

## *Mapp v. Ohio (1961)*

" . . . our holding that the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments is not only the logical dictate of prior cases, but it also makes very good sense. There is no war between the Constitution and common sense."

—Justice Clark, speaking for the majority

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## About landmarkcases.org

This site was developed to provide teachers with a full range of resources and activities to support the teaching of landmark Supreme Court cases, helping students explore the key issues of each case. The "Resources" section features basic building blocks such as background summaries and excerpts of opinions that can be used in multiple ways. The "Activities" section contains a range of short activities and in-depth lessons that can be completed with students. While these activities are online, many of them can be adapted for use in a one-computer classroom or a classroom with no computer.

Depending upon the amount of time you have to teach the case, you may want to use one or more of the "Resources" or "Activities" in conjunction with one or more of the general teaching strategies. These general teaching strategies include moot court activities, political cartoon analysis, continuum exercises, and Web site evaluation.

If you have time constraints, look at the Teaching Recommendations on page 3.

Feel free to experiment with these materials!

## Teaching Recommendations Based on Your Time

If you have one day . . .

- Begin discussion by asking students to create a KWL chart (what they know, what they want to know, and what they have learned) about search and seizure. Discuss their responses in the "K" and "W" columns. Explain that you will begin studying *Mapp* after completing the "K" and "W" columns in order to complete the "L" column.
- Read the "Background" as a class. Have students answer the questions that follow. Next, have students predict the outcome of the case.
- For homework, have students read the excerpt of the opinion and answer the accompanying questions. Then have students complete the "L" column on the KWL chart and discuss as a class.

If you have two days . . .

Complete the activities for the first day. (*Note to teachers: We recommend that you invite a community resource person, such as a police officer, judge, or lawyer, to assist in the activities described here for day two. Many of the scenarios are tricky and the answers can depend upon the nuances of state law.) Need recommendations for using community resources? Go to the Landmark Cases home page ([www.landmarkcases.org](http://www.landmarkcases.org)) and click on Community Resources to download suggestions and teaching strategies.*)

- Complete the activity titled "[When is a Search Warrant Not Necessary? Every person Response Activity.](#)"
- Next, complete the activity titled "[Search Warrants, What Are They and How Do They Work?](#)"
- For homework, have students read "[The Exclusionary Rule in a Computer-Driven Society](#)" and complete the written response that appears at the end of the reading. (You may want to print out this activity for them instead of having them do it on the Internet, as there is a hotlink to the actual outcome in *Arizona v. Evans*, which you won't want them to see until they have completed the activity. There are several other hotlinks embedded in the text, but these links are there primarily for enrichment.)
- On your last day, have students complete the "L" column on the KWL chart and discuss as a class.

If you have three days . . .

- Complete the activities for the first and second days.
- On the third day, discuss the outcome in *Arizona v. Evans*. Have students complete the activity titled "[Friend or Foe: Debating the Exclusionary Rule, Part I.](#)" Review and discuss the answers.
- On your last day, have students complete the "L" column on the KWL chart and discuss as a class.

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If you have four days . . .

- Complete the activities for the first, second, and third days.
- On the fourth day, complete the activity titled "[Friend or Foe: Debating the Exclusionary Rule, Part II.](#)"
- On your last day, have students complete the "L" column on the KWL chart and discuss as a class.

## Background Summary and Questions • • •

Ms. Dollree Mapp and her daughter lived in Cleveland, Ohio. After receiving information that an individual wanted in connection with a recent bombing was hiding in Mapp's house, the Cleveland police knocked on her door and demanded entrance. Mapp called her attorney and subsequently refused to let the police in when they failed to produce a search warrant. After several hours of surveillance and the arrival of more officers, the police again sought entrance to the house. Although Mapp did not allow them to enter, they gained access by forcibly opening at least one door. Once the police were inside the house, Mapp confronted them and demanded to see their warrant. One of the officers held up a piece of paper claiming it was a search warrant. Mapp grabbed the paper but an officer recovered it and handcuffed Mapp "because she had been belligerent". Dragging Mapp upstairs, officers proceeded to search not only her room, but also her daughter's bedroom, the kitchen, dinette, living room, and basement.

In the course of the basement search, police found a trunk containing "lewd and lascivious" books, pictures, and photographs. As a result, Mapp was arrested for violating Ohio's criminal law prohibiting the possession of obscene materials. At trial, the court found her guilty of the violation based on the evidence presented by the police. When Mapp's attorney questioned the officers about the alleged warrant and asked for it to be produced, the police were unable or unwilling to do so. Nonetheless, Mapp was found guilty and sentenced to 1 to 7 years in the Ohio Women's Reformatory.

Upon her conviction, Mapp appealed her case to the Supreme Court of Ohio. Her attorney argued that she should never have been brought to trial because the material evidence resulted from an illegal, warrantless search. Because the search was unlawful, he maintained, the evidence was illegally obtained and must also be excluded. In its ruling, the Supreme Court of Ohio recognized that "a reasonable argument" could be made that the conviction should be reversed "because the 'methods' employed to obtain the [evidence]. . . were such as to 'offend' a sense of justice." But the Court also stated that the materials were admissible evidence. The Court explained its ruling by differentiating between evidence that was peacefully seized from an inanimate object (the trunk) rather than forcibly seized from an individual. Based on this decision, Mapp's appeal was denied and her conviction upheld.

Mapp appealed again to the Supreme Court of the United States. The case came down to this fundamental question: may evidence obtained through a search in violation of the Fourth Amendment be admissible in state criminal proceedings? The Fourth Amendment states "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 . . . and particularly describing the place to be searched, and the persons or things to be seized." The Fourth Amendment, however, does not define when a search or seizure is "unreasonable" nor does it specify how evidence obtained from an "unreasonable" search should be treated.

While never previously addressing the specific question presented by Mapp's case, the Supreme Court of the United States had made attempts to determine what constitutes a reasonable search and what evidence can be used in court. It first wrestled with these issues in *Boyd v. United States* (1886) when the Court declared that "any forcible and compulsory extortion of a man's own . . . private papers to be used as evidence to convict him of a crime . . . is within the condemnation of . . . [the Fourth Amendment]. Later, in *Weeks v. United States* (1914), the Court ruled that the Fourth Amendment "put the courts of the United States and federal officials . . . under limitations . . . and forever secure[d] the people, their persons, houses, papers and effects against all unreasonable searches and seizures. . . ." By including only United States and federal officials in its ruling, however, the Court still left open the question of whether evidence unlawfully seized could be used in a state criminal court proceeding. In *Wolf v. Colorado* (1949) the Court for the first time discussed the effect of the Fourth Amendment on the states. It concluded that the Due Process Clause of the Fourteenth Amendment incorporated, or made applicable to the states, the Fourth Amendment to the Constitution. However, the ruling in *Wolf* also made clear that "in a prosecution in a State court for a State crime the Fourteenth Amendment does not forbid the

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admission of evidence obtained by an unreasonable search and seizure." In other words, the exclusionary rule did not apply to the states.

