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U.S. Department of Justice
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Criminal Justice Research Report

The Effects of the Exclusionary Rule: A Study in California

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James K. Stewart
Director

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FOREWORD

The exclusionary rule is one of the most controversial features of the American justice system. As set forth by the Supreme Court, the rule requires that courts ban from criminal trials evidence obtained through improper search and seizure. The rule's adherents assert that it deters constitutionally impermissible police conduct and thus protects constitutional liberties. Opponents say the rule frequently thwarts justice by excluding at trial physical evidence that would convict offenders.

Although the debate on the issue has continued at varying levels of intensity for many years, it has been hindered by an almost complete lack of systematic information on the actual effects of the rule as it currently operates. This study by the National Institute of Justice was conducted to help fill that gap. It contributes empirically-derived information about the practical effects of the exclusionary rule that can inform the continuing debate. It was begun in October of this year as part of the Institute's emphasis on developing policy-relevant knowledge about significant criminal justice issues.

The need for the study became clear to me after a review of the available empirical research. Virtually no current data exists on the effects of the rule on state criminal justice systems, the systems that process about 90 percent of the criminal cases. The only research on the topic done in the past ten years was conducted by the General Accounting Office (GAO) in 1978. The GAO study confined its analysis to the rule's effects in federal criminal cases. Although that report provided some details about the rule's effect on a broad range of federal felony cases, it did not break down findings in a way that permitted analysis of the rule's impact on specific types of crimes.

Our review of previous research conducted in the 1960's and early 1970's indicated that the rule's effects were likely to be concentrated in drugs and weapons cases. In designing this research on state criminal justice operations, we sought not only to report on the overall impact of the rule on all felonies, but to provide as much information as possible on the categories of offenses principally affected by the rule.

Past research also revealed little information on the criminal histories of defendants whose cases were dropped because of the exclusionary rule. As a result, it was impossible to determine which defendants were most affected by the rule. Does it apply chiefly in cases where the defendant has never before been arrested? Or is it more frequently invoked in cases involving defendants with active criminal histories? To help answer such questions, our study traces the prior and subsequent arrests of defendants whose felony cases were dismissed because of search and seizure problems.

California and its urban areas of San Diego and Los Angeles were selected as the sites for the study because of California's large and varied population and the sophistication and detail of its criminal justice information systems. When we sought the data necessary for this study, we were fortunate in that criminal justice professionals in the State were willing to cooperate with us. These individuals not only took all necessary steps to provide the data to us, they also explained to us both the significance and limitations of the various data sets.

The Institute's analysis found that the exclusionary rule does appear to have a substantially greater effect on state court cases than the GAO study indicated it had on federal cases. Of all felony arrests rejected for prosecution in California in the years 1976-1979, 4.8 percent were rejected because of search and seizure problems. This is 12 times the federal rejection rate reported in the GAO study (0.4 percent). In California, as well as in San Diego County, the vast majority of cases affected by the exclusionary rule were drug cases. In fact, almost three-fourths of the cases dropped due to search and seizure problems were drug cases. In San Diego, the study revealed that two-thirds of defendants whose cases were dropped in 1980 had prior or subsequent arrests. Both statewide and in San Diego, approximately half of those whose cases were dismissed were rearrested during the follow-up periods of 2 years and an average of 28 months, respectively; those rearrested had an average of approximately three rearrests during that time.

The research results in this report do not provide the final answers on all the effects of the exclusionary rule. Not addressed in the study, for example, is the question of the rule's deterrent effect on police misconduct, an issue of concern to many. But, the information reported, we hope, will be of help to policymakers and others attempting to understand how the rule presently works and the implications of any changes in its application.

The National Institute is especially grateful for the assistance of the many officials in the California criminal justice system without whose help and cooperation the study would have been impossible. Special appreciation is given to Edwin S. Miller, District Attorney of San Diego County and his staff, particularly Janet Frazer; to John F. Duffy, Sheriff of San Diego County and to Rich Robinson and his records room staff, particularly Ruby Neagles, Norv Krager, Lee Brooks and Geneva Watson; and to the staff of the Criminal Records Section, California Department of Justice, particularly Vic Paradis and Jerry Ackerman. In Los Angeles County, special thanks go to John K. Van de Kamp, District Attorney of Los Angeles County, and his staff, particularly Ronald Bowers, Steven Sowders, Neil Riddle and Robert Schirn; to Los Angeles County Sheriff Sherman Block and his staff; to the staff of the County Clerk's Office and Clerk of the Superior Court, and to the Los Angeles Police Department.

Appreciation is also due to Leo Schuerman at the University of Southern California, who provided all statewide California data, and to John Otto, Executive Assistant Director of the Federal Bureau of Investigation.

This study was conducted by research staff of the National Institute of Justice. Members of the project team brought to the study a broad range of academic training, and research and practical experience in various criminal justice fields. Overall direction was provided by W. Robert Burkhart, Assistant Director for the Office of Research Programs, who has a master's degree from the London School of Economics and was chief of parole research in California. Mr. Burkhart also has conducted research on prisons, parole, probation and juvenile justice for that State. The review of legal issues and prior research was the responsibility of Linda McKay, a former appellate prosecutor in the Brooklyn District Attorney's office and a graduate of the University of Virginia Law School. Collection and analysis of the San Diego data and the difficult task of compiling and analyzing criminal history information for San Diego defendants was carried out by Anne Schmidt, who holds a master's degree from Smith College and has conducted research for Georgetown University Law School and the Federal Bureau of Prisons. Statewide data and special data from Los Angeles were obtained and analyzed by Shirley Melnicoe, who has a graduate degree from the University of Southern California and has been a researcher with the Seattle Police Department. Cheryl Martorana, who earned her master's degree at the University of Notre Dame and has worked for private social science research firms, was responsible for much of the writing and editing of the report.

