifies excluding the
14 evidence.

15 MS. CARRIGAN: And what we are saying, Your
16 Honor, is that there -- that this arrest was not based
17 upon any exercise of judicial discretion, because after
18 all, the judge quashed the warrant. This arrest was based
19 upon a ministerial, clerical function, and when Leon was
20 decided, there was great deference given to the fact that
21 it was a judicial determination.

22 QUESTION: Ms. Carrigan, suppose the negligence
23 here was not on the part of the judicial department, but
24 rather the Arizona Department of Public Works, and let's
25 assume the contraband was discovered not in the course of

1 a mistaken arrest, but rather in the course of providing
2 ambulance assistance to this individual after his car has
3 fallen into a pothole that has been left on the street by
4 the Department of Public Works.

5 He has this accident. they come to help him,
6 and lo and behold, they find in the car vast quantities of
7 cocaine. Do you think that that evidence of his
8 wrongdoing should be excluded, because after all, the
9 Government had been negligent, and had it not been
10 negligent, it would never have been discovered?

11 MS. CARRIGAN: Well, I'm not sure I understand
12 your hypothetical. Was this cocaine in plain view --

13 QUESTION: Big pothole --

14 MS. CARRIGAN: -- in the trunk?

15 QUESTION: -- which was left there by the city,
16 negligently, okay.

17 (Laughter.)

18 QUESTION: His car falls into it, and when they
19 rescue him, they find the cocaine. It's the city's fault.
20 He would never be in that fix but for the negligence of
21 the city.

22 MS. CARRIGAN: And it was something --

23 QUESTION: Is it fair to put him in jail for the
24 cocaine?

25 MS. CARRIGAN: It was something that was clearly

1 recognizable to a street worker as cocaine and therefore
2 was evidence in plain view?

3 QUESTION: Yes. Yes, absolutely. No doubt it
4 was -- yes.

5 QUESTION: The only difference being, the arrest
6 wasn't the product of the negligence.

7 (Laughter.)

8 QUESTION: Oh, yes, it was a product of -- there
9 wasn't an arrest. The discovery of the cocaine was the
10 product of the negligence. There's no doubt. If he
11 hadn't fallen into the pothole, they wouldn't have found
12 the cocaine.

13 MS. CARRIGAN: And this --

14 QUESTION: Now, you wouldn't try to keep him out
15 of jail, would you?

16 MS. CARRIGAN: And this was a person who had the
17 authority to arrest, or who made a citizen's arrest
18 because he knew it was cocaine?

19 QUESTION: Once they saw the cocaine, they
20 certainly had authority to arrest him, assuming it was
21 okay for them to be there, but it wasn't okay for them to
22 be there if it was the product of the city's negligence,
23 right, and it was, because the city had left the pothole.

24 MS. CARRIGAN: Well, I think probably there
25 might be both a civil and a criminal action following --

1 QUESTION: I guess, but I really don't -- I
2 don't see a whole lot of difference in the essentials
3 between that situation and what is occurring here.

4 MS. CARRIGAN: If I'm understanding your
5 question, You're Honor, you're saying, if it is someone
6 other than the police, if it is a justice employee or
7 perhaps a Motor Vehicle Department employee who has
8 something to do with the computer, then where should we
9 draw the line?

10 QUESTION: Yes, who has something to do with the
11 fact that this person has been discovered to be a
12 criminal.

13 MS. CARRIGAN: And I think that you have
14 identified a very real problem with what the State is
15 proposing here, because in every case there would then
16 have to be a determination as to who was responsible, and
17 how much involvement that person had in law enforcement
18 under Leon, so as to --

19 QUESTION: That's why the Arizona supreme court
20 said as far as they were concerned it's Government
21 carelessness and that you shouldn't have to have a trial
22 over about whether it's the clerk in the police station or
23 the -- but let me ask you a question about what you argued
24 in your brief in opposition. There was a strong reply to
25 it.