Some states, including Ohio, felt that they should be able to make their own determination regarding the admissibility of illegally obtained evidence. Nevertheless, in 1960 the Supreme Court of the United States agreed to hear Mapp's case and reconsider the decision it had reached in *Wolf* by determining whether the U.S. Constitution prohibited state officials from using evidence obtained in violation of the Fourth Amendment. The decision in *Mapp v. Ohio* was handed down in 1961.

**Questions to Consider:**

1. In your opinion, was Dollree Mapp justified in denying the police entrance to her house? Explain your reasoning.
  
  
  
  
  
  
  
  
  
  
2. The Fourth Amendment states "The right of the people to be secure . . . against unreasonable searches and seizures shall not be violated . . ." If you were a justice for the Supreme Court of Ohio what, if anything, would you find unreasonable in the search of Mapp's house? Explain.
  
  
  
  
  
  
  
  
  
  
3. Complete the chart below based on your reading.

	Ways in which the decision <u>extended</u> the rights of individuals	Ways in which the decision <u>constrained</u> the rights of individuals
<i>Boyd v. United States</i> 1886		
<i>Weeks v. United States</i> 1914		
<i>Wolf v. Colorado</i> 1949		



## Background Summary and Questions • •

Suspicious that Dollree Mapp might be hiding a person suspected in a bombing, the police went to her home in Cleveland, Ohio. They knocked on her door and demanded entrance. On the advice of her lawyer, Mapp refused to let them in because they did not have a warrant.

After observing her house for several hours and recruiting more officers to the scene, the police forced their way into Mapp's house. When Mapp confronted them and demanded to see their search warrant, one of the officers held up a piece of paper. He claimed it was the search warrant. Mapp grabbed the paper but an officer recovered it and handcuffed Mapp. The police dragged her upstairs and searched her bedroom. Finding nothing there they went to other rooms in the house, including the basement.

As a result of their search of the basement, the police found a trunk containing pornographic books, pictures, and photographs. They arrested Mapp and charged her with violating an Ohio law against the possession of obscene materials. At the trial the police officers did not show Mapp and her attorney the alleged search warrant or explain why they refused to do so. Nevertheless, the court found Mapp guilty and sentenced her to jail.

Mapp and her attorney appealed the case to the Supreme Court of Ohio. Mapp's attorney argued that because the police had no warrant, their search of her basement was illegal. Because the search was illegal, he said, the evidence gained from the search was also illegal. Illegal evidence should not have been allowed in Mapp's trial. In the ruling, the Court disagreed and said that because the evidence was taken peacefully from the trunk, rather than by force from Mapp, it was legal. As a result, Mapp's appeal was denied and her conviction upheld.

Mapp then appealed her case to the Supreme Court of the United States. The case came down to this fundamental question: is evidence obtained through a search that violates the Fourth Amendment admissible in state courts? The Fourth Amendment states "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 . . . and particularly describing the place to be searched, and the persons or things to be seized." The Fourth Amendment, however, does not define when a search or seizure becomes "unreasonable". It also does not explain how evidence obtained from an "unreasonable" search should be treated.

Mapp's case was not the first case to ask this kind of question. In several rulings over the hundred years leading up to *Mapp* the Supreme Court of the United States had tried to answer questions about what, exactly, the Fourth Amendment means. They had agreed that neither federal nor state officials could conduct "unreasonable searches". Furthermore, in *Weeks v. United States*, they had determined that federal officials could not use evidence obtained in such searches at trial. However, they had not ruled on whether *states* could use illegally seized evidence to convict a criminal. Some states, including Ohio, felt that they should be able to make their own determination regarding this issue. Doing so would be consistent with historical tradition—states had always supervised the operation of their criminal justice systems.

In 1960 the Supreme Court of the United States agreed to hear Mapp's case and determine whether the Fourth and Fourteenth Amendments, which said the Fourth Amendment applies to the states, prohibited state officials from using evidence obtained in an unreasonable search. The decision in *Mapp v. Ohio* was handed down in 1961.

## Background Summary and Questions ••

### Questions to Consider:

1. In your opinion, was Mapp right to not let the police enter her house? Explain your reasoning.
2. The Fourth Amendment states "The right of the people to be secure . . . against unreasonable searches and seizures shall not be violated. . . ." Pretend that you were a justice for the Supreme Court of Ohio. What, if anything, would you find unreasonable in the search of Mapp's house? Explain.
3. The Supreme Court of the United States has to balance the protection of the rights of individuals against the protection of society. If the police had not searched Mapp's house they would never have found the pornography. With this in mind, do you think the rights of Mapp or society should have been more important? Explain.

## Background Summary and Questions •

### Vocabulary

#### **suspected (to suspect)**

Define:

---

Use in a sentence:

---

#### **search warrant**

Define:

---

Use in a sentence:

---

#### **obscene**

Define:

---

Use in a sentence:

---

#### **appealed (to appeal)**

Define:

---

Use in a sentence:

---

#### **evidence**

Define:

---

Use in a sentence:

**unreasonable**

Define:

---

Use in a sentence:

---

Dollree Mapp lived in Cleveland, Ohio. One day, the police broke into Mapp's house to look for a *suspected* bomber. Mapp had refused to let the police into her house earlier because they did not have a *search warrant*. When the police broke in, they showed Mapp a piece of paper. They said the paper was a search warrant, but they did not let her see it.

The police searched Mapp's house without her permission. They looked in her room, her daughter's bedroom, the kitchen, the living room, and the basement. In the basement they found a trunk. Inside the trunk were *obscene* pictures, photographs, and books. The police did not find the bomber, but they arrested Mapp anyway. They said she broke the law by having obscene pictures.

The court found her guilty. Mapp then *appealed* her case to the Supreme Court of Ohio. She said that her rights were violated in the search. The Supreme Court of Ohio said that the actions of the police were probably illegal. However, they also said that the *evidence* (the illegal pictures) the police found could be used against Mapp, even though the search itself may have been illegal. Mapp then appealed her case to the Supreme Court of the United States.

