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The Exclusionary Rule

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The exclusionary rule provides that evidence obtained by law enforcement officers in violation of the Fourth Amendment guarantee against unreasonable search and seizure is not admissible in a criminal trial to prove guilt. The rule was applied by the U.S. Supreme Court to the states in *Mapp v. Ohio* (1961). The primary purpose of the exclusionary rule is to deter police misconduct. Although some proponents argue that the rule emanates from the Constitution, the Supreme Court has indicated it is merely a judicially created remedy for violations of the Fourth Amendment. Because application of the rule may lead to the exclusion of important evidence and the acquittal of persons who are factually (if not legally) guilty, the exclusionary rule is perhaps the most controversial legal issue in criminal justice. Proponents argue that it is the only effective means of protecting individual rights from police misconduct, while critics decry the exclusion from trial of relevant evidence. Despite calls for its abolition and shifts in the composition of the Supreme Court, the exclusionary rule remains entrenched in American jurisprudence. But while the rule has survived, it has not gone unscathed. Supreme Court decisions over the years have limited the scope of the rule and created several exceptions.

History

The Supreme Court first addressed the issue of the admissibility of illegally obtained evidence in 1886, when it held in *Boyd v. United States* that the forced disclosure of papers amounting to evidence of crimes violated the constitutional right of the defendant against unreasonable search and seizure, and that such items were inadmissible in court proceedings. In 1914 the Supreme Court held in *Weeks v. United States* that evidence illegally obtained by federal law enforcement officers was not admissible in a federal criminal trial. Because the *Weeks* decision applied only to the federal government, however, state law enforcement officers were still free to seize evidence illegally without fear of its exclusion from state criminal proceedings. Moreover, evidence seized illegally by state police could be turned over to federal law enforcement officers for use in federal prosecutions because federal officers were not directly involved in the illegal seizure. In 1960, in *Elkins v. United States*, the Court put an end to this practice, prohibiting the introduction of illegally seized evidence in federal

prosecutions regardless of whether the illegality was committed by state or federal agents.

In *Wolf v. Colorado* (1949), the Supreme Court applied the Fourth Amendment to the states, incorporating it into the due process clause of the Fourteenth Amendment. However, the Court refused to mandate the remedy of the exclusionary rule. Just three years later, the Court modified its position somewhat, holding in *Rochin v. California* that evidence seized in a manner which "shocked the conscience" must be excluded as violative of due process. Exactly what type of conduct shocked the conscience was left to be determined on a case-by-case basis. The exclusionary rule thus became applicable to state criminal proceedings, but its application was uneven.

Finally, in 1961, the Court took the step in *Mapp v. Ohio* that it had failed to take in *Wolf*: It explicitly applied the remedy of the exclusionary rule to the states. The Court did so because it acknowledged that the states had failed to provide an adequate alternative remedy for violations of the Fourth Amendment. Although there was language in *Mapp* that suggested the exclusionary rule originated from the Constitution, subsequent decisions indicate that the Court views the rule as a judicial means of enforcing the Fourth Amendment prohibition against unreasonable search and seizure.

Exceptions

In *Mapp*, the Supreme Court stated that the exclusionary rule serves at least two purposes: the deterrence of police misconduct and the protection of judicial integrity. In recent years, however, the Court has focused almost entirely on the deterrence of police misconduct, creating several exceptions to the rule. In addition, the Court has held that there are a variety of proceedings in which the exclusionary rule is inapplicable.

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In 1984, the Court held in *Massachusetts v. Sheppard* that evidence obtained by police acting in good faith on a search warrant issued by a neutral and detached magistrate may be admitted at trial, even if the search warrant is ultimately found to be invalid.

The Court stressed that the primary rationale for the exclusionary rule—deterrence of police misconduct—did not warrant exclusion of evidence obtained by police who act reasonably and in good faith reliance upon the actions of a judge. By “good faith,” the Court meant the police are unaware that the warrant is invalid.

The Court emphasized that the good faith exception did not apply to errors made by the police, even if the errors were entirely inadvertent. The exception applies only to situations where the police relied on others who, it later turns out, made a mistake. Subsequent cases reiterated this point. In 1987, in *Illinois v. Krull*, the Court extended the good faith exception to instances where the police act in reliance on a statute that is later declared unconstitutional. In 1995, in *Arizona v. Evans*, the Court refused to apply the exclusionary rule to evidence seized by a police officer who acted in reliance on a computer entry made by a court clerk, which was later found to be in error.

The Court has also established the “inevitable discovery” exception to the exclusionary rule. This exception, developed in *Nix v. Williams*, permits the use at trial of evidence illegally obtained by the police they can demonstrate that they would have otherwise discovered the evidence by legal means. The burden is on the police to prove that they would in fact have discovered the evidence lawfully, a burden they have met only infrequently.

