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BILL ON EVIDENCE OPPOSED BY A.B.A.

Plan to Give Judges More Discretion Turned Down

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CLEVELAND, Feb. 12—The American Bar Association voted narrowly today to oppose legislation pending in Congress that is designed to give trial judges broader discretion in admitting illegally obtained evidence in criminal cases.

The association's House of Delegates decided, after an active debate, to support the "exclusionary rule," under which evidence that the police seize without a warrant or discover in the course of an unjustified search cannot be used against a defendant.

The final vote of 129 to 114 generally supported a series of controversial Supreme Court decisions insuring safeguards for accused criminals. The action was taken over objections from association members that the rules involved were unduly hampering law enforcement.

Debating in the minority was Solicitor General Erwin N. Griswold, who argued that prosecutors were being denied the use of evidence on the basis of constitutional objections that he said were often "technical in the extreme."

"It has always been my policy to support the police and the F.B.I. when I feel they have acted decently," the former dean of Harvard Law School declared.

Kleindienst Views

The bar association vote also appeared to go against the views of Attorney General Richard G. Kleindienst, who was on the floor as a member of the House of Delegates but did not participate in the debate. A few moments earlier he had told a news conference he thought trial judges should have broader discretion in admitting evidence.

Meanwhile, bar association officials agreed on the nomination of James D. Fellers of Oklahoma City, a former chairman of the House of Delegates, as president-elect of the association. He will be formally elected tomorrow and succeed to the leadership in August, 1974.

During a day-long business session, the bar association's policymaking body also voted its support of the following:

● Increased Federal funds for the legal services program for the poor, now facing an uncertain future in Congress, with guarantees that lawyers working in the program will remain "independent from political pressures."

¶A set of stiffer national standards for all law schools that would include a ban on discrimination on the basis of race or sex in admissions and professional placement.

¶Abolition of the present system under which a decision by a three-judge Federal district court involving a constitutional question may be appealed directly to the Supreme Court. The resolution did not propose eliminating this procedure for civil rights cases.

¶Federal gun control legislation involving restrictions on the import, sale, transportation and possession, a position the association first took in 1965. Ordinarily, the A.B.A. does not feel it necessary to reaffirm earlier policy positions.

¶Postponed for a year any action on proposed state legislation to reinstate capital punishment, on the ground that the law remains "unsettled" in the wake of last year's Supreme Court decision prohibiting the death penalty under certain circumstances.

For Conditional Admission

The criminal evidence legislation opposed by the association is sponsored by Senator Lloyd M. Bentsen, Democrat of Texas. It provides that evidence obtained in violation of the Fourth Amendment's ban on unreasonable search and seizure may be admitted in criminal trials unless the constitutional violation was "substantial."

Urging association support of the Bentsen bill, William B. West 3d of Dallas called the present exclusionary rule "a blunderbuss approach that has not worked," when "obviously guilty men go free because the constable has blundered."

In opposition, Barnabas F. Sears of Chicago said he had complete confidence in the Supreme Court's ability to interpret the Fourth Amendment but "no confidence whatsover" in the Bentse nbill, which he said was "as vague and fluid as the ancient laws of Caligula."

The A.B.A. board of governors had taken a neutral preliminary stance, forwarding the exclusion resolution to the House of Delegates floor without recommendation. At both its meetings in 1972 the association ducked the evidence issue, withdrawing a prepared policy position once and then deferring action.