

REPORT BY THE
Comptroller General
OF THE UNITED STATES

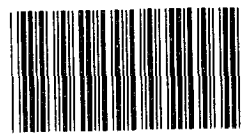
9/26/78

**Impact Of The Exclusionary Rule
On Federal Criminal Prosecutions**

At the request of Senator Edward M. Kennedy, GAO studied the impact of the exclusionary rule on criminal prosecutions. In general, this rule prohibits the introduction of evidence seized in violation of the fourth amendment—"unreasonable searches and seizures."

Of the 2,804 cases analyzed during the period July 1 through August 31, 1978, 16 percent of the defendants whose cases were accepted for prosecution filed some type of suppression motion; 11 percent cited the fourth amendment. However, only four-tenths of 1 percent of declined defendants' cases were declined due to fourth amendment search and seizure problems.

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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

B-171019

The Honorable Edward M. Kennedy
United States Senate

Dear Senator Kennedy:

Your letter dated December 8, 1977, requested us to develop empirical data on the impact of the exclusionary rule on criminal prosecutions. (See app. IV.) In general, this rule prohibits introduction of evidence seized in violation of the fourth amendment. (See app. I.) To accomplish this request, we analyzed 2,804 defendant cases handled from July 1 through August 31, 1978, in 38 U.S. attorneys' offices. Our methodology is discussed in appendix III.

The results of our study are summarized below and discussed in detail in appendix II.

- Sixteen percent of the defendants whose cases were accepted for prosecution filed some type of suppression motion.
- Eleven percent of the defendants whose cases were accepted for prosecution filed fourth amendment suppression motions.
- Thirty-three percent of the defendants who went to trial filed fourth amendment suppression motions; most defendants had formal hearings on their motions; however, the overwhelming majority of these motions were denied.
- Four-tenths of 1 percent of the declined defendants' cases were declined due to fourth amendment search and seizure problems.

The filing of fourth amendment suppression motions, even those not formally heard in court, requires expenditure of criminal justice system resources. However, on the basis of our study, the resources expended were modest when compared

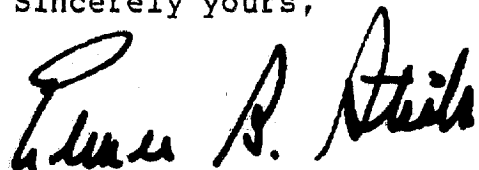
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with the total resources used in the criminal justice system. Fourth amendment motions, when granted in total or in part, did appear to reduce the likelihood of the defendant being convicted. ✓

As arranged with your office, unless you publicly announce the contents earlier, we plan no further distribution of this report until 15 days from the date of the report. At that time we will send copies to interested parties and make copies available to others.

We trust the information provided will be useful to your continuing evaluation of the exclusionary rule.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James B. Starks". The signature is written in a cursive, flowing style with a large initial "J".

Comptroller General
of the United States

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THE FOURTH AMENDMENT AND
THE EXCLUSIONARY RULE OF EVIDENCE

The fourth amendment to the Constitution of the United States protects the right of the people to be secure against arbitrary governmental interference with certain aspects of their privacy. The fourth amendment provides:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

The fourth amendment protects against arbitrary governmental interference with privacy by prohibiting unreasonable searches and seizures and by requiring that warrants be based upon probable cause. The amendment does not specifically prohibit warrantless searches, but, with the exceptions outlined below, searches that are conducted without warrants generally are presumed to be illegal.

Warrantless searches have been upheld and characterized as reasonable in some narrowly defined circumstances. For example, a warrantless search conducted during a valid arrest and limited to the area where the arrestee might reach for a weapon or destroy evidence is lawful. A warrantless search is also valid if the subject knowingly and voluntarily consents to it. Another exception applies when a police officer reasonably concluding that a suspect may be armed and dangerous, conducts a "stop and frisk" body search.

Other exceptions apply when evidence is in an officer's plain view or if he comes upon the evidence lawfully in hot pursuit of a suspect. Warrantless searches or seizures in these situations, referred to as searches or seizures under "exigent circumstances," are considered lawful because

the delay necessary to obtain warrants might result in bodily harm to the officers or to others and in the immediate removal or destruction of evidence.

Finally, the Supreme Court on occasion has upheld warrantless searches if the Congress specifically authorized the searches to carry out constitutionally valid regulatory schemes. But mere passage of such an authorization cannot suspend the protection of the fourth amendment. Whether conducted with or without a warrant, any governmental search must be constitutionally reasonable and, in making that determination, courts balance the need for the search against the invasion of privacy the search would entail.

