Exclusionary Evidence Rule Backed by ABA

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CLEVELAND, Feb. 12—Rejecting an attack on Supreme Court civil liberties decisions, the American Bar Association today endorsed the principle of excluding evidence from criminal trials when it has been unconstitutionally seized by police.

The ABA's house of delegates, in a move which surprised both supporters and critics of high court rulings, voted 129 to 114 to oppose efforts in Congress to water down the so-called exclusionary rule in criminal cases.

Critics of Supreme Court search-and-seizure rulings quoted heavily from a 1971 dissent by Chief Justice Warren E. Burger in urging legislation to permit the use of incriminating evidence even though it has been obtained in violation of the Fourth Amendment, which prohibits unreasonable searches and seizures.

The exclusionary rule, which has roots in 19th century decisions, has been applied in federal criminal trials since 1914 and has been under increasing attack since the Supreme Court ruled in 1961 that states also were bound by it.

A bill scheduled for reintorduction this week by Sen. Lloyd M. Bentsen (D-Tex.) would put the burden on the accused, even in cases of admittedly unconstitutional seizures, to prove to a judge that the violation of his rights was wilful or flagrant. Only then could evidence be suppressed.

Burden of Proof

At present, the prosecution has the burden of proving that evidence was lawfully obtained and should be placed before the jury.

Opposition to the Bentsen withdrew and later won referral of their resolution to the bar's judicial administration division, where it picked up the support of several judges who are ABA members.

Justice Department officials, wary of taking a public position that would polarize the debate still further, gave quiet encouragement to backers of the Bentsen bill.

Solicitor General Erwin N. Griswold, a member of the house, also sounded the theme of court delay and conflicting court decisions which puzzle judges as well as policemen.

Delegates said many ABA members were moved by a floor speech by Cecil Poole, former United States Attorney in San Francisco, in favor of retaining the exclusionary rule.

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Poole said he had "profound respect for law enforcement officers" but added that history had taught that police should not be "acting on their own" without the threat of court action. He urged the house not to be moved by "the hysteria that sometimes leads people to condemn their own institutions."

bill was led by Georgetown University law professor Samuel Dash, who said the legislation ran counter to the high court's own statements that the exclusionary principle is "an integral part of the Fourth Amendment" and thus beyond the power of Congress to change.

Dash said the Supreme Court itself might one day consider Burger's bid to re-examine the rule. Meanwhile, said Dash, the bill would "insult the police" by saying they were incapable—despite improvements in recruitment and training—to solve crimes within constitutional limits.

Livingston Hall, a Harvard law professor, led the fight for the bill on the floor of the 318-member house of delegates, the ABA's policy body.

Hall said the exclusionary rule had failed to deter official lawlessness but penalized the public by freeing guilty defendants even for technical police mistakes in seeking or executing court warrants.

At least the Bar should encourage exploration of less drastic methods of regulating police conduct, such as giving victims of unlawful searches the right to sue local and federal governments rather than individual policemen for damages, Hall said.

Dash, noting that the high court had waited for years for the states to take such action, said this kind of exploration should proceed with the exclusionary principle in tact.

Decades of Debate

Concerted attacks on the principle of throwing out evidence have been relatively recent, although debate has raged for decades over whether the rule should be applied to specific search or arrest situations. Burger's 1971 dissent, which gave a detailed outline of recommended legislation, triggered the latest drive.

The issue was intensely jockeyed within the ABA as court critics first offered, then