Other National Institute staff members lent valuable assistance to the preparation of this report. Joseph Kochanski, Acting Director of the Police Division, and Jack Katz, special assistant to the Institute Director, contributed their expertise. Mary Graham and Jane Danielson, of the Institute's reference and dissemination staff, provided editorial support.

Dean Roach, Chairman of the National Institute of Justice Advisory Board, provided numerous suggestions at the initiation of the study that were of great assistance. Professor William McDonald of Georgetown University provided insightful and especially helpful comments on an early draft of the report.

Special thanks to Anne Young, who patiently typed and retyped the report as additional comments were incorporated, and to Arthur Fergenson who provided his energy, acumen and enthusiasm to the completion of this study.

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SUMMARY

In 1914 in Weeks v. United States, the Supreme Court ruled that evidence obtained in violation of Fourth Amendment safeguards against improper searches and seizures would not be admissible in federal prosecutions. In 1961 the Supreme Court in Mapp v. Ohio applied this exclusionary rule to state and local prosecutions as well. Nearly 70 years after the exclusionary rule was fashioned, questions still arise regarding its effectiveness as a remedy for improper police procedures and its impact on criminal prosecutions.

Few empirical studies of the exclusionary rule's impact have been undertaken. In the past ten years the only systematic examination of the rule's effect was conducted by the General Accounting Office (GAO) in a 1978 study of the processing of federal crimes. Although earlier studies had restricted their analysis to drugs, weapons and other crimes found to be most vulnerable to search and seizure issues, the GAO study did not break down its results by the nature of the charges. That study simply analyzed aggregate data for a wide variety of federal felony arrests, and found little apparent impact of the rule: 0.4 percent of the sample of all cases rejected cited exclusionary rule concerns.

The present study was initiated to provide current information on the impact of the exclusionary rule on state felony prosecutions. The specific goals were: (1) to identify the extent of the rule's impact on the overall felony caseload; (2) to obtain a sense of the extent to which particular crime categories are affected by the rule; and (3) to gain some indication of the costs incurred by society after these defendants were released, as measured by their subsequent arrest records.

California was selected for analysis because it could provide a large amount of detailed automated data relevant to the study's objectives. The study examined all felony arrests rejected for prosecution because of search and seizure problems in California during the years 1976-1979, all felony cases rejected in San Diego County in 1980, a sample of those rejected in the Central Operations Branch of the Los Angeles County District Attorney and all felony rejections in the Pomona Branch in 1981. In addition to this analysis of case rejections, the study traces the prior and subsequent criminal histories of defendants whose cases were dropped because of search and seizure problems. Key findings are as follows:

A significant number of felony cases are rejected for prosecution in California because of search and seizure problems.

- Statewide, 4,130 cases, or 4.8 percent of all felony arrests rejected for prosecution from 1976 through 1979, were rejected because of search and seizure problems.

- In large urban areas a higher proportion of felony cases rejected were rejected for search and seizure problems. In San Diego County, search and seizure problems accounted for 8.5 percent of such rejections in 1980. In two Los Angeles County offices in 1981 the rates were 11.7 and 14.6 percent.

The greatest impact of the exclusionary rule is on drug cases, and for those cases the effect on case attrition is substantial.

- o 71.5 percent of the felony cases rejected for prosecution in California between 1976-1979 because of search and seizure problems involved drug charges. More recent figures for San Diego were similar: 74 percent of San Diego defendants released in 1980 because of search and seizure problems had been charged with felony narcotics or drug offenses.

- o 32.5 percent of all felony drug arrests referred for prosecution in 1981 to the Pomona (Los Angeles County) prosecutor's office were rejected at the initial case review because of search and seizure problems. A similar rate (29 percent) of drug case rejections for search and seizure problems was found in the sample from the Central Operations office of the Los Angeles District Attorney.

- o Reanalysis of data underlying the GAO study found that almost two-thirds (64 percent) of federal drug cases reviewed for prosecution by U.S. Attorneys involved a search and seizure issue.

For most defendants, the arrest that ended in release because of the exclusionary rule was only a single incident in a longer criminal career. About half of those freed were rearrested during the follow-up period; they averaged approximately three rearrests each.

- o 45.8 percent of the 2,141 defendants not prosecuted for felonies in California in 1976 and 1977 because of the exclusionary rule were rearrested within two years of their release. The 981 individuals who were rearrested accounted for 2,713 rearrests, 1,270 of which were for felony offenses.

- o 52.4 percent of San Diego felony defendants not prosecuted in 1980 because of search and seizure problems had been rearrested by October of 1982. Of those rearrested, 57.3 percent were rearrested more than once and 27.7 percent of those rearrested had four or more arrests during the follow-up period, which averaged 28 months.

- o 69 percent of San Diego defendants released in 1980 because of search and seizure problems were found to have a prior or subsequent arrest record. Well over half (60 percent) had either a prior or subsequent felony arrest.

In contrast to the earlier analysis of federal prosecutions, this study found a major impact of the exclusionary rule on state prosecutions. This effect was concentrated in drug and narcotics cases. To a substantial degree, individuals released because of search and seizure problems were those with serious criminal records who appeared to continue to be involved in crime after their release. The felony rearrests included many drug crimes, but the majority were for crimes against persons or property, or for other felony offenses.