The fourth amendment does not explicitly say what the consequences of a violation of the guarantee should be. In 1914, however, the Supreme Court decided the case of Weeks v. United States, 232 U.S. 383, and barred the use in Federal prosecutions of evidence obtained in violation of the fourth amendment. ^{1/} This prohibition, which is known as the exclusionary rule of evidence, was later expanded to not only bar the use of illegally seized evidence in court but to prohibit its use for any purpose (Silverthorne Lumber Co. v. United States, 257 U.S. 385 (1920)). Thus, if illegally seized evidence gave the Government knowledge or leads about the location, content, and types of additional evidence, the latter may be subject to the exclusionary rule as well. (Evidence in this category is called "fruit of the poisonous tree.")

There are several predominant justifications for the exclusionary rule. The first is based on the empirical proposition that the rule deters the police from violating the fourth amendment, lest they run the peril of losing cases when they obtain evidence illegally. The remaining and probably more important justifications rest on a series

^{1/}Mapp v. Ohio, 367 U.S. 643 (1961), applied the exclusionary rule to the States as a matter of Federal constitutional law.

of principles: (1) when the police obtain evidence in violation of the Constitution, the courts must exclude it to avoid the taint of a partnership between official lawlessness and the judiciary, (2) illegally seized evidence must be excluded to assure the people that the Government cannot profit from its lawless acts, and (3) if illegally seized evidence could be used to secure convictions, the Government's role as lawbreaker would breed general contempt for the law. 1/

Critics of the exclusionary rule question this rationale. They point to the lack of empirical data showing that police will not obtain evidence illegally if such evidence would not be admissible during a trial. They explain that certain applications of the exclusionary rule exclude evidence seized under circumstances when the police acted in good faith and without knowledge that the seizure would later be found illegal. Still others question the societal cost of the rule and note that illegally seized evidence is often the most probative and reliable information bearing on the guilt or innocence of the accused. These critics believe that when such evidence is excluded, the truth-finding process is deflected and some factually guilty individuals may go free.

1/Confessions obtained in violation of the fifth amendment to the Constitution cannot be used in criminal prosecutions. The fifth amendment prohibits compelling a person to be a witness against himself in any criminal case. Unlike illegal searches and seizures, when physical evidence is excluded for reasons generally unrelated to its reliability as evidence, the rationale for excluding unconstitutionally obtained confessions is based, in part, on the inherent untrustworthiness of coerced or involuntary statements. But like the rationale for applying the exclusionary rule to illegally seized evidence, the justification for excluding illegally obtained confessions also stems from the principle that the police should obey the law while enforcing the law and that life and liberty can be as much endangered by illegal methods of obtaining confessions as it can from illegal evidence-gathering procedures.

ISSUANCE OF WARRANTS AND MOTIONS TO SUPPRESS

Searches and seizures fall into one of two categories: those made with warrants and those made without warrants. To obtain a warrant, law enforcement officials appear at an ex parte hearing before a magistrate or other appropriate judicial officer (usually a district court judge), who may grant or deny the request. In reaching this decision, the judicial officer determines, among other matters, whether probable cause exists to establish the validity of the request.

While searches made with warrants ordinarily are considered presumptively valid, subject to rebuttal by the defense, the fact that warrants were issued does not provide absolute certainty that the searches will be constitutionally valid. The following list provides examples of the circumstances for both warrant and warrantless situations that may give rise to illegal searches and seizures and the exclusion of evidence under the exclusionary rule.

Searches conducted with warrants

- Probable cause supporting the warrant not strong enough.
- Informant providing information supporting the warrant not considered reliable.
- Information on which warrant was issued was incomplete, inaccurate, or misleading.

Searches conducted without warrants

- Search performed incident to arrest but invalid because search covered too broad an area.
- Search too remote in time from arrest.

If the defendant believes all or a part of the prosecution's case is supported by evidence seized in violation of the fourth amendment, he may file a motion to suppress the evidence. He must then demonstrate to the court that he or an area in which he had a legitimate expectation of privacy was the subject of a search and that the search was conducted or evidence seized in violation of the fourth amendment. In certain situations involving

warrantless searches, the prosecution may be called upon to carry the burden of convincing the court of the search's or seizure's validity.

Regardless of whether the defendant's motion is denied or sustained in total or in part, the trial may be conducted if the arrest was valid and the court's decision on the motion may be appealed to the U.S. Court of Appeals. The Court of Appeals may rule on the motion and, if the defendant was convicted, the conviction may be reversed or sustained or a new trial may be ordered.