The U.S. Supreme Court on the Exclusionary Rule in *Mapp v. Ohio*

Since the Fourth Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth [Amendment], it is enforceable against them by the same sanction of exclusion as is used against the Federal Government. Were it otherwise, then just as without the *Weeks* rule the assurance against unreasonable searches and seizures would be a ‘form of word,' valueless and undeserving of mention in a perpetual charter of inestimable human liberties, so too, without that rule the freedom from state invasions of privacy would be … ephemeral.

Mapp v. Ohio, 367 U.S. 643 (1961).

Limitations

The Supreme Court has been reluctant to extend the reach of the exclusionary rule to proceedings other than the criminal trial. Indeed, as recently as 1998, the Court stated, in *Pennsylvania Board of Probation and Parole v. Scott*, that as the primary purpose of the rule is deterrence of police misconduct, extension of the rule should be limited “to those instances where its remedial objectives are thought to be most efficaciously served.” The Court has consistently refused to apply the exclusionary rule to evidence seized by private parties, if they are not acting in concert with, or at the behest of, the police. The rule does not apply to evidence presented to the grand jury. An unlawful arrest does not bar prosecution of the arrestee, as the exclusionary rule is an evidentiary rule rather than a rule of jurisdictional limitation. The rule is inapplicable in both civil tax assessment proceedings and civil deportation proceedings. The exclusionary rule does not apply to parole revocation hearings. The Court has also been reluctant to apply the exclusionary rule to aspects of the criminal trial that are not directly related to the determination of guilt. Thus illegally obtained evidence may be used to impeach a defendant's testimony or to determine the appropriate sentence for a convicted defendant.

Summary

The exclusionary rule has aroused much debate since its application to the states some forty years ago. The rule remains in place, although its application has been limited and exceptions have been created. Nonetheless, the rule still has a major and continuing impact on police practices, acting as the primary constraint on unlawful search and seizure. The recent decision in *Scott* neatly summarizes the Court's position on the applicability of the rule and suggests how the rule may be dealt with by law enforcement agencies in the future.

In *Scott*, the Court again refused to apply the exclusionary rule to a proceeding other than a criminal trial, even though the illegally seized evidence could be **[p. 656 ↓]** used

to reincarcerate a parolee. By explicitly holding that the exclusionary rule does not apply to parole revocation hearings, the Court opened up a tremendous window of opportunity for police officers seeking to use illegally seized evidence against a suspect. The police may now avoid the prohibition on unreasonable search and seizure by using illegally seized evidence as the basis for parole revocation rather than as evidence of guilt in a criminal trial. This has tremendous implications for future law enforcement practices, as the number of persons under community supervision currently exceeds three million, and this number is predicted to grow steadily in the next decade (Bureau of Justice Statistics 1997).

The exclusionary rule continues, albeit in a limited form. Given the current composition of the Supreme Court, it seems unlikely that the rule will be expanded. The Court has refused numerous opportunities to discard the rule, however. So long as the exclusionary rule exists, it will serve, to some extent, as a limitation on police overreaching. It will also continue to result in the freeing of some “guilty” people. It is both the reward and the price we pay for living under a government of limited powers.

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See also

- Arrest Practices

Further Reading

Amar, Akhil Reed. (1997). The Constitution and Criminal Procedure. New Haven, CT: Yale University Press.

Bureau of Justice Statistics. (1997). Correctional Populations in the United States, 1995. Washington, DC: U.S. Department of Justice.

Cole, David. (1999). No Equal Justice. New York: The New Press.

Decker, John F. (1992). Revolution to the Right: Criminal Procedure Jurisprudence During the Burger-Rehnquist Court Era. New York: Garland.

del Carmen, Rolando V. (2000). Criminal Procedure: Law and Practice. Belmont, CA: Wadsworth/Thomson.

LaFave, Wayne R., and Jerold H.Israel. (1992). Criminal Procedure. Minneapolis, MN: West Publishing.

Court Cases

Arizona v. Evans (1995). 514 U.S. 1.

Boyd v. United States (1886). 116 U.S. 616.

Burdeau v. McDowell (1921). 256 U.S. 465.

Elkins v. United States (1960). 364 U.S. 206.

Illinois v. Krull (1987). 480 U.S. 340.

INS v. Lopez-Mendoza (1984). 468 U.S. 1032.

Mapp v. Ohio (1961). 367 U.S. 643.

Massachusetts v. Sheppard (1984). 468 U.S. 981.

Nix v. Williams (1984). 467 U.S. 431.

Pennsylvania Board of Probation and Parole v. Scott (1998). 118 S. Ct. 2014.

Rochin v. California (1952). 342 U.S. 165.

United States v. Alvarez-Machain (1992). 504 U.S. 655.

United States v. Calandra (1974). 414 U.S. 338.

United States v. Janis (1974). 428 U.S. 433.

United States v. Leon (1984). 468 U.S. 897.

Weeks v. United States (1914). 232 U.S. 383.

Wolf v. Colorado (1949). 338 U.S. 25.