

**The Ongoing Debate:
Crime Control v. Due Process Protection
by Mike Carls**

Students will examine the Exclusionary Rule and other alternatives for enforcing the protections found in the Bill of Rights. Activities involved will include teacher led discussion, small group discussions, students authorship of position papers, and classroom debate.

Students will:

- 1.** Learn that society faces a very difficult task when we pursue effective crime control and public safety, while at the same time protecting the constitutional rights of individuals.
- 2.** Learn what alternatives exist for enforcing the criminal procedure protections set forth in the U.S. Constitution.
- 3.** Learn the historical development of the Exclusionary Rule and a few arguments both for its use and in opposition to its use.

Materials needed: Copies of: **Student Handout 1: VIOLENT CRIME**
Student Handout 2: PROTECTING INDIVIDUAL RIGHTS

Time needed: 4-5 days

Grade level: 11th - 12th grades

Procedure:

- 1.** Teachers will introduce the central issues raised in this lesson by presenting the students with the following information.

Most Americans recognize and value both of the following conditions:

- A.** To be safe and secure in person and home is a fundamental desire of nearly everyone. In fact, the concept of common welfare is, to many people synonymous with effective law and order in American society today. Contemporary society has become increasingly alarmed about the crime explosion in America which has affected every community in the nation to some degree.

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Procedure cont.

B. An equally important and valued goal in our society is preserving and protecting the individual liberties that are found in the first eight amendments to the United States Constitution. Some of these highly valued rights are: the right to a speedy and public trial by an impartial jury; the protection against unreasonable searches and seizures; the freedoms from being tried twice for the same crime; and the protection against self-incrimination. There are additional, equally important rights, found in the Bill of Rights.

The central question raised by this lesson is: *Is it possible to effectively control crime in our society while at the same time protect the individual rights of the people from infringement by the government?*

2. Tell students that they will be developing evidence to support the argument that crime is a serious problem.
3. Individually, have students examine a daily newspaper over a three-day period and compile a list of all the crimes reported in the newspaper during that time period.
4. In groups of four or five students, have them complete a single list which includes the examples found by the individual group members.
5. The teacher should distribute **Student Handout 1: VIOLENT CRIME** which provides additional examples of the crime problem.
6. Teacher will lead classroom discussion considering the following:
 - A. Identify and elaborate on several reasons why there is so much crime in our society.
 - B. What are some of the alternatives that could be utilized to reduce the amount of crime in our society?
 - C. Identify and explain what potential problems may arise for each alternative method of reducing crime.
7. Have the students draw conclusions from this activity including, among others:
 - A. crime is indeed a serious problem,
 - B. the causes of crime are numerous and highly complex
 - C. there are no easy, quick, safe, fair, and guaranteed methods of reducing the level of crime.

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8. Tell students that they will now develop arguments to support the claim that we value our individual liberties and realize that government may, at times, threaten those liberties.
9. Have students read **Student Handout 2: PROTECTING INDIVIDUAL RIGHTS** and, in groups of three, complete the following:
 - A. summarize and explain the point being made by James Madison in his speech of June 8, 1789.
 - B. list the apparent violations of the Bill of Rights that were experienced by the three individuals mentioned in the handout.
10. Teachers will lead a classroom discussion, considering the following:
 - A. What was the main point of James Madison's comments?
 - B. In the view of today's legal system, were Madison's concerns valid?
 - C. What alternatives should be pursued to insure that government does not infringe on the individual rights of the people?
 - D. Evaluate the appropriateness of each alternative.
 - E. What constitutional errors do you believe were allowed by the state courts in Missouri, Georgia, and Florida in the cases of Thompson, House and Smith?
 - F. What is your reaction to the facts in the 1936 Supreme Court case *Brown v. Mississippi*? Why?
11. Have students draw conclusions from this activity, including, but not limited to, the following:
 - A. The framers of the Bill of Rights realized that government infringement on individual liberties was a serious potential problem.
 - B. There are numerous examples in U.S. history in which the rights of individuals have been violated during the criminal procedure process.
12. Briefly explain the general philosophy of the *crime control* model of criminal law and the philosophy of the *due process* model of criminal law. Be sure to explain that these models overlap. In explaining the crime control model, include the following points.
 - A. The most important concern is that society must be made safer and criminals must go to jail.
 - B. If an innocent person goes to jail, it is the price we pay for an orderly, safe society.
 - C. Most of the people charged with crimes are probably guilty and should go to jail.

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Procedure cont.

D. The courts have been overly concerned with protecting Constitutional rights, and the result has been that guilty persons have gone free.