RESULTS OF ANALYSIS OF
THE IMPACT OF THE
EXCLUSIONARY RULE ON
CRIMINAL PROSECUTIONS

Senator Edward M. Kennedy asked us to develop empirical data on the impact of the exclusionary rule 1/ on criminal prosecutions. (See app. IV.) To do this we selected a national sample of 42 U.S. attorneys offices. Because of the varying caseloads in each office, we stratified the offices into four groups of defendants handled (1,000 and over, 500 to 999, 300 to 499, and fewer than 300). The individual defendant was used as the sampling unit, and our sample covered the period July 1 through August 31, 1978. The defendants were subdivided into two groups (1) those whose cases had been formally accepted for prosecution at any time in the past but had been closed (terminated) during the sample period and (2) those whose cases had been formally submitted to the U.S. attorney's office which required decisions to prosecute or not prosecute (case screening).

We sent questionnaires to personnel in U.S. attorneys offices responsible for the cases. The questionnaire asked about the role potential fourth amendment problems played in (1) decisions to prosecute or not to prosecute, (2) the frequency with which all types of suppression motions were filed on defendants accepted for prosecution, (3) the frequency with which fourth amendment motions were filed, (4) the extent to which fourth amendment motions were involved in cases which went to trial, and (5) the impact of fourth amendment motions on both the criminal justice system resources and the disposition of defendants. A complete discussion of our review methodology is contained in appendix III.

1/Barring the use in Federal prosecutions of evidence obtained in violation of the fourth amendment.

TYPES OF DEFENDANTS AND CRIMES
PROSECUTED BY U.S. ATTORNEYS

A substantial number of defendants prosecuted by U.S. attorneys have had previous felony convictions. An estimated 40 percent of the defendants we sampled had prior felony convictions, and about 28 percent had been incarcerated as a result of these convictions.

While seizure of evidence can occur in the development of any criminal case, U.S. attorney office officials stated there were 15 offenses in connection with evidentiary motions which were most likely to be filed. These include firearms, immigration, and narcotics violations. The types of crimes prosecuted by U.S. attorneys offices vary considerably. For example, in the largest offices sampled, an estimated 88 percent of the defendants, in cases accepted for prosecution, were accused of crimes where the seized evidence would be most susceptible to search and seizure challenge. This compared with a low of 69 percent in the small offices sampled. The following table illustrates this point.

<u>Type of crime</u>	<u>U.S. attorney's office size</u>			
	<u>Very large</u>	<u>Large</u>	<u>Small</u>	<u>Very small</u>
	----- (percent) -----			
Highly susceptible violations:				
Firearms	5	10	13	10
Narcotics	29	11	7	5
Immigration	18	1	3	2
Other highly susceptible violations	<u>36</u>	<u>52</u>	<u>46</u>	<u>57</u>
Total	<u>88</u>	<u>74</u>	<u>69</u>	<u>74</u>
Other violations susceptible	<u>12</u>	<u>26</u>	<u>31</u>	<u>26</u>
Total	<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>
Number of defendants	1,661	783	230	123

Question: In what percentage of criminal trials are suppression hearings held?

So as to not unduly burden the U.S. attorneys, we did not attempt to determine for all suppression motions when formal suppression hearings had been held. This question was answered only for fourth amendment motions. The following discussion concerns suppression motions filed.

About 16 percent of the defendants whose cases were closed during our sample period filed suppression motions. As shown below, 55 percent of the motions related to searches and seizures allegedly conducted in violation of the fourth amendment.

<u>Type of suppression motion filed</u>	Percent of defendants filing motions (note a)	<u>Percent of all motions</u>
General fourth amendment search/seizure	10.5	55.3
Electronic surveillance (court ordered)	0.4	1.9
Electronic surveillance (consensual)	0.5	2.9
Confession	4.4	23.2
Photographic identification	0.9	4.6
Lineup identification	0.1	0.6
Other	2.2	11.5

a/The same defendant may have filed several different motions.

Analysis shows that suppression motions tend to be filed more frequently in larger U.S. attorneys offices (19.3 percent of the defendants) than in small ones (6.5 percent). In addition, cases that go to trial are more likely to involve defendants who have filed suppression motions than cases that do not go to trial. A comparison of total defendants with those who go to trial is shown on the following page.

<u>Office size</u>	<u>Total defendants filing motions</u>	<u>Defendants going to trial filing motions</u>
	----- (percent) -----	
Very large	19.3	41.1
Large	16.1	49.7
Small	6.5	29.2
Very small	11.3	31.3
National estimate	16.0	43.0

Question: In what percentage of criminal trials are suppression hearings held based on fourth amendment violations and in what percentage of these hearings is the evidence suppressed?

Analysis shows that search and seizure was an element in about 30 percent of the cases closed during our sample period. Very large offices tend to prosecute more defendants who were subjected to search and seizure.