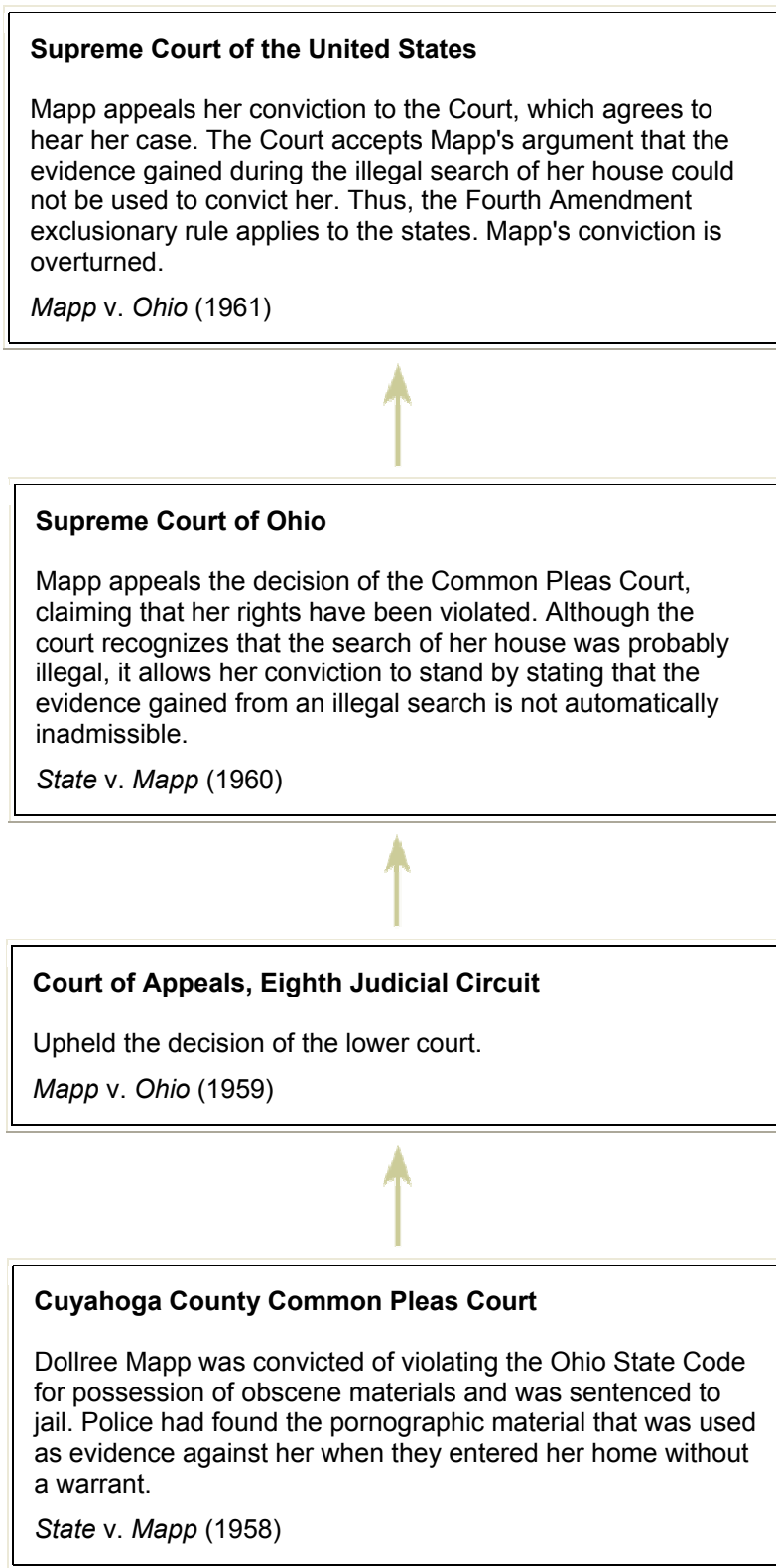
The Fourth Amendment to the U.S. Constitution protects people from *unreasonable* searches by the government. In Mapp's case, the Supreme Court of the United States had to decide when a search is legal and whether evidence from an illegal search could be used in a criminal case. In 1961 the Supreme Court of the United States ruled in the case of *Mapp v. Ohio*.

## Background Summary and Questions •

### Questions to Consider:

1. Was Mapp right to not let the police enter her house? Why or why not?
2. Was there anything unreasonable about the police search of Mapp's house? Explain.
3. The Supreme Court of the United States has to protect both humans and society. In this case, whom do you think they should protect first? Mapp? Society? Explain your answer.

## Diagram of How the Case Moved Through the Court System



## Key Excerpts from the Majority Opinion

**The case was decided six to three.  
Justice Clark delivered the opinion of the Court.**

....

Since the Fourth Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth, it is enforceable against them by the same sanction of exclusion as is used against the Federal Government. Were it otherwise . . . the freedom from state invasions of privacy would be so ephemeral and so neatly severed from its conceptual nexus with the freedom from all brutish means of coercing evidence as not to merit this Court's high regard as a freedom "implicit in the concept of ordered liberty." . . . in extending the substantive protections of due process to all constitutionally unreasonable searches—state or federal—it was logically and constitutionally necessary that the exclusion doctrine—an essential part of the right to privacy—be also insisted upon as an essential ingredient of the right. . . .

....

. . . our holding that the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments is not only the logical dictate of prior cases, but it also makes very good sense. There is no war between the Constitution and common sense.

....

Federal-state cooperation in the solution of crime under constitutional standards will be promoted, if only by recognition of their now mutual obligation to respect the same fundamental criteria in their approaches.

....

There are those who say, as did Justice (then Judge) Cardozo, that under our constitutional exclusionary doctrine "[t]he criminal is to go free because the constable has blundered." . . . In some cases this will undoubtedly be the result. But, as was said in *Elkins*, "there is another consideration—the imperative of judicial integrity." . . . The criminal goes free, if he must, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence.

....

. . . Our decision, founded on reason and truth, gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice.

....

## Key Excerpts from the Majority Opinion

### Questions to Consider:

1. In the majority opinion, the justices refer to the "exclusionary rule". Under this rule, what has to be excluded from trial? Why?
2. The majority identifies several reasons why evidence gained in an illegal search cannot legally be used against a defendant during trial. Why do they say that such a rule is constitutionally necessary?
3. The majority insists that to allow illegally seized evidence during trial would destroy the government. Explain.
4. What foundation of U.S. government is the Court referring to when it states, "Nothing can destroy a government more quickly than its . . . disregard of the character of its own existence"?
5. Do you agree with the Court's statement "there is no war between the Constitution and common sense"? Explain.

## Key Excerpts from the Concurring Opinion

The case was decided six to three.  
Justice Black delivered a concurring opinion.

....

I am still not persuaded that the Fourth Amendment, standing alone, would be enough to bar the introduction into evidence against an accused of papers and effects seized from him in violation of its commands. For the Fourth Amendment does not itself contain any provision expressly precluding the use of such evidence, and I am extremely doubtful that such a provision could properly be inferred from nothing more than the basic command against unreasonable searches and seizures. Reflection on the problem, however, in the light of cases coming before the Court since *Wolf*, has led me to conclude that when the Fourth Amendment's ban against unreasonable searches and seizures is considered together with the Fifth Amendment's ban against compelled self-incrimination, a constitutional basis emerges which not only justifies but actually requires the exclusionary rule.

....

### Questions to Consider:

1. Does Justice Black agree or disagree with the exclusionary rule?
  
  
  
  
  
  
  
  
  
  
2. How does his reasoning differ from that in the majority opinion?

## Key Excerpts from the Dissenting Opinion

**The case was decided six to three.  
Justice Harlan delivered the dissenting opinion.**

In overruling the *Wolf* case the Court, in my opinion, has forgotten the sense of judicial restraint which, with due regard for *stare decisis*, is one element that should enter into deciding whether a past decision of this Court should be overruled. Apart from that I also believe that the *Wolf* rule represents sounder Constitutional doctrine than the new *Wolf* rule, which now replaces it.