13. Explain the due process model, including the following points:

A. The protection of individual liberties is extremely important because when one person's rights are violated all of society's rights are at stake.

B. It is better that a guilty person occasionally remains free from going to jail than for individual rights to be eroded.

C. The guarantees of the Bill of Rights must be strictly followed from the point of initial contact with law enforcement authorities through the point of imprisonment if that is the outcome.

D. Society must be willing to sacrifice efficiency in order to protect rights.

14. Instruct students about the Exclusionary Rule (See **TEACHER BACKGROUND** information) and tell them that they will be using the Exclusionary Rule as the basis for the evaluation of the *crime control model* and the *due process model*.

15. In groups of three or four, have the students discuss the following questions:

A. What are the strengths and weakness of the departmental discipline, civil law suit, and civilian review board means of limiting the police practice of illegal searches and seizures.

B. List the positive aspects of the Exclusionary Rule.

C. List the negative aspects of the Exclusionary Rule.

16. Have the students write a one or two page position paper on the Exclusionary Rule by responding to the following statement: "*The Exclusionary Rule is the best means of enforcement of the Fourth Amendment protection against illegal search and seizure.*"

17. On the basis of the positions taken in the position papers, have the class debate the issue by dividing it into two groups. Each side should fully explore the appropriateness of the Exclusionary Rule.

18. Optional activity or final evaluation of the lesson: Students should write a two page paper in which they identify the advantages of both the *crime control model* and the *due process model*. The paper should include the student's selection of their preferred model, stating the reasons for their positions.

TEACHER BACKGROUND: Exclusionary Rule

The Fourth Amendment to the United States Constitution states that *"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated...."* If the police violate a person's rights under the Fourth Amendment, there are various means that could be used to deal with the situation.

Some of the alternatives utilized in different countries to deal with the illegal search/seizure problem are as follows:

A. The law enforcement officer who made the constitutional error could be disciplined (demoted, fired, fined) by the police administration, but the evidence could be admitted during a trial.

B. Individuals who believed they were victims of illegal searches/seizures could sue the police officers involved in a civil suit.

C. A civilian review board could hold hearings to investigate the supposedly illegal search/seizure action and recommend a penalty if they conclude that an illegal action did in fact take place.

D. The illegally seized evidence could be made inadmissible in a court of law (Exclusionary Rule).

In 1914 the U.S. Supreme Court ruled unanimously in *Weeks v. United States* that in the federal courts evidence secured illegally could not be used in prosecution efforts.

In 1949 the Supreme Court allowed the use of illegally seized evidence by the prosecutor in a state court criminal trial in the case of *Wolf v. Colorado*. Justice Frankfurter, writing for the majority, stated, *"... that in a prosecution in a state court for a state offense the 14th Amendment does not forbid the admission of evidence obtained by an unreasonable search and seizure."*

In 1961 the Supreme Court reversed the *Wolf* decision and ruled by a 5-4 vote in *Mapp v. Ohio* that illegally obtained evidence is not admissible in a state court. In effect the Supreme Court applied its 1914 *Weeks* decision creating the Exclusionary Rule to the states. The United States became the only country in the world to have such a strict rule regarding evidence. The facts involved in the *Mapp* case are included below as they appeared in Justice Clark's majority opinion.

"On May 23, 1957, three Cleveland police officers arrived at appellant's residence in that city pursuant to information that "a person (was) hiding out in the home who was wanted for questioning in connection with a recent bombing, and that there was a large amount of police paraphernalia being hidden in the home." Miss Mapp and her daughter by a former marriage lived on the top floor of the two-family dwelling. Upon their arrival at that house, the officers knocked on the door and demanded entrance but appellant, after telephoning her attorney, refused to admit them without a search warrant. * **

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TEACHER BACKGROUND: Exclusionary Rule cont.

*"The officers again sought entrance some three hours later when four or more additional officers arrived on the scene. When Miss Mapp did not come to the door immediately, at least one of the several doors to the house was forcibly opened and the policemen gained admittance. Meanwhile Miss Mapp's attorney arrived, but the officers, having secured their own entry, and continuing in their defiance of the law, would permit him neither to see Miss Mapp nor to enter the house. (When the officers broke into the hall, Miss Mapp) demanded to see the search warrant. A paper, claimed to be a warrant, was held up by one of the officers. She grabbed the "warrant" and placed it in her bosom. A struggle ensued in which the officers recovered the piece of paper and as a result of which they handcuffed appellant because she had been "belligerent" in resisting their official rescue of the "warrant" from her person. * * * Appellant, in handcuffs, was then forcibly taken upstairs to her bedroom where the officers searched a dresser, a chest of drawers, a closet and some suitcases. * * * The search spread to the rest of the second floor * * * The basement of the building and a trunk found therein were also searched. The obscene materials for possession of which she was ultimately convicted were discovered in the course of that widespread*

search.

