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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT
DIVISION

B-171019

DECEMBER 22, 1980

The Honorable Edward M. Kennedy
Chairman, Committee on the Judiciary
United States Senate



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Dear Mr. Chairman:

Subject: [State Exclusionary Rule Procedures]
(GGD-81-33)

You requested us to develop empirical data on the impact of the exclusionary rule on State criminal prosecutions similar to a previous study we performed at your request on the effect of the rule on Federal criminal trials. This prior effort resulted in the issuance of a report to you on April 19, 1979, entitled "Impact of the Exclusionary Rule on Federal Criminal Prosecutions" (GGD-79-19).

In response to your office's request, we sent letters to the Attorneys General and Chief Justices of the 50 States requesting data on each State's exclusionary rule requirements. Thirty-six of the 50 States responded to our inquiry and a summary of their responses is contained in the enclosures.

Enclosure I summarizes the responses received from the States to specific questions asked concerning their exclusionary rule requirements. Enclosure II provides a summary by State. An analysis of the responses showed that there is a wide disparity among the States concerning their exclusionary rule requirements. As a result, we determined that a study similar to our study on the Federal system would be difficult if not impossible. After presenting the results of our analysis to your office, it was agreed that those States with a rule similar to the Federal rule would be contacted to inquire whether they would be willing to participate in a detailed study.

We sent letters to four State Attorneys General (Alabama, Minnesota, Tennessee, and Wisconsin) and followed up these letters with discussions to determine the feasibility of conducting a detailed study in each State. The consensus of the

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four State Attorneys General was that a study would be impossible on the State level because, within each State, each local prosecutor would have to be studied to determine the impact of the exclusionary rule on criminal prosecutions. Additionally, the State Attorney General said that the local prosecutors probably would not have the resources to assist us in such a detailed study. They also expressed concern that our study could not be used to draw any conclusions concerning the State as a whole.

We presented the above facts to your office and it was agreed that the desired study would not prove beneficial. In lieu of a detailed study, it was agreed that we would provide an analysis of the information gathered concerning the 36 States that responded to our inquiry.

As arranged with your office, we are sending copies of this report to the Director, Office of Management and Budget, and the Attorney General. We will also make copies available to others upon request.

Sincerely yours,


for William J. Anderson
Director

Enclosures (2)

SUMMARY OF STATE RESPONSES
TO GAO QUESTIONS

Does the State have exclusionary rule requirements different from the Federal rule requirements?

Nine States have identical exclusionary rule requirements while 19 have different requirements. Eight States did not provide data relating to this question.

Would the State have an exclusionary rule requirement if there was no Federal rule?

Sixteen States said that they would have an exclusionary rule of their own even if a Federal rule did not exist. Eight States said they would have no requirement if it were not required by the Federal Government. The remaining 12 States either did not provide any information or had no comment.

Is the State exclusionary rule based on the State constitution or State statute?

Twenty-one States said their exclusionary rule was based on the State's constitution. Four States stated it was based on State statute. The remaining 11 States did not respond to this question either because their exclusionary rule was based on the U.S. Supreme Court ruling or their rule was based on a combination of other factors.

Can a motion to suppress evidence occur before, during trial or both?

Nineteen States said the motion to suppress must take place before trial while one State said the motion must take place during trial. Seven States said the motion could take place before or at trial. Nine States did not respond to the question.

SUMMARY BY STATE
TO GAO QUESTIONS

<u>State</u>	<u>Does the State have exclusionary rule requirements different from the Federal requirements?</u>		
	<u>Yes</u>	<u>No</u>	<u>No response</u>
Alabama			x
Alaska	x		
Arizona		x	
California			x
Connecticut			x
Colorado		x	
Delaware		x	
Georgia			x
Idaho		x	
Kansas		x	
Kentucky	x		
Maryland		x	
Massachusetts		x	
Michigan	x		
Minnesota	x		
Mississippi		x	
Montana	x		
New Hampshire	x		
New York		x	
Nevada		x	
North Carolina			x
North Dakota		x	
Ohio	x		
Oregon		x	
Pennsylvania	x		
Puerto Rico			x
South Carolina		x	
South Dakota			x
Tennessee		x	
Texas		x	
Utah			x
Vermont		x	
Washington		x	
West Virginia		x	
Wisconsin		x	
Wyoming	x		
Total	<u>9</u>	<u>19</u>	<u>8</u>

SUMMARY BY STATE
TO GAO QUESTIONS

<u>State</u>	<u>Would the State have an exclusionary rule requirement if there was no Federal law?</u>		
	<u>Yes</u>	<u>No</u>	<u>No response</u>
Alabama		x	
Alaska			x
Arizona	x		
California			x
Connecticut			x
Colorado		x	
Delaware			x
Georgia			x
Idaho	x		
Kansas	x		
Kentucky	x		
Maryland	x		
Massachusetts		x	
Michigan			x
Minnesota	x		
Mississippi	x		
Montana	x		
New Hampshire		x	
New York		x	
Nevada		x	
North Carolina			x
North Dakota		x	
Ohio	x		
Oregon	x		
Pennsylvania	x		
Puerto Rico			x
South Carolina			x
South Dakota			x
Tennessee		x	
Texas	x		
Utah			x
Vermont	x		
Washington			x
West Virginia	x		
Wisconsin	x		
Wyoming	x		
Total	<u>16</u>	<u>8</u>	<u>12</u>

SUMMARY BY STATE
TO GAO QUESTIONS

<u>State</u>	Is the State exclusionary rule based on the State Constitution or State Statute?		
	<u>Constitution</u>	<u>Statute</u>	<u>No response</u>
Alabama			x
Alaska	x		
Arizona	x		
California			x
Connecticut			x
Colorado		x	
Delaware	x		
Georgia			x
Idaho	x		
Kansas			x
Kentucky	x		
Maryland	x		
Massachusetts		x	
Michigan	x		
Minnesota	x		
Mississippi	x		
Montana	x		
New Hampshire			x
New York			x
Nevada	x		
North Carolina			x
North Dakota			x
Ohio	x		
Oregon	x		
Pennsylvania	x		
Puerto Rico			x
South Carolina	x		
South Dakota	x		
Tennessee		x	
Texas	x		
Utah			x
Vermont		x	
Washington	x		
West Virginia	x		
Wisconsin	x		
Wyoming	x		
Total	<u>21</u>	<u>4</u>	<u>11</u>

SUMMARY BY STATE
TO GAO QUESTIONS

<u>State</u>	<u>Can a motion to suppress evidence occur before or during trial, or both?</u>			
	<u>Before</u>	<u>During</u>	<u>Both</u>	<u>No response</u>
Alabama	x			
Alaska	x			
Arizona	x			
California				x
Connecticut				x
Colorado			x	
Delaware	x			
Georgia				x
Idaho				x
Kansas				x
Kentucky			x	
Maryland	x			
Massachusetts	x			
Michigan			x	
Minnesota	x			
Mississippi	x			
Montana	x			
New Hampshire	x			
New York	x			
Nevada	x			
North Carolina				x
North Dakota	x			
Ohio	x			
Oregon	x			
Pennsylvania	x			
Puerto Rico				x
South Carolina			x	
South Dakota	x			
Tennessee		x		
Texas			x	
Utah				x
Vermont	x			
Washington	x			
West Virginia			x	
Wisconsin			x	
Wyoming				x
Total	<u>19</u>	<u>1</u>	<u>7</u>	<u>9</u>