The table below shows that even when search and seizure was an element in a case, less than half the defendants requested evidence suppression on fourth amendment grounds.

Percent of Defendants Involved
in Search and Seizure

	<u>U.S. attorney's office size</u>				<u>National estimate</u>
	<u>Very large</u>	<u>Large</u>	<u>Small</u>	<u>Very small</u>	
No search/ seizure	<u>60.5</u>	<u>75.9</u>	<u>78.3</u>	<u>76.7</u>	<u>70.2</u>
Search/seizure with no fourth amend- ment motion	26.2	13.4	16.5	17.7	19.3
Search/seizure with a fourth amendment motion	<u>13.3</u>	<u>10.7</u>	<u>5.2</u>	<u>5.6</u>	<u>10.5</u>
Total	<u>39.5</u>	<u>24.1</u>	<u>21.7</u>	<u>23.3</u>	<u>29.8</u>
Total	<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>

Even when motions were filed, the vast majority either were decided in favor of the Government or not heard. In only a few instances were the motions granted in total or in part. 1/ The following table shows for all defendants filing a fourth amendment motion the disposition of the motion by very large and large U.S. attorneys offices. 2/

<u>Disposition of fourth amendment motions</u>	<u>U.S. attorney's office size</u>	
	<u>Very large</u>	<u>Large</u>
	------(percent)-----	
Motion denied in total	54.3	81.2
Motion granted in total	2.7	3.5
Motion granted in part	12.2	5.9
Other (includes not heard)	30.8	9.4
Number of defendants	221	85

As the table indicates, if a fourth amendment motion was filed, the issue was likely to be decided in a formal hearing. For example, 70 percent of the defendants in very large offices and 91 percent in large offices received formal hearings.

Of the cases closed during our sample period, only 14.6 percent were closed through the trial process. An estimated 32.6 percent of the defendants in the cases that went to trial filed fourth amendment motions; nearly all were decided by formal hearings. Motions of defendants, who go to trial and have a formal evidence suppression hearing, are almost always denied; the denial rates for very large and large U.S. attorneys offices were 80 and 90 percent, respectively.

1/When motions are granted in part, the court has ruled that some of the evidence was illegally seized or was discovered as a result of an illegal search or a seizure and cannot be used by the prosecutor.

2/Too few motions were filed in the smaller offices to develop reliable statistics.

Overall, in only 1.3 percent of the 2,804 defendant cases was evidence excluded as a result of filing a fourth amendment motion.

Question: In what percentage of the fourth amendment hearings were the law enforcement agents acting with warrants?

The use of warrants in those fourth amendment cases that resulted in formal hearings varied greatly. Warrants (search and/or seizure) were used about 35 percent of the time in very large offices as opposed to 70 percent of the time in large offices. We did not develop any information to explain this difference. Data was not sufficient in the smaller offices to provide a detailed statistical analysis.

Question: How much in-court time was required to decide the suppression motions?

When a motion is filed, the U.S. attorney must prepare to respond to the motion if it is heard. When the motion is heard, more time is required not only by the U.S. attorney but by others, such as judges, court officials, and law enforcement officials. We asked the U.S. attorneys for data on:

- The time they spent preparing to answer motions.
- The court time required to hear them.
- The number and types of people required to attend the hearings.

This data was used to develop the following national estimates of the resources devoted to responding to and participating in fourth amendment hearings during our sample period.

<u>Resources involved</u>	<u>Estimated staff-years (note a)</u>
U.S. attorney (preparation and in-court time)	3.6
Judges	0.9
Other court officials	3.2
Federal law enforcement officials	2.4
State/local law enforcement officials	1.1
Others	<u>1.2</u>
Total	<u><u>12.4</u></u>

a/These estimates do not include out-of-court preparation time that may have been necessary for other parties. We only estimated preparation time for the U.S. attorneys.

During our sample period, the U.S. attorneys offices had about 271 available staff-years 1/ to devote to case prosecution. Thus about 1.3 percent (3.6 ÷ 271) of the available time was devoted to fourth amendment motions. This estimate is low as certain amounts of time were used for such things as vacation and administrative activities, but we could not obtain information on time directly charged to the prosecutive effort.

Impact of fourth amendment suppression motions on defendant outcomes

As stated previously, while there are very few instances of evidence suppression, one of our objectives was to determine how important suppressed evidence may have been to the

1/During fiscal year 1978, the U.S. attorneys offices had 1,628 full-time attorneys. Thus, during our 2-month sample period, about 271 staff-years (1,628 ÷ 6) would have been available.

prosecution. Analysis shows that defendants in cases when evidence is suppressed are less likely to be convicted than in those when the motions are denied. The following table shows this impact.