THE EFFECTS OF THE EXCLUSIONARY RULE: A STUDY IN CALIFORNIA

I. INTRODUCTION

This report examines certain effects of the application of the exclusionary rule in California. This judicially-constructed rule mandates the exclusion of evidence of criminal wrongdoing from trials when violation of certain constitutional rights is found. It is a remedy applied by courts for police improprieties in gathering criminal evidence. Its use has been the subject of controversy for nearly 70 years.

Although violation of several constitutional rights may give rise to the application of the rule, 1/ this study addresses only Fourth Amendment search and seizure issues. The aim of the study is to determine the impact of the exclusionary rule on felony case processing at the state and local level and to examine the prior and subsequent criminal histories of defendants who were freed because of exclusionary rule concerns. The overall purpose is to increase our knowledge of the effects of the exclusionary rule and thereby enlighten the continuing debate about its appropriateness and its consequences.

Using data routinely collected and reported by criminal justice agencies in California, and specially collected data from the counties of San Diego and Los Angeles, the National Institute has examined felony arrest cases rejected by prosecutors for search and seizure reasons. For defendants in these cases, prior and subsequent criminal arrest information was also obtained to determine more about the types of offenders who are affected by the exclusionary rule and to estimate the potential harm to society, in terms of future criminal activity, of the failure to successfully prosecute them on the original charges.

While some new data are presented on police-initiated releases of arrestees and on court dismissals of cases after prosecutor acceptance of a case, the bulk of the information analyzed for this report derives from prosecutor rejections or later dismissals of cases because of concerns about the search and seizure of evidence. No information is available in any measurable form on incidents in which an arrest was not made due to police officer uncertainty about a search situation. Nor does the study examine the effect of search and seizure issues raised in cases for which convictions were obtained. Only cases where search and seizure problems were identified and recorded by the prosecutors as the primary reason for case rejection are included. Cases where this was a secondary or contributing cause of case attrition are not reflected in the study data. Thus, the study findings understate the overall effects of the exclusionary rule on felony case processing.

1/ Violations of Fourth, Fifth and Sixth Amendment rights can lead to exclusion of evidence. See, e.g., Miranda v. Arizona, 384 U.S. 436 (1966) (confessions); United States v. Wade, 388 U.S. 218 (1967) (lineups); Gilbert v. California, 388 U.S. 263 (1967) (identifications); Lee v. Florida, 392 U.S. 378 (1968) (wiretaps).

II. BACKGROUND

The case law and commentary concerning search and seizure issues are voluminous. 2/ The possibility of excluding evidence obtained through police searches and seizures that were found to violate the Constitution was first suggested in Boyd v. United States, 116 U.S. 616 (1886), but it was not until 1914, in Weeks v. United States, 232 U.S. 383, that the Supreme Court actually shaped this remedy and applied it to federal prosecutions. In 1961, in Mapp v. Ohio, 367 U.S. 643, the rule was extended to state prosecutions. In Mapp, the Court discusses two major justifications for the use of this exclusionary rule: first, to deter unlawful police conduct, and, second, to maintain the integrity of the judicial system by refusal to collaborate with and benefit by constitutionally impermissible governmental activity. However, the primary ground upon which the Court relies for the continuing use of the exclusionary rule is the deterrence rationale. 3/ Today, neither court cases nor the literature give the judicial integrity argument much attention. 4/

Relatively few empirical studies have addressed the efficacy of the exclusionary rule. In a 1963 survey of randomly-selected police chiefs, prosecutors, defense attorneys, judges and civil rights advocates, Stuart Nagel attempted to measure the differences in police training and practices in states which had an exclusionary rule before Mapp and those which did not. One important finding was that there was a marked decrease in police "effectiveness" in states mandated by Mapp to adopt the exclusionary rule. 5/ Another survey of 90 criminal justice practitioners in North Carolina, conducted about that same time by Michael Katz, revealed that many judges and attorneys were

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2/ It is not the purpose of nor is it appropriate to this study to discuss the status of search and seizure law itself, which is complex and frequently uncertain. Nor will we touch upon the several collateral legal issues concerning the rule, such as standing to object or the doctrine of "fruit of the poisonous tree." A recent case suggesting a possible modification of the rule itself by limiting exclusions to searches and seizures not made in "good faith" by the police, United States v. William, 662 F.2d 830 (5th Cir., 1980), cert. denied, 101 S. Ct. 948 (1981), will be noted here but not discussed further.

3/ See, e.g., United States v. Janis, 428 U.S. 433, 458-9 (1976); Michigan v. Tucker, 417 U.S. 433, 450 (1974). These and other cases make the point that the judicial integrity rationale, while not abandoned, requires the same findings of fact and serves the same purpose (to prevent violations of the Constitution) and thus does not provide an independent basis for exclusionary rule challenge.

4/ But see, Henry Lueders Henderson, "Justice in the Eighties: The Exclusionary Rule and the the Principle of Judicial Integrity," 65 Judicature 354 (1982).

