

Mapp v. Ohio / Senate Debate: Abolishing the Exclusionary Rule

Directions:

1. Read the **Background** section below.
 2. Read the **Scenario** below and complete the **Classifying Arguments** (page 2) and **Data Analysis** (page 5) activities.
 3. If your teacher assigns it, complete the **Extension Activity** (page 6).
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Background

In 1995, both the U.S. Senate and the U.S. House of Representatives proposed legislation to abolish the exclusionary rule, which bars illegally seized evidence from criminal cases. The Senate's version of the legislation 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.”

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

Scenario

You are a U.S. Senator representing your state in 1995. The bill to abolish the exclusionary rule 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.

Classifying Arguments Activity

Read each argument below. Decide whether the statement is FOR (**F**) the legislation to abolish the exclusionary rule, AGAINST (**A**) it, or is NEUTRAL (**N**). Write the appropriate letter in the space provided.

1. 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*)

2. 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 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*)

3. 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*)

4. 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: The New Republic*)

5. “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*)

6. 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*)

7. 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.)*)

8. 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*)

9. 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: *Westmiller Commentaries*)

10. 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: “*In Defense of the Exclusionary Rule*” *USA Today*)

11. 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*)

12. 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: *Westmiller Commentaries*)

Data Analysis Activity

Examine the data below and determine which argument(s) each piece of data supports. In the space provided, write the number of the corresponding argument from the Classifying Arguments activity.

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 reporter 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: “The Imperial Judiciary. And What Congress Can Do About It,” Policy Review*)

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: “*In Defense of the Exclusionary Rule.*” *USA Today*)

Extension Activity

Determine your position on the exclusionary rule. 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.