From the Court's statement of the case one would gather that the central, if not controlling, issue on this appeal is whether illegally state-seized evidence is Constitutionally admissible in a state prosecution, an issue which would of course face us with the need for re-examining *Wolf*. However, such is not the situation. For, although that question was indeed raised here and below among appellant's subordinate points, the new and pivotal issue brought to the Court by this appeal is whether §2905.34 of the Ohio Revised Code making criminal the *mere* knowing possession or control of obscene material, and under which appellant has been convicted, is consistent with the rights of free thought and expression assured against state action by the Fourteenth Amendment. That was the principal issue, which was decided by the Ohio Supreme Court, which was tendered by appellant's Jurisdictional Statement, and which was briefed and argued in this Court.

In this posture of things, I think it fair to say that five members of this Court have simply "reached out" to overrule *Wolf*. With all respect for the views of the majority, and recognizing that *stare decisis* carries different weight in Constitutional adjudication than it does in nonconstitutional decision, I can perceive no justification for regarding this case as an appropriate occasion for re-examining *Wolf*.

....

... It seems to me that justice might well have been done in this case without overturning a decision on which the administration of criminal law in many of the States has long justifiably relied.

....

I would not impose upon the States this federal exclusionary remedy.

....

... Our concern here...is not with the desirability of that [exclusionary] rule but only with the question whether the States are Constitutionally free to follow it or not as they themselves determine. ...

....

The preservation of a proper balance between state and federal responsibility in the administration of criminal justice demands patience on the part of those who might like to see things move faster among the States in this respect.

....

## Key Excerpts from the Dissenting Opinion

### Questions to Consider:

1. What does the term "judicial restraint" mean? Does Justice Harlan think the majority has exercised judicial restraint in this case?
2. According to Justice Harlan, what was the primary issue raised by the appellant?
3. What was the issue that the Court ultimately decided?
4. What does Justice Harlan think of the fact that the Court decided a different issue than the one that was originally raised? How does he feel about the decision itself?
5. Does Justice Harlan support the notion of states controlling their own criminal justice systems or of the federal government making decisions for them?

## **Search Warrants: What Are They and How Do They Work?**

*(Note to teachers: We recommend that you invite a community resource person, such as a judge, prosecutor or criminal defense lawyer to assist in going over the scenarios, as many of them are tricky and the answers can depend upon the nuances of state law. Though we have provided sample search warrant forms for you, this person may also be able to assist you in getting copies of the warrant forms that your state court uses. If not, you may be able to get them yourself by calling the clerk of your trial court.)*

A search warrant is an order signed by a judge that allows the police to look in a specific place for a specific item at a specific time. In order to get a search warrant, the police must persuade a judge that they have "probable cause" to believe they will find evidence of criminal activity in the place to be searched. Police officers do this through an affidavit, which is an oral or written statement made under oath. In the affidavit, they identify the place to be searched, the reason it is to be searched, and the items that are to be seized. If a judge believes that a police officer has demonstrated "probable cause" that he will find the items, the judge will issue the search warrant. If the judge does not believe that "probable cause" exists he will not issue the warrant.

### **Directions:**

In the activity that follows, you will walk through the process of obtaining a search warrant.

1. Your teacher will divide the class into groups of two and will give each group a scenario to read. (Some groups will have the same scenario.) Your teacher will also assign one person in each group to one of the following roles:
  - Police Officer
  - Witness
2. The police officer and witnesses read the scenario and will answer the questions that follow the scenario.
3. The police officer will interview the witness, who will describe any "suspicious behavior" she has seen to the police officer. (In some scenarios, the witness will play more than one role). The information in the scenario provided will serve as a basis for the witnesses, but she may embellish the details as appropriate. If the situation merits a request for a search warrant, the police officer will complete an "Application and Affidavit for a Search Warrant". If the situation does not merit a request for a search warrant, members of the scenario should discuss why.
4. Each group of two will now form a group of four with another set of partners. The "witnesses" will trade places and will now serve as judges. If the lawyer has an affidavit to submit, she will give it to the judge. If not, she will explain to the judge why she did not submit one.
5. The judge will review the "Application and Affidavit for a Search Warrant" and determine whether or not there is probable cause for a warrant. (At this point, it would be helpful to have the assistance of the community resource person.) The judge will complete the first page of the search warrant form explaining why or what additional information he would need in order to grant the request.
6. Each group will present the outcome of its scenario to the class and will explain what transpired and why. The community resource person can assist in the discussion.

*(Note to teacher: You may want to "model" one scenario. Ask for volunteers to assist you by playing the other roles. If you decide to do this, do not assign that scenario to any of the groups.)*

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**Follow-up Questions:**

1. In which scenarios did the police officers request a search warrant?
2. In which scenarios did the judge issue a search warrant?
3. Why were warrants issued in some cases but not in others?
4. In situations where warrants were not issued, how did the police obtain evidence?

**Scenario Number One**

Residents in Las Vegas, Nevada are complaining about one of their neighbors. They believe that the adults living in the corner house of Caroline Way are involved in something illegal. The neighbors notice cars coming and going at all hours. Most of the time single men drive the cars. These men spend very little time in the house before leaving, often carrying a package with them when they leave. Additionally, the children living in the house appear sad and malnourished. They are frequently playing in the back yard during school hours and walk around the neighborhood wearing little more than their underwear. When interacting with each other, the children use very mature language, often peppering their comments with profanity. At school, the children's teachers notice that they have trouble sitting still and often complain about not feeling well. Witnesses to this suspicious activity include the next-door neighbor and the nurse at the children's elementary school.

**Questions to Consider:**

1. What illegal activity might the parents be involved in? List two possibilities below.
  - a.
  - b.
  
2. List three pieces of possible evidence to support each of the above predictions.
  - a.
    - 1.
    - 2.
    - 3.
  - b.
    - 1.
    - 2.
    - 3.

**Scenario Number Two**

In a quiet neighborhood outside of Chicago, Illinois a middle-class family has begun to spend money as if they were rich. The wife, a stay-at-home mother of two, traded her Ford station wagon for a BMW SUV. She purchased three platinum and diamond rings for her right hand and a huge emerald and diamond ring for her engagement finger. Furthermore, as the weather has gotten colder, a fur has replaced her wool coat. The father, a manager at the local Bank of America branch, recently bought a snowmobile and a mint condition 1957 Corvette. At school, the kids have been bragging to their friends about skiing in Switzerland. Witnesses to this suspicious activity include the next-door neighbor and the mother of the children's best friend.

**Questions to Consider:**

1. What illegal activity might the parents be involved in? List two possibilities below.

a.

b.

2. List three pieces of possible evidence to support each of the above predictions.

a.

1.

2.

3.

b.

1.

2.

3.