5/ Stuart Nagel, "Testing the Effects of Excluding Illegally Seized Evidence", 1965 Wis L. Rev. 283. Of 250 questionnaires sent, 113 responses were received (45 percent), representing 47 states. Approximately half of these states had some type of exclusionary rule in effect before the 1961 Mapp decision.

unaware of the exclusionary rule and exactly what it required. 6/

The first comprehensive examination of the effects of the exclusionary rule on case processing was not undertaken until 1970, when Dallin Oaks and James Spiotto conducted a series of studies in Chicago, Cincinnati and Washington, D.C. 7/ As a result of this work, Oaks 8/ determined that the exclusionary rule was applicable primarily in certain types of cases, particularly those involving narcotics, weapons, and gambling offenses. Further, Oaks found remarkable differences between Chicago and Washington, D.C. in the proportion of such cases where motions to suppress evidence due to search and seizure problems were brought (40 versus 16 percent, respectively); in the percent of motions granted (87 versus 20 percent); and in the percent of cases where a successful motion resulted in dismissal of the case (100 percent versus 50 percent). He attributed these differences in large part to the lack of early case review by Chicago prosecutors, compared with more rigorous screening in Washington, D.C.

This examination led him to conclude that the filing of motions was not indicative of the actual impact of the exclusionary rule on case dispositions and to suggest that further research was needed on the effect of search and seizure problems on prosecutorial decisions to reject cases. It was Oaks' opinion that the exclusionary rule does not deter police illegality in searches and seizures. He therefore suggested that the rule be abolished, but that some more effective mechanism first be developed which would allow adequate court review of cases involving the Fourth Amendment's guarantees.

Spiotto 9/ compared Oaks' results to case processing in Chicago in 1971 and found that approximately 30 percent of the narcotics, weapons and gambling cases were dismissed due to search and seizure problems soon after charges were lodged in court. He detected a relationship between crime seriousness and the probability of the motion to suppress being granted, with the

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6/ Michael Katz, "The Supreme Court and the State: An Inquiry Into Mapp v. Ohio in North Carolina," 45 N.C.L. Rev. 119 (1966).

7/ This work was supported in part by a research grant from the National Institute. (Grant No. 70-NI-013 to the University of Chicago Law School; Dallin Oaks, Project Director.)

8/ Dallin H. Oaks, "Studying the Exclusionary Rule in Search and Seizure," 37 U.Chi. L. Rev. 665 (1970). Chicago data from Table 5 on 685; Washington, D.C. data extrapolated from discussion at 685-687.

9/ James E. Spiotto, "Search and Seizure: An Empirical Study of the Exclusionary Rule and Its Alternatives," 2 J. Legal Studies 243 (1973). See also Critique, "On the Limitations of Empirical Evaluations of the Exclusionary Rule: A Critique of the Spiotto Research and United States v. Calandra," 69 N.W.U L. Rev. 740 (1974).

courts being less willing to suppress incriminating evidence in the more serious cases. However, 78 percent of defendants bringing motions to suppress were found to have had a prior record, and these defendants had a significantly greater chance of having a motion sustained than those without criminal records. Thus, Spiotto concluded, "(T)he exclusionary rule permits many defendants with criminal records to escape punishment for offenses actually committed but few who have no previous contact with the criminal justice system." 10/

Several studies of exclusionary rule cases were also conducted by Bradley Canon. In one 11/, he examined arrest data for narcotics, weapons and gambling offenses from 19 large cities for the years 1956-1960 (before Mapp) and 1962-1965 (after Mapp). He found distinct changes in some cities but not in others; however, the changes did not appear to be related to the implementation of the exclusionary rule. Canon's 1973 survey of police, prosecutors and public defenders in cities with over 100,000 population 12/ indicated growing compliance by police officers with Mapp's dictates between 1967 and 1973, as demonstrated by an increase in the use of search warrants and more specific procedures and policies restricting police behavior in searches. It was, therefore, Canon's general conclusion that the exclusionary rule could deter police misconduct in the area of search and seizure.

In 1978, the General Accounting Office (GAO), in response to a Congressional request, conducted a study of the impact of the exclusionary rule on criminal cases processed by 38 U.S. Attorney's Offices. 13/ Two samples of cases were selected for analysis. The first consisted of cases that were formally presented for prosecution and reviewed during a two-month period in 1978. The second sample consisted of cases closed by those offices during the same period. Among the findings reported: Of approximately 2,800 closed cases, 29.8 percent involved search and seizure issues but only 10.5 percent of the defendants filed Fourth Amendment suppression motions. Of those cases closed by trial, however, 32.6 percent involved such motions, most of which required formal hearings. For those cases where motions were granted, the likelihood of acquittal or dismissal was tripled from 15 percent to 45-50 percent. Of the 9,400 cases in the sample of arrests reviewed for prosecution, 14.7 percent involved Fourth Amendment issues. Of the cases rejected for prosecution (4,324 cases), about 272, or 6.3 percent, involved Fourth Amendment issues. However, in only 0.4 percent of those rejected cases was a search and seizure problem cited as the primary reason for the case rejection.

10/ Id. at 257.

11/ Bradley C. Canon, "Testing the Effectiveness of Civil Liberties Policies at the State and Federal Levels: The Case of the Exclusionary Rule," 5 Am. Politics Q. 57 (1977), and Bradley C. Canon, "Is the Exclusionary Rule in Failing Health? Some New Data and a Plea Against a Precipitous Conclusion," 62 Ky. L. J. 681 (1974).

12/ Bradley C. Canon, "The Exclusionary Rule: Have Critics Proven That It Doesn't Deter Police?" 62 Judicature 398 (1979).

13/ Comptroller General of the United States, Impact of the Exclusionary Rule on Federal Criminal Prosecutions, U.S. General Accounting Office (GGD-79-45), 1979.