1 You had said initially Arizona, with this broad
2 language, wasn't having anything to do with the Federal
3 interpretation of the exclusionary rule, that it was
4 deciding this as a matter of State law. The answer was,
5 no, Arizona in the Fourth Amendment area takes the Federal
6 standard, and that's what it's attempting to apply. Do
7 you think you have an argument?

8 Let's say this would be remanded to the Arizona
9 supreme court. Worry about your own constitution, which
10 would then leave Arizona to its new way and not involve
11 any Federal question.

12 MS. CARRIGAN: We have not abandoned our
13 jurisdictional argument, Your Honor. If you will look at
14 the decisions and what was argued below by the State and
15 by ourselves in response, what was really argued was a
16 State statute -- that was A.R.S. section 13-3925 -- and it
17 appears at 35a and 36a of the petition's appendix, and
18 what the Arizona court said was, we don't choose to
19 interpret the Arizona good faith statute that way.

20 I think there really is a jurisdictional problem
21 here, and I think there's a problem with remand, because
22 if this Court chooses to remand, then I don't know what
23 the Court will say to the Arizona supreme court about how
24 it should interpret its statute.

25 QUESTION: Well, I suppose what the Court would

1 say, if it accepted the State's submission, was that,
2 proceedings not inconsistent with this opinion. We say
3 that it does make a difference if the error stemmed from
4 the judicial side rather than the police side, and so
5 don't decide this case, if you're deciding on the Federal
6 Constitution, on the assumption that even though the error
7 came from the judicial side, the evidence should
8 nonetheless be excluded. That would obviously leave open,
9 if you have kept it open, any State constitutional
10 question.

11 QUESTION: May I just ask a practical question,
12 and that is this: do the law enforcement officers in
13 Maricopa County have any way of maintaining the accuracy
14 of computer records over time independent of what happens
15 in the justice court?

16 MS. CARRIGAN: I think there are two parts to
17 that answer. I think that they have set up a system where
18 the individual justice courts call in to the sheriff. The
19 second part of that answer is that they don't appear to be
20 doing any housekeeping, and our argument is that they
21 should.

22 If there are no further questions --

23 QUESTION: May I ask --

24 MS. CARRIGAN: Yes.

25 QUESTION: -- just one question? If we were to

1 take the position that I guess the Arizona supreme court
2 took and say that it is simply the system's responsibility
3 here, and therefore we don't care where the error is made,
4 there's going to be suppression, because we want to induce
5 the system to get it right, why shouldn't we take exactly
6 the same position in a Leon situation?

7 In a Leon situation, in effect, we are saying,
8 well, the judge may have gotten it wrong, but as long as
9 the police reasonably relied, we will in effect allow the
10 evidence in. Why shouldn't we, if we accept Arizona's
11 position, in a Leon situation say, look, we don't care
12 that it's the judge who made the mistake, we want to
13 induce the system to get judges who will be smart enough
14 to get it right. If we take your position, don't we have
15 to overrule Leon?

16 MS. CARRIGAN: No, indeed, Your Honor, because
17 what Leon says is that we will rest on the assurance that
18 some magistrate or judge doing his job made an assessment
19 on probable cause, but if you look in the Leon decision at
20 page 923, you'll find there are four exceptions to the
21 exception, if you will, and one of those exceptions is if
22 the magistrate abandons his job, or his responsibilities.

23 So I don't believe -- and the first one, very
24 importantly, is where the police are guilty of submitting
25 reckless or false information, and what the court, the

1 Leon court said about that was that this would be a
2 reckless disregard for the truth that they would not
3 condone.

4 CHIEF JUSTICE REHNQUIST: Thank you,
5 Ms. Carrigan. The case is submitted.

6 (Whereupon, at 12:00 noon, the case in the
7 above-entitled matter was submitted.)
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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of

The United States in the Matter of:

ARIZONA, Petitioner v. ISAAC EVANS

CASE NO.:93-1660

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BY *Ann Marie Federico*

(REPORTER)

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