### Scenario Number Three

A wealthy businessman in San Francisco, California has a family with three beautiful children. He and his wife are well known for their philanthropic contributions to society. Recently, an article in a San Francisco newspaper featured the family and mentioned that they were worth about 500 million dollars. The weekend after the article appeared in the newspaper, the youngest daughter was at soccer practice in a city park. Mrs. Smith, who usually watches her daughter's practice, left for about 20 minutes to run some errands. When she came back, her daughter was nowhere to be found. Frantic, she asked the team coaches and parents at the practice if they knew where her daughter was. No one did, but one father, Mr. Cruz, mentioned that he had seen an unknown woman lingering near the water fountain at the far side of the field. Mrs. Smith called her husband in tears, wondering how she was going to explain the situation. However, when she reached her husband she did not need to explain. He told her that a letter was mailed to him that afternoon. It says, "We have your daughter. To get her back, you must contribute the following fee to the "HELP ME" organization: \$25 million dollars. Collect the money, DO NOT call the police, and await further instructions." A witness to this suspicious activity includes Mr. Cruz, the soccer father.

#### Questions to Consider:

1. What illegal activity may have taken place?
  
2. List three pieces of possible evidence to support the above prediction.
  - 1.
  - 2.
  - 3.

**Scenario Number Four**

A high-school senior at a New York prep school comes to class wearing brand new Nike sneakers, a Tommy Hilfiger shirt, and Nautica jeans. A talented artist, he is known to take beautiful, dramatic photographs of people. Because he usually wears neat, but not new clothes to school, his classmates comment on his new look. He is pleased and tells them to wait and see what he has on tomorrow. The following day, he again comes to school in new clothes. In addition to the clothes, however, he also has on a new gold necklace and is seen in the cafeteria treating three of the most popular girls to lunch. When questioned about his new wealth, he says that he has gotten a job. At the end of the week, he drives to school in a new Jeep Cherokee. That weekend, he is spotted at several parties he has never before been invited to. At the parties, he is often seen in quiet conversation with other students where money exchanges hands. Witnesses to this activity include the high-school student's art teacher, the captain of the cheerleading squad, and the manager at the store where the boy claims to work.

**Questions to Consider:**

1. What illegal activity might the student be involved in? List two possibilities below.
  - a.
  - b.
  
2. List three pieces of possible evidence to support each of the above predictions.
  - a.
    - 1.
    - 2.
    - 3.
  - b.
    - 1.
    - 2.
    - 3.

**Scenario Number Five**

When visiting downtown Kansas City, Missouri you and your friend come across a woman on the street corner selling stereo equipment out of the back of her SUV. The equipment that she is selling is very high quality but she is selling it for less than half the price it would cost in a specialty store. When you ask how she is able to sell the equipment at such a low price, she tells you that the merchandise was previously owned, but assures you that it has been checked and is in excellent condition. Not wanting to commit to a purchase, you ask if she will be back next weekend. She says she will, but might not be in the exact location. During the week, you talk to your uncle who lives in Kansas City, Kansas. He asks if your community is having the same crime wave that his is suffering. You tell him no, and you ask for details. He says that homes in one of the more affluent neighborhoods are being burglarized. When you ask what is being stolen, he tells you jewelry and electronic goods. Although you think nothing of it at the time, when the weekend comes you again see the woman selling stereos and think twice. Witnesses to this activity include your friend and your uncle.

**Questions to Consider:**

1. What illegal activity may have taken place?
  
2. List three pieces of possible evidence to support the above prediction.
  - 1.
  
  - 2.
  
  - 3.

**Scenario Number Six**

Bored one Saturday evening, you are sitting in your family room watching MTV and wishing your parents would stop arguing over whose turn it is to do the dinner dishes. As Carson Daly introduces the latest Madonna smash hit, you hear a screeching noise in your driveway, followed by the sound of wood splintering. Rushing outside, you come across two friends in a gorgeous bright red BMW with a personalized license plate that reads "Doc". Surprised, you ask, "What's up?" "The sky", the driver replies and tells you to get in the car "NOW". Ignoring the yelling of your parents, you hop in the car, figuring you are about to embark on a fantastic adventure. Once in the car, you ask your friend in the passenger seat where you are going. He looks scared, but answers bravely, "Anywhere our chauffeur wants to take us." Careening around corners and running red lights, you get to the center of town before you notice the flashing lights of a police car behind you. Your friend ignores the police until you and the other passenger convince him to pull over. Witnesses to this activity are the two passengers; Doctor Rodriguez, whose red BMW is missing from the restaurant parking lot where he had parked it; the driver of another car that was almost run over by both the BMW; and the police car pursuing the BMW.

**Questions to Consider:**

1. List two illegal activities that may have taken place.
  - a.
  - b.
  
2. List three pieces of possible evidence to support each of the above predictions.
  - a.
    - 1.
    - 2.
    - 3.
  - b.
    - 1.
    - 2.
    - 3.

To be completed by the police officer based on testimony from the witness(es)

Application and Affidavit for Search Warrant

AO 106 (Rev. 5/85) Application for Search Warrant

United States District Court

DISTRICT OF

In the Matter of the Search of
Name, address or best description of person or property to be searched

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

CASE NUMBER:

I, being duly sworn depose and say:
I am (an) and have reason to believe
that on the person of or on the premises known as (name, description and location)

in the District of
there is now concealed a certain person or property, namely

which is (name address province for search and return under Rule 41(b) of the Federal Rules of Criminal Procedure)

In violation of Title United States Code, Section(s)
The facts to support the issuance of a Search Warrant are as follows:

Continued on the attached sheet and made a part hereof. Yes No

Signature of Affiant

Sworn to before me, and subscribed in my presence

Date

City and State

Name and Title of Judicial Officer

Signature of Judicial Officer

MT (31)-28

11-2-80/31

CCD Manual

To be completed by the judge after receiving an affidavit from the police officer. (page one of two)

**Search Warrant**

AQ 93 (Rev. 5/95) Search Warrant

**United States District Court**

DISTRICT OF \_\_\_\_\_

In the Matter of the Search of

(Name, address or brief description of person or property to be searched)

**SEARCH WARRANT**

CASE NUMBER: \_\_\_\_\_

TO: \_\_\_\_\_ and any Authorized Officer of the United States

Affidavit(s) having been made before me by \_\_\_\_\_ who has reason to believe that  on the person of or  on the premises known as \_\_\_\_\_

in the \_\_\_\_\_ District of \_\_\_\_\_ there is now concealed a certain person or property, name: \_\_\_\_\_

I am satisfied that the affidavit(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before \_\_\_\_\_

(not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant and making the search (in the daytime — 8:00 A.M. to 8:00 P.M.) (at any time in the day or night as I find reasonable cause has been established) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to \_\_\_\_\_ as required by law.

Date and Time Issued \_\_\_\_\_

at \_\_\_\_\_

City and State \_\_\_\_\_

Name and Title of Judicial Officer \_\_\_\_\_

Signature of Judicial Officer \_\_\_\_\_



## When Is a Search Warrant Not Necessary? Every People Response Activity

*(Note to teachers: We recommend that you invite a community resource person, such as a judge, prosecutor, or criminal defense lawyer to assist in going over the scenarios, as many of them are tricky and the answers can depend upon the nuances of state law.)*

### **Introduction:**

Most Americans understand that police officers sometimes need a warrant to search for information believed to be related to criminal activity. They may also be aware that, according to the exclusionary rule, evidence gained in an illegal search cannot be used to convict someone of a crime. However, in many circumstances the police do not need a warrant for a search, or for the evidence gained from a search, to be legal and used in court.