<u>Case outcome</u>	<u>Motion outcome</u>			
	<u>Granted in total or in part</u>		<u>Denied in total</u>	
	<u>Very large office</u>	<u>Large office</u>	<u>Very large office</u>	<u>Large office</u>
	------(percent)-----			
Dismissed/not guilty	45.5	50.0	15.9	15.4
Convicted	54.4	50.0	84.1	84.6
Number of defendants	33.0	8.0	113.0	65.0

While the table shows that a relationship does exist, we did not develop the data to evaluate why the evidence in some cases was suppressed. Further, there is no certain way of determining whether the inadmissibility of excluded evidence was the sole and exclusive proximate cause of an acquittal or dismissal.

DEFENDANT SCREENING

Fourth amendment motions are filed infrequently and evidence exclusion is rare. However, case screening by the U.S. attorneys might have caused the figures in the above discussion to be understated. Case screening is examining cases and deciding whether to prosecute the defendants. Department of Justice officials told us that cases involving illegal searches and seizures would probably not be prosecuted. The following section examines the screening process and its fourth amendment implications.

During our sample period, the U.S. attorneys screened about 9,400 potential felony violations, of which 54 percent were accepted for prosecution. About 15 percent of the defendants' cases screened involved search and seizure with considerable variation by office size as indicated on the following page.

<u>Office size</u>	<u>Percent of defendants involved in search/seizure</u>
Very large	22.5
Large	17.2
Small	5.1
Very small	10.1
National estimate	14.7

For those cases that were declined, about 6.3 percent involved search and seizure. But for those involving search and seizure that were declined, the U.S. attorneys indicated that search and seizure problems were the primary reason for declining only 6.3 percent of the cases. Thus, search/seizure problems are indicated as the primary declination reason in only about 0.4 percent of the total declined cases.

REVIEW METHODOLOGY

Because our objective was to develop information about motions in general and fourth amendment motions specifically which would enable national estimates to be made, we had to draw a national probability sample of U.S. attorneys offices. Because 95 U.S. attorneys offices are involved, we developed questionnaires and selected 42 U.S. attorneys offices to complete them. Our review methods are discussed below in terms of the

- sampling plan,
- questionnaire design,
- questionnaire application, and
- data base computerization.

SAMPLING PLAN

The 88 continental U.S. attorneys offices were first stratified into these four groups (strata) based on the number of defendants handled in fiscal year 1977: (1) 1,000 defendants and over, (2) 500 to 999, (3) 300 to 499, and (4) fewer than 300. The following table shows the strata, the universe sizes, and the sample sizes that would enable national estimates to be made. The offices within each strata were selected randomly.

<u>Strata</u>	<u>Universe size</u>	<u>Sample size</u>
1,000 and over	14	14
500 to 999	24	12
300 to 499	17	8
Fewer than 300	<u>33</u>	<u>8</u>
Total	<u>88</u>	<u>42</u>

This sampling procedure is called a stratified cluster sample.

Since only 38 of the 42 sampled offices responded to our questionnaire, we had to adjust the universe and sample sizes to reflect the estimated number of offices that would have responded if questionnaires had been sent to all 88. The following table shows the strata, the adjusted universe size, and the adjusted sample size.

<u>Strata</u>	<u>Universe size</u>	<u>Sample size</u>
1,000 and over	13	13
500 to 999	22	11
300 to 499	15	7
Fewer than 300	<u>29</u>	<u>7</u>
Total	<u>79</u>	<u>38</u>

QUESTIONNAIRE DESIGN

Because there was no national system containing the data required to respond to the request, we developed a national data collection and reporting system. The heart of this system was two special data collection instruments (screener's log and fourth amendment motion questionnaire).

Design constraints

The design effort had certain constraints.

First, because of the number of locations in our sample, we had to rely on the U.S. attorneys offices' personnel to fill out the questionnaires. Because of their heavy workloads our questionnaires had to be short and easy to complete.

A second major constraint was the need for timely response to the questionnaire. This meant that the time period for collecting the data had to be held to a minimum. After reviewing annual average caseloads for U.S. attorneys offices, we concluded that collection of data for a 2-month period would allow us to present our results in terms of

national estimates. We chose the period July 1 through August 31, 1978. While we recognized we would encounter seasonal variations because of summer vacations of prosecutors and court officials, we did not believe these would materially affect our results.

Unit analysis

The next step in the design process was to determine the most useful unit of analysis. We believed that the questionnaire could be answered in terms of either Federal criminal cases or individual Federal case defendants. The selection of the unit of analysis was important because one case might have many defendants (one or more of which might file motions) and another case might have a single defendant. Because individual defendants file motions to suppress evidence, we concluded that the most appropriate unit of analysis would be the individual defendant.