The GAO study did not break down its findings by specific crime types as had most of the earlier studies. However, the underlying data for the study, provided directly to NIJ by GAO, indicates that narcotics cases comprise the largest single crime type in which search and seizure is an issue. The data show that, for 64 percent of drug cases, the reviewing prosecutor indicated the case involved search and seizure issues. In weapons cases, prosecutors indicated that approximately half involved exclusionary rule issues. Most of the federal caseload at the time the study was conducted was composed of such white collar crimes as embezzlement, fraud and forgery. Search and seizure issues are seldom raised in these cases. Thus, in terms of the universe of cases in the federal courts, the rule was not seen as a major issue. As the newly analyzed data show, however. the rule was a factor in a significant number of drugs and weapons cases at the federal level.

III. STUDY FOCUS AND METHODOLOGY

In recent years no empirical studies have addressed the impact of the exclusionary rule on state prosecutions. Virtually all the studies examining the exclusionary rule in state courts were conducted over 10 years ago and do not accurately reflect current practices under the application of the rule during recent years. Furthermore, none of the earlier studies attempted to determine the subsequent rate of criminal activity among defendants released because of the rule. To provide some current information about the effect of the exclusionary rule on state felony cases and to describe the types of defendants whose cases are affected by the rule, the National Institute of Justice undertook a study of the impact of the exclusionary rule on the processing of felony cases in California.

Although reference is made to other studies, and there is some limited examination of police releases and of court dismissals for search and seizure problems, the study focuses on felony cases rejected for prosecution or dismissed by the prosecutor after charges were filed specifically because of search and seizure problems. 14/ Two basic data sets were analyzed to examine particular aspects of the impact of the exclusionary rule. A large data set came from California's Offender-Based Transaction Statistics (OBTS), maintained for research purposes by the University of Southern California. This set contains information on the processing of all adult felony arrests in the State during the years 1976, 1977, 1978 and 1979, including data on felony arrests, complaints denied for exclusionary rule reasons, and court dismissals for search and seizure problems. In addition, the rearrest records of defendants whose cases were rejected in 1976 and 1977 for search and seizure problems were obtained to provide the two-year follow-up data. In the California OBTS system, "illegal search" is the specific code used to identify a Fourth Amendment issue at screening.

14/ Throughout this report, when the phrase "search and seizure issue" (or, "reason," "problem," "concern") is used, it refers to the full range of legal issues that involve possible Fourth Amendment violations and might give rise to a motion to suppress evidence in court, regardless of how that motion might be decided.

The other major data set contains all felony arrests rejected for prosecution by the San Diego District Attorney in 1980 in which problems of search and seizure resulted in all charges being dropped. In San Diego, the District Attorney's office has 10 separate codes specific to search and seizure issues which are among the reasons a prosecutor might give for rejecting a case presented for prosecution. These include "questionable stop/detention," "questionable consent," and "questionable execution (of a search warrant)." The San Diego sample was drawn from all felony arrests rejected during the sample period for which the first notation was one of these 10 codes. Defendants involved in these cases were identified and information was obtained concerning their offense charges, prior arrests, and, where available, subsequent arrests through October 1982, an average follow-up period of 28 months.

Additional data came from the San Diego Police Department. These data derive from a study conducted by that department in 1981, examining reasons given for the release of the accused without presenting the case to the district attorney. Such releases are authorized in the California Penal Code at section 849(b).

Additional prosecutorial data were supplied by the Los Angeles District Attorney's Office from their largest branch, Central Operations, and a branch office identified as typical by the District Attorney's Office, the Pomona Branch. Information on both prosecutorial rejections and on court dismissals of cases resulted from a special examination of case files conducted by members of these two offices in November 1982. Some data are for cases where search and seizure issues resulted in a rejection by the prosecutor of all charges in 1981; other data reflect court dismissals between August 20 and September 20, 1982.

It is important to note that, because nearly all data were obtained from routinely collected and coded data sources, they are, therefore, only as complete and correct as those sources allow. Furthermore, due to inconsistencies in recording dispositional information on the police files of the defendants in these samples, the decision was made to use only prior and subsequent arrests, not convictions, as the indicator of the criminal activity of the defendant.

California was selected as the site for the study because it maintains an automated statewide information file on the reasons for case rejection as well as statewide criminal arrest information. California also includes a number of rather large population centers which reflect varied local policies and practices. The statewide data base, therefore, is large enough to allow for an ample number of cases to be examined over a relatively short period of time. The large number of cases and varied mix of urban and rural jurisdictions in the State provides some assurance that the findings are not likely to be dramatically different from what would be found in other American jurisdictions of similar size with similar crime problems. Information was obtained from San Diego and Los Angeles Counties for the purpose of making comparisons with the statewide data and to provide details not available in the statewide data base.

The data analyzed for this study tend to understate the net effect of the exclusionary rule. For instance, one effect of the exclusion of some evidence is that there is then "insufficient evidence" to prove an arrest charge. A prosecutor rejecting such a case could reasonably note either "improper search" or "insufficient evidence" as the reason for case rejection. In fact, a spot review of a sample of "Charge Evaluation Worksheets" completed by Los Angeles prosecutors and used to identify reasons for rejection revealed that either of these reasons for rejection might be recorded when an exclusionary rule issue was raised.