In each of the situations below, a police officer does not need a search warrant to conduct a search.

1. If an individual voluntarily consents (agrees to) a search, no warrant is needed. The key question in this kind of search is what counts as a voluntary agreement? In order for a **consent search** to be legal, the individual must be in control of the area to be searched and cannot have been pressured or tricked into agreeing to the search.
2. A police officer that spots something in plain view does not need a search warrant to seize the object. In order for a **plain view search** to be legal, the officer must be in a place he has the right to be in and the object he seizes must be plainly visible in this location.
3. If a suspect has been legally arrested, the police may search the defendant and the area within the defendant's immediate control. In a **search incident to arrest** no warrant is necessary as long as a spatial relationship exists between the defendant and the object.
4. Following an arrest, the police may make a **protective sweep search** if they reasonably believe that a dangerous accomplice may be hiding in an area near where the defendant was arrested. To do so, police are allowed to walk through a residence and complete a "cursory visual inspection" without a warrant. If evidence of or related to a criminal activity is in plain view during the search, the evidence may be legally seized.
5. If the police stop a car based on probable cause, they can search for objects related to the reason for the stop without obtaining a warrant. During a car search, the police are also allowed to frisk the subject for weapons, even without a warrant if they have reasonable suspicion that the suspects may be involved in illegal activities.

**Directions:** You will be given an index card with an "L" on one side and an "I" on the other. The "L" stands for LEGAL. The "I" stands for ILLEGAL. Your teacher will read aloud a scenario in which the police did not have a search warrant. You will have 10 seconds to decide, based on the information above, whether the search/seizure was legal or illegal. When the teacher says "go", raise your index card, displaying the "L" if you think the search was legal or the "I" if you think the search was illegal. Be prepared to explain and defend your answer.

	Scenario	Is this search <u>Legal</u> or <u>Illegal</u> ?	If it's legal, cite the reason using the underlined words from items 1-5 above. If it's illegal, explain.
1	At the local shopping mall, an undercover detective notices a group of teenagers shopping together. Following them, he observes no illegal behavior. However, once they exit the mall he stops them and orders them to turn over their purses, wallets, and jackets. Is this search legal or illegal?		
2	Using a valid arrest warrant, police arrest a woman for running a drug ring out of her house. Believing that her boss, one of the biggest drug dealers in the country, may be hiding inside the house, they walk through the house looking for him. Is this search legal or illegal?		
3	Officer Jones is trying to find a convict who escaped from a nearby jail. Going door-to-door in the neighborhood surrounding the jail, he asks permission to enter each house and search it. The Nguyen's allow him to enter their house. Once in the house, the officer sees and seizes an unregistered firearm that is on a bookshelf. Is this search legal or illegal?		
4	In a neighborhood well known for producing methamphetamines, the police have a warrant to search the basement of one home to find a production lab. Finding nothing in the basement, they perform a protective sweep search on the rest of the house. Is this search legal or illegal?		
5	While chaperoning a high-school football game, police in Mississippi see a gun on the front seat of a parked car. Opening the car door, they discover not only the gun but also bullets and a knife. Is this search legal or illegal?		
6	Jody and Chandra attend a keg party where all of those drinking were under age. The police break up the party without arresting anyone. They seize Jody's purse. Inside, they find marijuana and arrest Jody for possession. Is this search legal or illegal?		
7	Late for work, Diego was driving five miles over the speed limit when pulled over by the police. Ordering Diego out of the car, the police proceed to frisk him and find a small weapon in his jacket pocket. Is this search legal or illegal?		

## Friend or Foe? Debating the Exclusionary Rule, Part I

### Background:

In 1995, both the U.S. Senate and the U.S. House of Representatives proposed legislation, which sought to abolish the exclusionary rule, barring illegally, seized evidence from criminal cases. The Senate's version read as follows:

" . . . Evidence obtained as a result of a search or seizure that is otherwise admissible in a Federal criminal proceeding shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the fourth amendment to the Constitution."

Source: Lynch, Timothy. 1999. "In Defense of the Exclusionary Rule" *USA Today*.

If passed, this legislation would have eliminated the use of the exclusionary rule in federal criminal prosecutions.

You are a U.S. Senator. This bill will be coming up for a vote soon. You asked a junior staff member to research the arguments for you. She did so, but unfortunately, she neglected to label the arguments as for or against the legislation.

### Directions:

1. Read each argument below. Decide whether the statement is For (**F**) the legislation, Against (**A**) it, or Neutral (**N**). Write the appropriate letter in the space provided.
2. Examine the data that follow the arguments and determine which argument each piece of data supports. In the space provided, write the number of the corresponding argument.

### Arguments

\_\_\_\_\_ 1. According to Michael Cooke, "Many people are familiar with the concept that they have a right to privacy and cannot be searched without a warrant. However, not many people understand how the exclusionary rule, which is what actually enforces this right, protects us. The purpose of the exclusionary rule is to deter police misconduct. If a police officer violates a citizen's Fourth Amendment right to be free from illegal searches and seizures [sic], that evidence is to be suppressed in federal court."

Source: Written by Michael Cooke, for [www.pagewise.com](http://www.pagewise.com)

\_\_\_\_\_ 2. Rep. Bill McCollum, R-FL, argued that "these technicalities are killing a lot of our police officers' efforts and the prosecutors' efforts to get convictions."

Source: American Civil Liberties Union

\_\_\_\_\_ 3. According to Timothy Lynch, the associate director of the Cato Institute's Center for Constitutional Studies, "When agents of the executive branch (the police) disregard the terms of search warrants, or attempt to bypass the warrant-issuing process altogether, the judicial branch can and should respond by 'checking' such misbehavior. The most opportune time to check such unconstitutional behavior is when prosecutors attempt to introduce illegally seized evidence in court. Because the

## ***Mapp v. Ohio***

exclusionary rule is the only effective tool the judiciary has for preserving the integrity of its warrant-issuing authority, any legislative attempt to abrogate the rule should be declared null and void by the Supreme Court."

Source: Cato Institute

\_\_\_\_\_ 4. When Edwin Meese was the U.S. Attorney General in the early 1980s, he commented on the exclusionary rule using these words "what the rule really does is endanger innocent victims, while letting criminals escape . . . The social costs of this policy are immense."

Source: American Civil Liberties Union

\_\_\_\_\_ 5. Jeffrey Rosen of *The New Republic* says, "For the first century after American independence, the remedy for an unreasonable search was simple: sue the offending officer for compensatory or punitive damages under trespass or tort law . . . No court, in England or America, excluded evidence in criminal trials until the Supreme Court invented the exclusionary rule in the 1886 *Boyd* case. Even friends of the rule agree the Court's reasoning was mystifying . . . But the Court has never explained why, if the exclusionary rule is not required by the Constitution, the justices had any business imposing it on the states in the first place."

Source: Rosen, Jeffrey. 1995. Republican Legal Onslaught II: Search and Seize. *The New Republic*, March 27, 1995.