The need for two questionnaires

Originally we thought we would need information only on cases closed during our sample period. However, Justice Department officials warned us that some cases involving fourth amendment violations might never reach the U.S. attorney case stage because (1) the law enforcement agencies making the arrests, either independently or in conjunction with U.S. attorneys offices, might determine that search and seizure was not proper and decide not to forward the cases officially or (2) the cases, when presented to U.S. attorneys offices, might be evaluated (screened) and found to have a high potential for having fourth amendment problems and be declined for prosecution.

Identifying those cases dropped by law enforcement agencies before presentation to the Justice Department was not attempted because the primary thrust of the request was determination of the impact of the exclusionary rule on criminal prosecution. Therefore, we limited our work to analyzing the cases processed through U.S. attorneys offices.

This approach, while missing the impact of potential motions viewed by the arresting organizations, provided information about how the formal screening process reacts to cases with suppression motion potential. By collecting information on closed cases, we measured the impact of motions on the entire prosecution process.

The screened and closed cases are not the same. Those being screened are merely being considered for prosecution; some will not be closed for many months or perhaps years. Closed cases are those which have gone through the entire process. Therefore, the two groups may come from different time periods; however, we believed that we could use them to obtain an overview of the process.

Separate forms were designed to collect data at each of the two stages in the process. We refer to the former as the "screener's log" and the latter as the "fourth amendment motion questionnaire." The forms are described below and appear as appendixes V and VI, respectively.

Screener's log

The screener's log was completed by U.S. attorneys for individual defendants in proposed felony cases. It was completed at the point in the system when a U.S. attorney's office reviews a case and either accepts or rejects it for prosecution. Its purpose was to yield data on the impact of the fourth amendment in decisions relating to which cases are to be prosecuted. The U.S. attorneys were asked to record data only for cases formally entered into the system. No telephone advice or recommendations made to Federal law enforcement agencies were to be recorded.

The log was designed to provide data on:

- The number of potential defendants involved.
- The history of past felony convictions.

- The arresting agencies.
- The types of crimes involved.
- Whether or not search/seizure was involved.
- Types of warrants, if any, issued.
- An estimate of the probability that fourth amendment suppression motions would be filed.
- Whether the cases were accepted.
- If applicable, the primary reasons for declining the cases.

Fourth amendment motion questionnaire

The questionnaire on defendant motions was more complex than the screener's log. The U.S. attorneys were asked to complete it at the time they prepared closing memorandums on felony cases. The added complexity of the instrument stemmed from the fact that there were more possible outcomes in the various stages of prosecution once cases entered the system.

Basic data (similar to the screener's log) was requested for each defendant. If the case involved a fourth amendment suppression motion, additional information was requested. The questionnaire collected much the same data as the screener's log; it also gave us information concerning:

- What case dispositions had been.
- The extent to which any suppression motions had actually been filed and their number.
- Fourth amendment motions and their outcomes.
- The types of evidence involved.
- The reasons given for granting the motions in both warrant and warrantless cases.

--The extent to which multiple motions and multiple searches had been involved.

--The amount of time and the number of people involved in the motion process.

Throughout the instrument design process, constant contact was maintained with the Department of Justice. The Office for Improvements in the Administration of Justice commented on each major revision of both instruments up to and including the final versions.

The log and the questionnaire were pretested on actual cases before mailing. Additionally, visits were made to the U.S. attorneys offices in Washington, D.C.; Richmond, Va; and San Diego, Calif., to obtain comments on the final drafts. These comments were included in the final questionnaire design.

U.S. attorneys were requested to give special attention to multiple defendant cases in estimating the time spent on motions. Specifically they were asked to distribute proportionately for each defendant both (1) the time spent preparing for the suppression motion hearing and (2) the time spent in the hearing. For example, if a case involved five defendants and 10 hours were spent preparing for a hearing and 5 hours were spent in the hearing, then 2 hours were to be entered for preparation time and 1 hour for actual hearing time on each of the five defendant questionnaires. The reason for this was to keep from overcounting the time required to prepare for and hear suppression motions.

QUESTIONNAIRE APPLICATION

By letter dated June 16, 1978, we explained to each U.S. attorney selected how the review would be conducted and the role of each U.S. attorney's office. Shortly afterwards, packages containing copies of both forms were mailed to each office. Each questionnaire and log carried a unique office identifier so that completed forms could easily be matched with the responding office.