In addition, the study counts as a search and seizure rejection only those cases where search and seizure was listed as the primary reason that the prosecutor chose not to proceed. Cases where search and seizure problems were listed as a secondary or contributory reason were not considered search and seizure rejections for the study's findings. Finally, only the officially recorded impact of search and seizure issues on completed felony arrests was examined. No attempt was made to determine the possible effect of the rule on the number of police searches not initiated or on the number of arrests not made once such a search revealed possible evidence of a crime.

The net result of all these limitations is to assure that the cases shown to be affected by the exclusionary rule were, in fact, so affected. There are, no doubt, others also affected by the rule. For the reasons noted above, these cases were not counted as having been affected by the rule for purposes of this analysis.

IV. FINDINGS

The findings presented below are reported in three sections. The first looks at the effects of the exclusionary rule on felony case processing in general. The second describes the effects of the exclusionary rule on particular categories of crimes, primarily drug and narcotic cases. The third section presents the prior and subsequent criminal history of individuals whose cases were rejected or dismissed because of the exclusionary rule, in an effort to gauge the social costs of releasing these defendants.

A. Impact of the Exclusionary Rule on Felony Case Processing

1. Police Screening

The first agency to review arrests for search and seizure problems is the police. Although data are not available at the state level on the number of felony arrestees released by the police because of search and seizure problems, a special study conducted by the San Diego Police Department and made available to the National Institute provides some information on the impact of the exclusionary rule at this initial case processing stage. All felony arrests made by the San Diego Police Department in October 1981, which resulted in the full release of the defendant and the dropping of all criminal charges by the police, were examined to determine the primary reason for the release. Although problems with victims and witnesses or lack of sufficient evidence for successful prosecution were cited as the main reasons for release in more than 60 percent of the cases, search and seizure problems were reported to be the primary reason for 6 percent of these releases by the police. Based on these data, San Diego officials estimate that in 1981, approximately 130 felony arrestees were released and the charges against them dropped by police primarily because of a search and seizure problem.

2. District Attorney's Initial Case Review

A much larger number of felony cases, however, are rejected for search and seizure problems by the next reviewing agency, the district attorneys' office. Statewide data on the proportion of cases rejected by district attorneys for prosecution are available for the years 1976 - 1979. During that period, California district attorneys rejected for prosecution approximately 17 percent (86,033 cases) of the 520,993 felony complaints referred to them by the police. Search and seizure problems were cited as the primary reason for the rejection of 4.8 percent, or 4,130, of those cases rejected. The statewide figures for each of the four years are presented in Table 1.

Table 1

California District Attorney Case
Rejections for Search and Seizure Problems
at Initial Screening
Statewide

	1976-1979	1976	1977	1978	1979
Total Felony Cases Rejected	86,033 (100.0%)	21,571 (100.0%)	20,141 (100.0%)	20,989 (100.0%)	23,332 (100.0%)
Cases Rejected for Search and Seizure	4,130 (4.8%)	1,057 (4.9%)	1,084 (5.4%)	975 (4.6%)	1,014 (4.3%)

Similarly, in 1980 a total of 14,478 cases were presented to the San Diego District Attorney for prosecution; of these, 3,840 felony cases were rejected for prosecution. In 327, or 8.5 percent of the rejected cases, the primary reason for rejection was identified as a search and seizure problem.

Two small studies in Los Angeles County revealed even higher proportions of rejected cases declined for reasons of search and seizure. In these studies, personnel of the Los Angeles County District Attorney's Office examined all felony cases rejected for prosecution in 1981 in their Pomona office (493 cases), and a random sample of 432 felony cases screened out by their Central Operations office. Data from these special analyses were made available to NIJ to

complement the statewide study. These data are from a special survey made by Los Angeles District Attorney personnel and are not based on routinely-recorded case rejection information. Reviewing prosecutors were asked to examine police reports and all information in the prosecutor's file on these cases to determine whether or not a search and seizure problem was the primary reason for case rejection. Data from all three of these sources are presented in Table 2.

Table 2

San Diego and Los Angeles
District Attorney Case Rejections for
Search and Seizure Problems
at Initial Screening

	San Diego County 1980	Pomona Office Los Angeles Co. 1981	Central Operations Los Angeles Co. 1981 Sample
Total Felony Cases Rejected	3,840 (100.0%)	493 (100.0%)	432 (100.0%)
Cases Rejected for Search and Seizure	327 (8.5%)	58 (11.8%)	63 (14.6%)

3. Court Dismissals

Once a case is accepted for prosecution, it moves into the lower courts for a preliminary hearing. No statewide data were obtained on cases dismissed at lower court levels for reasons of search and seizure, but information on court dispositions is available from a special Los Angeles survey. Reports and files covering the period August 20, 1982 through September 20, 1982 from the Central Branch of the Los Angeles County District Attorney's Office were examined. Those records revealed that, during the period reviewed, a total of 519 preliminary hearings were held; these resulted in 32 case dismissals, 10 of which were for search and seizure reasons.

After preliminary hearing in the lower court, felony cases move into the Superior Court. At the Superior Court level, statewide data were available showing that during the period 1976-1979, out of a total of 15,403 dismissals, 575, or 3.7 percent, were dismissed because of a search and seizure problem.

B. Crimes Most Affected by the Exclusionary Rule

Although the exclusionary rule may in theory be relevant to any kind of case in which evidence is collected, its actual impact, in fact, is much narrower. The study data show that the exclusionary rule's impact is concentrated on drug cases. 15/

Both the county and statewide data show that the vast majority of cases rejected because of search and seizure problems involve defendants charged with drug offenses. In San Diego, for example, 74 percent of defendants released in 1980 for the primary reason of a search and seizure problem were charged with at least one felony narcotic or drug crime. A profile of the most serious felony charge filed in all statewide cases rejected for prosecution because of search and seizure problems in the years 1976-1979 reveals that 71.5 percent were drug offenses. The second largest category of charges is "Other Felonies," which includes weapons cases. A complete breakdown by the most serious charge filed is presented in Table 3.

