

# ABA Postpones Fight On Illegal Evidence Ban

By John P. MacKenzie  
Washington Post Staff Writer

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SAN FRANCISCO, Aug. 12—The leadership of the American Bar Association has moved to forestall a bitter fight over the exclusion of illegally seized evidence from criminal trials.

The ABA's board of governors voted here to recommend further study of the so-called "exclusionary rule" rather than have a floor debate in the House of Delegates when the ABA's 95th convention begins Monday.

Postponement was recommended under circumstances indicating that lawyers trying to curtail use of the rule—and permit more illegally obtained evidence to be introduced—lacked the votes or feared a divisive battle in the 315-member House of Delegates.

The exclusionary rule, which has been applied in several recent controversial Supreme Court decisions, has been the principal method courts have used to show disapproval of unconstitutional actions by law enforcement officers.

Federal courts have denied prosecutors the use of evidence gathered in violation of the Fourth Amendment since 1916 and some states followed the same rule before 1961, when the Supreme Court applied it nationwide.

The ABA controversy is over a bill introduced by Sen. Lloyd Bentsen (D-Tex.), which would put the burden on a defendant to show that a major violation of his rights had occurred before courts would

suppress evidence admittedly seized illegally.

The ruling council of the ABA's criminal law section voted, 12 to 6, last April, to oppose the Bentsen bill and reaffirm support of the exclusionary rule as a major safeguard for citizens and the integrity of courts.

But the more conservative board of governors, which had postponed action at the ABA's mid-year meeting in February, voted to recommend another six-month postponement so that the ABA's section on judicial administration could study the measure.

But the chairman of the judicial administration section, Justice Louis H. Burke of the California Supreme Court, and chairman-elect William B. Jones, a judge of the U.S. District Court in Washington, said they had not asked in the dispute.

The board was told that the Justice Department expected to reach its own position on the Bentsen bill by the year's end and that no congressional hearings will be held until next year.

The bill was inspired by a 1971 dissent by Chief Justice Warren E. Burger in two cases involving illegal searches by federal and state law enforcement officers. Burger said Congress should relax the exclusionary rule and substitute civil suits against the government as the preferred method of enforcing constitutional safeguards.