After allowing sufficient time for delivery, we contacted each U.S. attorney's office to assure that the materials had been received and to answer any questions. We monitored the effort at each office until completed.

U.S. attorneys were extremely cooperative. We received completed forms from 38 of the 42 offices sampled. This response rate was sufficiently high to allow us to maintain an acceptable degree of reliability.

However, no data was obtained from four offices because:

- Completed logs and questionnaires from one office were lost in the mail. All attempts to trace the registered package failed. We believed that an excessive burden would be placed on the office if we requested the reconstruction of the completed questionnaires.
- One office refused to complete the questionnaire because it believed this would overburden its resources.
- Two offices, although pledging support or cooperation, failed to supply any usable data before our cutoff date.

DATA BASE COMPUTERIZATION

All logs and questionnaires were coded so that keypunching could be done directly from the completed forms. Before and after the keypunched data was computerized, standard verification procedures were used to assure accuracy. The major verification procedures were:

- All forms were reviewed for completeness and accuracy. Five percent of the computerized data file was verified back to the original forms.

--Output of the raw data was examined for obvious errors, and relationships between key questions were checked for consistency.

--Automated computer data checks (edit routine) were run.

EDWARD M. KENNEDY
MASSACHUSETTS

United States Senate

WASHINGTON, D.C. 20510

December 8, 1977

Mr. Elmer Staats
Comptroller General
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20001

Dear Mr. Staats:

For the past couple of months, my staff and I have been engaged in research on the effect of the Exclusionary Rule on criminal prosecutions. The Rule prohibits the introduction of evidence seized in violation of the Fourth Amendment, and results generally in the termination of the pending criminal case.

We are attempting to fashion a legislative alternative to the Rule in certain well-defined situations. The success of our work is seriously hampered by the lack of empirical data about the effect of the Rule on criminal trials. We have attempted to obtain this information from the Department of Justice, but the Department has informed us that neither it nor the offices of United States Attorneys throughout the country collect such information.

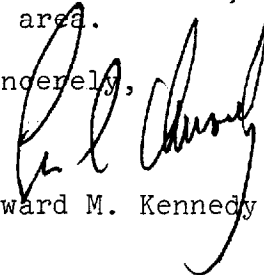
My staff has met informally with members of your General Government Division staff to discuss the feasibility of a study which would collect the necessary data. The general impression was that such a study was possible, but that certain problems, such as instrument design, population designation and case sampling, would have to be resolved. My understanding is that a preliminary survey would be necessary before a final decision on the feasibility of a large-scale survey could be made. I would like GAO to undertake this preliminary study as well as the large-scale survey, should it be feasible.

Mr. Elmer Staats
December 8, 1977

-page two-

The Exclusionary Rule is an important area of concern to me, especially since it impacts critically on the daily operations of the criminal justice system. If my staff can be of any assistance to you or your staff, please feel free to contact Robert M. McNamara, at 224-7488, who is assisting me in this area.

Sincerely,



Edward M. Kennedy

SURVEY OF U.S. ATTORNEYS

4th Amendment Motions

Office Identifier: 0/1 (1-2)

Year of Filing (3-4), Case Number (5-11), Defendant Number (12-13), Court Case Number

NOTE: Add zeroes in front of all numbers. For example, Case Number 314 would be entered as 0 0 0 0 3 1 4 / , and then the first defendant would be entered as 0 1 / .

- 1. Past criminal felony convictions? (Check one.) (14)
1. Federal
2. Non-Federal
3. Both
4. None
5. Unknown
2. Past incarceration for felony convictions? (Check one.) (15)
1. Yes
2. No
3. Unknown

- 3. Arresting and investigating agencies
a. Arresting agency? (Check all that apply.) (16)
FBI (16), DEA (17), ATF (18), Secret Service (19), Postal Service (inspectors) (20), State or local (21), Other (Please specify) (22)
b. Investigating agency? (Check all that apply.)
FBI (23), DEA (24), ATF (25), Secret Service (26), Postal Service (inspectors) (27), State or local (28), Other (Please specify) (29)

- 4. Crime type--maximum penalty charged (Federal). (Check one.) (31-32)
01. Robbery
02. Bank fraud and embezzlement
03. Fire arms violations
04. RICO -- Racketeer Influence Currupt Organizations
05. Controlled substances -- narcotics
06. Counterfeiting and forgery
07. Crimes affecting the mails (including mail fraud)
08. Fraud against the government
09. Immigration
10. Income tax
11. Homicide or kidnapping
12. Motor vehicle control -- ITMV -- Interstate Transportation of Motor Vehicles
13. ITSP -- Interstate Transportation of Stolen Property
14. Gambling/Wagering
15. Theft of Government property
16. Other (Please specify)