Table 3

Most Serious Charge Filed in Felony Cases
Rejected for Prosecution (1976-1979) for
Search and Seizure Problems
Statewide

Most Serious Charge	Number	Percent
Total Cases	4,130 cases	100.0%
Drug	2,953	71.5%
Other Felonies*	641	15.5%
Burglary	217	5.3%
Assault	134	3.2%
Robbery	88	2.1%
Grand Theft Auto	48	1.2%
Grand Theft	33	.8%
Rape	12	.3%
Murder	4	.1%

* Includes weapons and other felonies not listed separately.

15/It was not possible to determine the exact nature of the incidents giving rise to the felony charges brought in the drug cases in the statewide and local samples, which might have allowed some judgments about the relative seriousness of those charges. However, in California, the possession or informal transfer of one ounce or less of marijuana is a citation offense, not an arrestable offense. Thus it is clear the drug arrest data do not contain incidents involving marijuana for personal use.

In both of the Los Angeles offices surveyed, almost one-third of all felony drug cases submitted to the district attorney for prosecution were rejected because of a search and seizure problem. In the Pomona survey, of a total 1,131 felony cases reviewed by the District Attorney in 1981, 58 (5.1 percent) were rejected because of search and seizure problems. However, of the 114 felony drug and narcotic cases submitted for review, 37 (32.5 percent) were rejected for search and seizure reasons. In the Central Operations office there were similar findings. Of the 1,330 sampled 1981 cases screened for prosecution, 63 cases (4.7 percent) were rejected for search and seizure problems. Of the 145 drug cases reviewed, the proportion rejected for search and seizure was much higher: 29 percent, or 42 cases.

C. Criminal Histories of Defendants Released Because of Search and Seizure Problems

1. Prior Arrest Records

Among the questions relating to the exclusionary rule is the level of criminal involvement characteristic of defendants freed for search and seizure reasons and the effects on society of their release. To learn something about these issues, information on the prior and subsequent arrest histories of individuals charged with felony offenses but not prosecuted because of search and seizure problems was examined for San Diego County in 1980. Of the 327 felony cases rejected for prosecution in that county, criminal history files were located for 290 of the individuals involved. 16/ These records revealed that 169 of these subjects (58 percent) had prior arrests, the vast majority of which involved felony offenses. Details are presented in Table 4.

Table 4

Arrest Histories of San Diego Felony
Defendants Not Prosecuted in 1980
Because of Search and Seizure Problems

Arrest History	Number	Percent	
Total Defendants	290	100.0%	
Defendants with Prior Arrests	169	58.3%	
With Prior Felony Arrests	145	50.0%	(85.8% of those with prior arrests)
With Prior Misdemeanor Arrests Only	24	8.3%	(14.2% of those with prior arrests)

16/The 37 cases for which follow-up information is not provided include 3 subjects who died, 1 subject whose file had been purged, 12 subjects who were excluded because of uncertainties regarding the initial criminal charge, and 18 subjects who could not be identified in the criminal files. Also not included are second arrests of three subjects arrested and released for search and seizure reasons twice in the same year.

2. Subsequent Arrest Records

Subsequent criminal involvement was examined for individuals released because their cases had been rejected for prosecution both in San Diego and statewide. For San Diego, these data are based on arrest information available in the California Identification and Investigation (C.I.I.) criminal records data base as of October 30, 1982, and on supplemental information from the FBI. This information revealed that slightly more than half of the entire group was rearrested during the 22-to-34 month period following their case rejections in 1980. The great majority of those rearrested (79.6 percent) were charged with felonies. Specific figures are presented in Table 5.

Table 5

Rearrests as of October 31, 1982 of San Diego
Felony Defendants Not Prosecuted in 1980 Because of
Search and Seizure Problems

Rearrests	Number	Percent	
Total Defendants	290	100.0%	
Defendants Rearrested	152	52.4%	
Rearrested for a Felony	121	41.7%	(79.6% of those rearrested)
Rearrested for Misdemeanor Only	31	10.7%	(20.4% of those rearrested)

A significant portion of those released in San Diego because of search and seizure problems have an extensive record of arrests following their release. As can be seen in Table 6, almost 60 percent of those who were rearrested were rearrested more than once. In fact, the 152 persons who were rearrested accounted for a total of 462 separate arrests within the follow-up period. Of these, 312 were felony arrests.

Table 6

Number of Rearrests of
San Diego County Defendants Not Prosecuted
in 1980 Because of Search and Seizure Problems
(Average Follow-up Period: 28 Months)

Number of Rearrests (462)	Number of People (152)	Percent of Those Arrested (152=100.0%)	Percent of Total Defendants (290=100.0%)
1	65	42.7	22.4
2	29	19.1	10.0
3	16	10.5	5.5
4-6	26	17.1	9.0
7-9	8	5.3	2.8
10-18	8	5.3	2.8

To assess the risk presented to the community by those released because of search and seizure problems, the criminal records of the 290 San Diego defendants were examined in detail. Their records showed that about 20 percent (57 of the 290) had been rearrested for a felony more than once; 4.1 percent, or 12 people, were rearrested on a felony charge more than six times; and 9.3 percent, or 27 people, were rearrested for an offense involving a firearm. Furthermore, in spite of the delay which occurs between arrest and incarceration, 5.5 percent, or 16 people, were shown to have been arrested, convicted and sent to state prison by October 1982.