\_\_\_\_\_ 6. "Most law enforcement officials, including the police, do not believe that the exclusionary rule interferes with their effectiveness in enforcing the law. In 1988, the American Bar Association published a report on the impact of constitutional rights on crime and crime control. After gathering the testimony of hundreds of judges, prosecutors, and police officers describing in detail the problems they faced daily in their work, the report concluded that 'the exclusionary rule neither causes serious malfunctioning of the criminal justice system nor promotes crime,' and further noted that 'the police, toward whom the deterrent force of the exclusionary rule is primarily directed, do not consider search and seizure proscriptions to be a serious obstacle.'"

Source: American Civil Liberties Union

\_\_\_\_\_ 7. The Head of the Narcotics Section of the Organized Crime Division of the Chicago Police Department stated in 1986, "I would not do anything to the exclusionary rule . . . It makes the police department more professional. It enforces appropriate standards of behavior."

Source: American Civil Liberties Union

\_\_\_\_\_ 8. In a speech delivered in the House of Representatives regarding a similar piece of legislation, Representative Nancy Pelosi said, ". . . the exclusionary rule is what protects all Americans against unreasonable searches and seizures and the invasion of privacy by law enforcement officers. It does not undermine the ability of the police to enforce the law; indeed, it has been part of the training given to all federal law enforcement agents since 1914. The directors of the FBI have endorsed the exclusionary rule and have stated that the rule does not hinder the FBI's work . . . the exclusionary rule works because it creates an incentive for law enforcement officers to know legal search and seizure standards. By passing this bill, law enforcement will actually have an incentive not to know the law."

Source: Rep. Nancy Pelosi (D-Calif.)

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\_\_\_\_ 9. Robert E. Moffit, Deputy Director of Domestic Policy Studies for the Heritage Foundation, stated in 1996, "in *Mapp v. Ohio* (1961), the Court mandated the exclusion of evidence in cases involving even the most technical violation of the search and seizure provisions of the Fourth Amendment."

Source: The Heritage Foundation

\_\_\_\_ 10. William Westmiller, the California Coordinator of the Republican Liberty Caucus, writes, "The exclusionary rule was a judicial effort to fill a legislative void. Rather than carving laws that properly punish violations of civil rights, the Congress deferred to Executive police authority, unfettered by any constitutional restrictions. The courts could not draft those proper laws, so they found a feeble mechanism to at least discourage the most flagrant violations . . . but only when they were perpetrated against criminals. Innocent citizens benefit not a whit from the rule, being left to battle state atrocities by their own means in a civil court. This is injustice compounded beyond injustice. . . . But they evade the whole truth, that it is exactly those innocent parties who are explicitly excluded [sic] from the benefits of the exclusionary rule. The entire proposition of excluding truthful facts from a trial flies in the face of common law principles established over centuries."

Source: Excerpted from Westmiller Commentaries.

\_\_\_\_ 11. According to Timothy Lynch, the associate director of the Cato Institute's Center for Constitutional Studies, "Critics of the exclusionary rule often stress that they wish to replace it with 'a more effective remedy' for illegal police searches. The substitute remedy typically offered is a civil damages action that would enable victims of unlawful searches to sue police departments for monetary damages . . . history shows that, where courts do not employ the exclusionary rule, the problem of police lawlessness gets worse."

Source: Lynch, Timothy. 1999. "In Defense of the Exclusionary Rule" *USA Today*.

\_\_\_\_ 12. James Fyfe, a 16-year veteran of the New York City Police Department and professor of criminal justice at Temple University, said "the fact is that the exclusionary rule is the best deterrent to illegal searches and seizures that the best legal minds in the United States have been able to devise in the 200 years since magistrates and law enforcement officers had unchecked powers to authorize and execute searches and seizures of persons and property."

Source: American Civil Liberties Union

\_\_\_\_ 13. Anthony Bouza, former New York Police Department Commander and retired Minneapolis Police Chief, states, "Over the ensuing decades [after the *Mapp* decision], cops learned to obtain warrants, secure evidence, and prepare cases. Arrests that had been clouded by sloppiness, illegality, and recklessness were now much tidier."

Source: American Civil Liberties Union

\_\_\_\_ 14. William Westmiller, the California Coordinator of the Republican Liberty Caucus, writes, "Irrespective of the guilt or innocence of any other party, police should be held liable for their unlawful conduct. This is different, in kind, from expanding federal police powers. The law should restrain and prosecute federal, state, and local police who violate individual rights. The range of penalties should be broad, but most critically the law must treat any illegal conduct by police perpetrated 'under the color of law' much more severely than the same conduct perpetrated by a common criminal. The minimum penalty for any intentional violation of constitutional rights should be expulsion and perpetual exclusion from any position within law enforcement—impeachment and removal from office, if the contemporary analogy holds."

Source: Excerpted from Westmiller Commentaries.

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### **Data**

\_\_\_\_ A. In 1978, the Comptroller General of the United States found "evidence was excluded at trial as a result of Fourth Amendment motions in only 1.3% of the cases . . . "

Source: American Civil Liberties Union

\_\_\_\_ B. In New York, an appellate court decided that a human corpse found in the trunk of a car, searched with the driver's permission, could not be used as evidence because the "state troopers may have appeared intimidating to the driver."

Source: National Center for Policy Analysis

\_\_\_\_ C. In 1997, according to *Wall Street Journal* author Max Boot, "Four state appellate judges upheld a family court judge's ruling that a loaded .45 caliber semi-automatic gun confiscated by a security guard from a 15-year old student—when he clearly saw the outline of the gun through a coat—was improperly seized and, thus, could not be considered as evidence."

Source: National Center for Policy Analysis

\_\_\_\_ D. A 1982 study by the National Institute of Justice reported that, over a three-year period in California, "[o]nly 0.79% of all felony complaints brought in the state of California over a three-year period were rejected for prosecution because of the exclusionary rule."

Source: American Civil Liberties Union

\_\_\_\_ E. According to former Attorney General Edwin Meese, "Since *Mapp v. Ohio*, the exclusionary rule has had a devastating impact on law enforcement in America. One recent study estimated that 150,000 criminal cases, including 30,000 cases of violence, are dropped or dismissed every year because the exclusionary rule excluded valid, probative evidence needed for prosecution."

Source: Meese, Edwin III and Rhett DeHart. 1997. "The Imperial Judiciary... And What Congress Can Do About It," *Policy Review* January-February 1997, No. 81.

\_\_\_\_ F. In New York, "a district court judge dismissed a firearms case against a taxi driver who was a convicted felon. Although police from a safety-checking task force stopped the cab driver, the judge ruled that the police who stopped the cab and found the gun, 'had no probable cause or reasonable suspicion to stop the taxicab.'"

Source: National Center for Policy Analysis

\_\_\_\_ G. "When the exclusionary rule was not in effect in the state of Ohio, for example, the Cincinnati police force rarely applied for search warrants. In 1958, the police obtained three warrants; in 1959, none. Although civil trespass actions were available to victims of unlawful searches, the potential threat of a lawsuit had a negligible effect on police behavior. The pervasive attitude among police officers was that, if illegally seized evidence could be used in court, there was no reason to bother with the search warrant application process."