- 5. What was the outcome of the case? (Check one.) (33)
1. Case dismissed
2. Pled to maximum penalty charge
3. Pled to lesser charge
4. Trial, convicted on maximum penalty charge
5. Trial, convicted on lesser charge
6. Trial, not guilty
7. Other (Please specify)

- 6. Was there a search/seizure involved in the case? (Check one.) (36)
1. Yes
2. No
3. Unknown

7. Was there a warrant issued? (Check one.) (37)

- 1. Search warrant
- 2. Arrest warrant
- 3. Both
- 4. None

8. Were any of the following suppression motions filed? (Check all that apply.)

- 4th Amendment search/seizure (38)
- Electronic surveillance (court ordered) (39)
- Electronic surveillance (consensual) (40)
- Confession (41)
- Photo I.D. (42)
- Line-up (43)
- Other (Please specify) _____ (44)
- None (45)

NOTE: IF YOU DID NOT CHECK THE 4TH AMENDMENT SEARCH/SEIZURE RESPONSE, TERMINATE -- ANSWER NO FURTHER QUESTIONS. OTHERWISE, CONTINUE.

9. How many 4th Amendment suppression motions were filed? (Check one.) (46)

- 1. 1 motion
- 2. 2 motions
- 3. 3 motions
- 4. More than 3 motions

10. How many searches were covered in the suppression motion(s)? (Check one.) (47)

- 1. 1 search
- 2. 2 searches
- 3. 3 searches
- 4. More than 3 searches
- 5. Unknown

11. Where was the search(es) covered by the suppression motion conducted? (Check all that apply.)

- Business (48)
- Residence (49)
- Person (50)
- Vehicle (51)
- Other _____ (52)

12. What was the ultimate outcome of the suppression motion(s) (including appeal disposition)? (Check one.) (53)

- 1. All motions granted in total
- 2. All motions denied in total
- 3. Some granted, some denied
- 4. Other (Please specify) _____
- 5. Not heard -- If not heard skip to question 15.

13. What evidence types were suppressed or not suppressed as a result of the suppression hearings? (Check one box for each row.)

EVIDENCE TYPES	N O T		
	(1)	(2)	(3)
Controlled substances			
Drug paraphernalia			
Drug manufacturing equipment			
Weapons			
Implements of crime			
Fruits of crime			
Other (specify) _____			

Other (specify) _____			

Other (specify) _____			

NOTE: IF THE SEARCH/SEIZURE MOTION(S) WAS DENIED IN TOTAL, SKIP TO QUESTION 15!

14. With respect to each search please indicate why the motion was granted, using section (A) for searches pursuant to warrants and section (B) for warrantless searches.

A. Searches pursuant to warrant (Check all that apply.)

REASONS	SEARCH		
	1	2	
Supporting affidavit insufficient as to facts of crime			(65-66)
Supporting affidavit insufficient as to reliability of informant			(67-68)
Supporting affidavit otherwise insufficient (e.g. failure to specify locale to be searched or items to be seized)			(69-70)
Search beyond warrant scope			(71-72)
Technical defect in warrant/execution/return			(73-74)
Other (specify) _____			(75-76)

E. Warrantless searches (Check all that apply.)

REASONS	SEARCH		
	1	2	
Search incident to unlawful arrest/stop			(77-78)
Search incident to arrest/stop too broad			(79-80)
Search incident to arrest/stop too remote in time			(81-82)
Insufficient probable cause for search			(83-84)
Search made when there was time to obtain warrant			(85-86)
Consent given but not valid			(87-88)
Other (specify) _____			(89-90)

15. Overall, what impact did the suppression motion have on the case outcome? (check one.)

(91)

- 1. No impact
- 2. Minor impact
- 3. Moderate impact
- 4. Major impact

16. Approximately how much extra time (excluding the time in court) did you spend on the case because of the suppression motion? (Please fill in the boxes -- round all fractional parts of hours to the nearest whole hour.

(92-94)

____/____/____ hours

17. Approximately how long did you spend in the suppression hearing(s)? (Please fill in the boxes -- round all fractional parts of hours to the nearest whole hour.

(95-97)

____/____/____ hours

18. How many of each of the following groups were at, or required to be available at the suppression hearing(s)? (Please fill in the boxes -- include those waiting, but not called.)

- Judges and Magistrates (98-99)
- Other court officials (law clerks, marshals, court reporters, probation officer, etc. -- count yourself) (100-101)
- federal law enforcement officials (102-103)
- State and local law enforcement officials (104-105)
- Other individuals including witnesses or necessary parties (106-107)
- Defendant(s) and attorney(s) (108-109)



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