Statewide rearrest data for individuals released because of the exclusionary rule were obtained for those defendants released without prosecution during the years 1976 and 1977. All rearrests of these defendants within two years of their case rejection were analyzed. The analysis reveals that, of the 2,141 defendants whose cases were rejected for prosecution in those years, 981 individuals, or 45.8 percent of the total, were rearrested within a two-year follow-up period. This rate is remarkably similar to the 52.4 percent rate for San Diego as shown in Table 5. Furthermore, these 981 individuals accounted for a total of 2,713 rearrests, or almost 3 arrests per individual, during the two years. A significant portion of these rearrests (1,270) were on felony charges. Table 7 provides a breakdown of these rearrests.

Table 7

Rearrests of California Defendants Not Prosecuted in 1976 and 1977 Because of Search and Seizure Problems Within 2 Years of their Release Statewide

Rearrests	Number		Percent
Total Defendants Released	2,141		100.0%
Defendants Rearrested	981		45.8%
Total Number of Arrests	2,713	(Average:	2.8 arrests per rearrestee)
Number of Felony Arrests	1,270	(Average:	1.3 arrests per rearrestee)
Number of Misdemeanor Arrests	1,443	(Average:	1.5 arrests per rearrestee)

Analysis of felony rearrests by type of crime showed that, although most of the defendants with later rearrests had originally been arrested on drug charges, more than half (53.2 percent) of the rearrest charges were for non-drug felonies. The released group accounted for a total of 676 non-drug felony arrests during the two-year follow-up period. A breakdown of these figures and the types of felony rearrests of persons charged with drug, personal, property, and other types of crime are presented in Table 8.

Table 8

Rearrests by Type of Crime for Felony Defendants Not Prosecuted for Reasons of Search and Seizure (2 Year Follow-Up, 1976-1977 Releases) Statewide

Original Charges	No. of Defendants	Felony Rearrests	Felony Rearrests by Charge			
			Drugs	Property	Other	Personal
Total	981	1,270	594	323	200	153
Drugs*	691	879	534	167	97	81
Property**	138	196	35	123	20	18
Other***	113	123	11	21	70	21
Personal****	39	72	14	12	13	33

* Drugs: drug possession, sale, transportation and other drug and narcotic charges
** Property: burglary, grand theft and grand auto theft
*** Other: miscellaneous including felony weapons offenses
**** Personal: assault, murder, rape, and robbery

3. Combined Prior and Subsequent Arrest History

The San Diego County data provide the only combined information on both prior and subsequent arrests of defendants not prosecuted because of search and seizure reasons. As has been noted previously, 58.3 percent had prior arrests and 52.4 percent had subsequent arrests. When this information is combined, it is found that a total of 200 defendants, 69 percent, had a history of either prior or subsequent arrests, and well over half of the sample (60 percent) had a history of either prior or subsequent felony arrests. This information is presented in Table 9.

Table 9

Prior and Subsequent Arrests of San Diego County Defendants Not Prosecuted in 1980 Because of Search and Seizure Problems

	Total Defendants	With Subsequent Felony Arrests	With Subsequent Misdemeanor Arrests Only	With No Subsequent Arrests
Total	290 (100.0%)	121 (41.7%)	31 (10.7%)	138 (47.6%)
With Prior Felony Arrests	145 (50.0%)	92 (31.7%)	16 (5.5%)	37 (12.8%)
With Prior Misdemeanor Arrests Only	24 (8.3%)	10 (3.5%)	3 (1.0%)	11 (3.8%)
With No Prior Arrests	121 (41.7%)	19 (6.6%)	12 (4.1%)	90 (31.0%)

V. CONCLUSIONS

In summarizing the findings of this study, three major conclusions may be drawn.

First, the exclusionary rule does appear to be an important factor in the processing of state felony cases. The analysis of California data reveals that almost 5 percent of felony rejections statewide and an even larger proportion in large urban areas -- up to almost 15 percent in one office in Los Angeles -- were rejected for search and seizure problems. This contrasts with a rate of only four-tenths of 1 percent found in a 1978 study of federal cases.

Second, the findings demonstrate conclusively that the effects of the exclusionary rule are most evident in drug cases and are felt in a significant portion of drug arrests. Over 70 percent of all the felony cases rejected because of search and seizure problems in California and in San Diego were drug cases. During the four-year period 1976 through 1979, almost 3,000 felony drug arrests in California were not prosecuted because of search and seizure problems. Analysis of drug arrest screenings at two local prosecutors' offices reveals that 30 percent of all felony drug arrests were rejected for prosecution because of search and seizure problems.

For many defendants, the rejected arrest was only one of a series of arrests. In San Diego, two-thirds of the defendants in rejected cases had either prior or subsequent arrests on their records. Almost half of the defendants in the statewide data set whose cases were rejected for search and seizure problems were rearrested within two years. This proportion was quite similar to the proportion rearrested in the San Diego follow-up period. Also, the defendants both statewide and in San Diego who were rearrested had an average of three rearrests during the follow-up period. Analysis of the nature of the felony rearrests statewide reveals that, although many of the rearrests were for drug crimes, the majority were for personal or property crimes, or for other felony offenses.

END