"At the trial no search warrant was produced by the prosecution, nor was the failure to produce one explained or accounted for. At best (as the Ohio Supreme Court, which affirmed the conviction, expressed it), "there is, in the record, considerable doubt as to whether there ever was any warrant for the search of defendant's home"

The Exclusionary Rule is not found in the U.S. Constitution. It was created by the Supreme Court in order to prevent police officers from breaking the law. The Supreme Court eventually broadened its application to cover the rights included in the Fifth and Sixth Amendments.

People critical of the Exclusionary Rule claimed that the Supreme Court had made it too easy for criminals to escape being sent to prison. Some criminals who had quite obviously committed crimes were released by appeals courts because the police had made mistakes while conducting searches, seizing evidence, or conducting the criminal investigative procedure.

As different individuals were appointed to the U.S. Supreme Court in the 1970's and 1980's the use of the exclusionary rule has been narrowed. Perhaps in reaction to increasing numbers of crimes involving violence and/or illegal drug use and trafficking, the Supreme Court has created the **good faith exception**. In *U.S. v. Leon* (1984) Justice Byron White wrote the 6-3 majority opinion. He stated that if the police believe they have a valid search warrant when they conduct a search only to find out after the search that the warrant was flawed, they acted in **good faith** and the search was legal. Justice

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TEACHER BACKGROUND: Exclusionary Rule cont.

White stated in *Leon* that the Exclusionary Rule was "*designed to deter police misconduct rather than punish the errors of judges.*" Justice William Brennan strongly disagreed with Justice White because he feared the "gradual but determined strangulation of the exclusionary rule."

Student Handout 1: VIOLENT CRIME

The following four situations were recently cited in a Minneapolis Star Tribune Editorial (July 21, 1991). The specific problems involving repeat sex offenders are clearly illustrated, by these examples.

- 1.** Thomas Schwartz was released from a Nebraska prison on March 9, 1988 where he had served time for robbery and sexual assault. He was arrested two weeks later in Eagan, Minnesota for following a woman home. He went on to sexually assault and kill a Minneapolis woman on May 27, 1988.
- 2.** David Thomas committed several rapes in Minneapolis in 1980. He was released from jail on May 17, 1988. During the three weeks following his release he sexually assaulted eight women and murdered the eighth victim on June 12, 1988.
- 3.** Richard Moorman refused psychological counseling after pleading guilty to raping a seventeen-year-old woman in Minnesota in 1987. He was released to a halfway house in December of 1989 but did not show up. On October 16, 1990 he was arrested for attempted rape of his sister's roommate. He was later convicted of the September 19, 1990 rape and murder of a fourteen-year-old girl in Brooklyn Park, Minnesota.
- 4.** Scott Stewart served 40 months in prison for a 1984 rape of a St. Paul woman. One month after his release, he kidnapped and repeatedly raped another St. Paul woman. He was sentenced to five years in prison and released to a half-way house on July 4, 1991. He failed to show up and is now charged with the July 8, 1991 abduction and murder of a St. Cloud, Minnesota woman.

The examples in this handout focus on sex-related violent crimes that resulted in death. Other violent crimes involving robbery, assault, kidnapping and murder are also increasing in frequency. Our society is struggling to find a means to deal with the crime problem. Should we deal with the problem by making it easier for the police to do their job by exempting them from such requirements as showing probable cause, obtaining search warrants, and advising people of their constitutional rights?

Student Handout 2: PROTECTING INDIVIDUAL RIGHTS

James Madison proposed that a Bill of Rights be added to the United States Constitution to a reluctant House of Representatives in a speech he made on the floor of the house on June 8, 1789.

In proposing the Bill of Rights, James Madison stated that his intent was...

"to limit and qualify the powers of government, by excepting out of the grant of power those cases in which the government ought not to act, or to act only in a particular mode."

Madison went on to warn of the dangers of the necessary and proper clause in Article I when he stated:

"It is true the powers of the general government are circumscribed; they are directed to particular objects; but even if government keeps within those limits, it has certain discretionary powers with respect to the means, which may admit of abuse to a certain extent..."