Source: Lynch, Timothy. 1999. "In Defense of the Exclusionary Rule" *USA Today*.

***Mapp v. Ohio***

**Extension:** Determine your position on the issue. Circle what you perceive to be the best arguments and corresponding supporting data. Use that information to write a short speech expressing your position on the proposed legislation. The speech will be delivered on the floor of the Senate. Remember that your constituents may be watching on television.

## Friend or Foe? Debating the Exclusionary Rule, Part II

**Directions:**

You will be participating in a two-person debate on the issue of the proposed legislation to abolish the exclusionary rule in federal courts. The legislation reads as follows:

" . . . Evidence obtained as a result of a search or seizure that is otherwise admissible in a federal criminal proceeding shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the Fourth Amendment to the Constitution."

The debate will follow a scripted format. One person will argue FOR the legislation and the other will argue AGAINST the legislation. Each participant will have thirty seconds to defend his or her point of view based on each issue using the introductory statements presented below, supporting arguments and data from Part I of this activity, additional research he or she may have conducted, and the comments made by his or her debate competitor. Before you begin, read the introductory statements below. Then take a few minutes to list the arguments and data that support each statement. This can include, but is not limited to, information from Part I of this activity.

	<b>FOR the Legislation</b>	<b>AGAINST the legislation</b>
	<i>The statements provided below are intended to be used as introductory statements.</i>	
<b>Issue One: Police Misconduct</b>	Police, as professionals, should be trusted to be fair without lots of rules being forced upon them.	Without the exclusionary rule, police will act in an unprofessional manner.
<b>Issue Two: Who Is Punished? Society or the Police?</b>	The exclusionary rule makes it more difficult to convict criminals and thus, punishes society for police wrongdoing.	The exclusionary rule punishes police by making it more difficult to convict criminals using illegally obtained evidence.
<b>Issue Three: Who Does It Protect—the Guilty or the Innocent?</b>	The exclusionary rule protects guilty people rather than innocent ones.	The exclusionary rule protects innocent people.
<b>Issue Four: Ways to Protect People Who Are Wrongfully Searched</b>	There are other ways to protect people who are wrongfully searched or whose rights are violated.	The exclusionary rule is the most effective way to protect people who are wrongfully searched or whose rights are violated.
<b>Issue Five: Judicial Integrity</b>	Citizens will have faith in the court even if evidence used to convict someone is illegally obtained.	Citizens will not believe in the court if convictions are based on evidence obtained in violation of a citizen's rights.
<b>Conclusion:</b>	The exclusionary rule should be abolished.	The exclusionary rule should remain intact.

***Mapp v. Ohio***

**For Discussion:** What additional argument could be made regarding whether the exclusionary rule should be abolished or kept in STATE courts?

**\*\*Conclusion:** Determine your position on the legislation. In Part I of this activity, circle what you perceive to be the best arguments and corresponding supporting data. Use that information to write a short speech expressing your position on the proposed legislation. The speech will be delivered on the floor of the Senate. Remember that your constituents may be watching on television.

*\*(Note to teacher: You could modify this activity by dividing the class into teams and having each member of the team prepare and debate one of the five issues.)*

*\*\* (Note to teachers: This is the same as the extension activity that appears in Part I of your lesson. Have your students do it once, preferably after completing the debate).*

## The Exclusionary Rule in a Computer-Driven Society: The Case of *Arizona v. Evans* (1995)

### Introduction:

In the United States, one of the ways that the judicial branch checks the executive branch is via the **exclusionary rule**. Under this law, illegally obtained evidence has been inadmissible in federal criminal courts since 1914. Proponents of this rule find that it helps eliminate police misconduct and protect individual rights, while opponents believe that society is punished and criminals benefit from errors made by the police.

In the 1961 case of *Mapp v. Ohio*, the exclusionary rule was extended to the states. At that time, televisions had just recently become a standard in the American household and the average American had no concept of what a computer might be. However, by the 1990s, computers were as much a part of American's lives as televisions. Increasing technological skills allowed computers to be utilized by law enforcement officers as a standard part of their job.

As technology was evolving, so were the Court's standards regarding the controversial exclusionary rule. In a series of cases, it recognized several exceptions. For instance, in the 1984 case *United States v. Leon*, the Court relaxed the standard a bit to include "good faith" exceptions. The Court held that if police believed, for instance, that a search warrant was legal, but later found out that it was technically flawed, the evidence obtained in the search would still be admissible, so long as the police had acted in "good faith".

**Directions:** Read the summary of *Arizona v. Evans* to determine if the exclusionary rule applies to computer errors made by the police.

### The Case: *Arizona v. Evans*

The police stopped Evans for driving the wrong way down a one-way street. After running his driver's license through their computer, the police found that there was a warrant out for his arrest. Arresting Evans, the police searched his car and found marijuana.

A search "incident to arrest" is generally understood to be constitutional. However, it turned out that the misdemeanor warrant that appeared on the police officer's computer was a mistake. The warrant had been withdrawn. At his trial, Evans argued that the computer mistake meant the search of his car was illegal. Because his car was illegally searched, he stated, the exclusionary rule should apply to the marijuana the police found.

The Supreme Court of Arizona basically agreed with Evans that the search and resulting drug charges were unconstitutional. They ruled that because the exclusionary rule is meant to deter police employees from making mistakes in the process of searching for and seizing evidence, computer records were not exempt from the rule.

In 1994, the Supreme Court of the United States decided to hear the case upon appeal from the Arizona police.

**The Exclusionary Rule in a Computer-Driven Society:  
The Case of *Arizona v. Evans* (1995)**

**Questions to Consider:**

1. What is the purpose of the exclusionary rule?
2. Should it apply in this case? Why or why not?
3. Predict the outcome of the case.

Find out the outcome in *Arizona v. Evans* by reading about the Court's decision on the next page.

**Extension**

Do you agree with the majority opinion or with Justice Stevens, whose comments appear in the last line of the synopsis of the dissenting opinion? Explain why.

### **The Supreme Court's Decision in *Arizona v. Evans***

In its decision, the Court reversed the decision of the Arizona Supreme Court and ruled that the search and seizure were not covered by the exclusionary rule, and therefore were constitutional. In deciding the case, the Court looked at three different things.

1. They decided that the exclusionary rule was created to stop police misconduct. In this case, the Court said no misconduct had occurred.
2. The Court also decided that, because there is no evidence that record keeping employees were inclined to ignore the Fourth Amendment, the computer error was probably a result of pure human error rather than an attempt to undermine the rights of individuals.
3. Without evidence that extending the exclusionary rule to mistakes made by record keeping employees would change police behavior, there was no reason to believe that finding for Evans in this case would make a police officer more accurate. After all, they determined, the officer was just doing his job.

Although the majority of the Court ruled as described above, Justices Stevens and Ginsburg dissented. Justice Ginsburg thought that it was too early to rule on such a case, as technology was constantly evolving. Justice Stevens, however, believed that the search and seizure may have been unconstitutional and used the following reasoning to make his case: "the indignity of an arrest stemming from a bureaucrat's error is just as outrageous as an arrest made without probable cause."