Madison also pointed out the fact that he believed state governments to be a greater threat to individual liberties than the national government:

"the words, 'No state shall pass any bill of attainder, ex post facto law, etc.' were wise and proper restrictions in the constitution. I think there is more danger of those powers being abused by the state governments than by the government of the United States . . . I should therefore wish to extend this interdiction, and add, as I have stated in the 5th resolution, that no state shall violate the equal right of conscience, freedom of the press, or trial by jury in criminal cases; because it is proper that every government should be disarmed of powers which trench upon those particular rights."

The following examples involve the experiences of three individuals originally found guilty and sentenced to death in Missouri, Georgia, and Florida.

- 1.** Douglas Thompson - Missouri courts conducted the original trial of Thompson with a jury that the sheriff had loaded with his friends.
- 2.** Jack House - The lawyers for House prepared no defense for him in this Georgia case. They did not develop a strategy, did not seek witnesses, and failed to discover useful evidence that existed in police files because as one of the defense lawyers stated, "Both of us were too busy." Houses's case was summarized for the jury with a verse from the Bible.

Student Handout 2: PROTECTING INDIVIDUAL RIGHTS cont.

3. Dennis Smith - during the initial police interview of the only witness who placed Smith at the scene of the crime the witness failed to mention Smith at all. The jury was never informed of the absence of Smith's name during this important first interview that was crucial to his conviction.
4. See *Brown v. Mississippi* (1936) as a gross example of a violation of individual liberties. The following facts of the 1936 *Brown* case were set forth by Justice Hughes in his majority opinion in 1936.

"The question in this case is whether convictions, which rest solely upon confessions shown to have been extorted by officers of the state by brutality and violence, are consistent with the due process of law required by the Fourteenth Amendment of the Constitution of the United States.

Petitioners were indicted for the murder of one Raymond Stewart, whose death occurred on March 30, 1934. They were indicted on April 4, 1934, and were then arraigned and pleaded not guilty. Counsel were appointed by the court to defend them. Trial was begun the next morning and was concluded on the following day, when they were found guilty and sentenced to death.

Aside from the confessions, there was no evidence sufficient to warrant the submission of the case to the jury. After a preliminary inquiry, testimony as to the confessions was received over the objection of defendants' counsel. Defendants then testified that the confessions were false and had been procured by physical torture."

Justice Hughes continued to describe the facts of the case as follows:

"The crime with which these defendants, all ignorant negroes, are charged was discovered about 1 o'clock p. m. on Friday, March 30, 1934. On that night one Dial, a deputy sheriff, accompanied by others, came to the home of Ellington, one of the three defendants, and requested him to accompany them to the house of the deceased, and there a number of white men were gathered, who began to accuse the defendant of the crime. Upon his denial they seized him, and with the participation of the deputy they hanged him by a rope to the limb of a tree, and, having let him down, they hung him again, and when he was let down the second time, and he still protested his innocence, he was ties to a tree and whipped, and still declining to accede to the demands that he confess, he was finally released, and he returned with some difficulty to his home, suffering intense pain and agony. The record of the testimony shows that the signs of the rope on his neck were plainly visible during the so-called trial.

Student Handout 2: PROTECTING INDIVIDUAL RIGHTS cont.

A day or two thereafter the said deputy, accompanied by another, returned to the home of the said defendant and arrested him and departed with the prisoner towards the jail in an adjoining county, but went by a route which led into the state of Alabama; and while on the way, in that state, the deputy stopped and again severely whipped the defendant, declaring that he would continue the whipping until he confessed, and the defendant then agreed to confess to such a statement as the deputy would dictate, and he did so, after which he was delivered to jail.

"The other two defendants, Ed Brown and Henry Shields, were also arrested and taken to the same jail. On Sunday night, April 1, 1934, the same deputy, accompanied by a number of white men, one of whom was also an officer, and by the jailer, came to the jail, and the two last named defendants were made to strip and they were laid over chairs and their backs were cut to pieces with a leather strap with buckles on it, and they were likewise made by the said deputy definitely to understand that the whipping would be continued unless and until they confessed, and not only confess, but confessed in every matter of detail as demanded by those present; and in this manner the defendants confessed the crime, and, as the whippings progressed and were repeated, they changed or adjusted their confession in all particulars of detail so as to conform to the demands of their torturers. When the confessions had been obtained in the exact form and contents as desired by the mob, they left with the parting admonition and warning that, if the defendants changed their story at any time in any respect from that last stated, the perpetrators of the outrage would administer the same or equally effective treatment.

"Further details of the brutal treatment to which these helpless prisoners were subjected need not be pursued. It is sufficient to say that in pertinent respects the transcript reads more like pages torn from some medieval account than a record made within the confines of a modern civilization which aspires to an enlightened constitutional government."