Justice for All  
Affirmative Case by Mark Csoros



This case rests on your ability to make the exclusionary rule a whipping boy. You have to convince the judge that it is unjust for criminals to walk free because we couldn’t use evidence against them. And, if you really think about it, that isn’t too much of a stretch. It’s a little odd that we let felons off the hook even though we know that punishment is deserved.

The best argument on negative is that as a nation of laws, we can’t use evidence gathered in violation of those laws. This is called the “fruit of the poisonous tree” doctrine, and it basically means that we taint criminal proceedings when we break the law in order to convict people that break the law. I think the best counterargument to that doctrine is to think of the law as an impartial standard. It sets rules for criminals, it sets rules for cops. If a cop breaks those rules with an illegal search, he should be punished. If a criminal breaks those laws by committing a crime, he should be punished. Society shouldn’t be punished by having a criminal go free just because the criminal and cop both broke laws. That isn’t fair or just, and you need to emphasize and reiterate that point.

Other than that, your strength lies in your value. Justice needs to be front and center in your argumentation, with the exclusionary rule cast as an illogical affront to law and justice. You don’t necessarily have to be overly “tough on crime”, though you can certainly adopt that persona and adapt your rhetoric to fit. You can also simply be the voice of reason. The law has been broken, An illegal search has been conducted. The fact of the illegal search doesn’t change the fact of the broken law. Punishment should still be administered. If you can stick to that narrative, you’ll run this case well.

Justice

It’s a simple fact of life that wrongdoers exist. Because we live in a fallen world, people will always break the law, harm others, and seek to avoid punishment. The resolution today asks us how we ought to approach situations of wrongdoing, and it’s my contention that we place far too much emphasis on the privacy of criminals, and far too little emphasis on doing the right thing. That’s why I stand **Resolved:** that **criminal procedure should value truth-seeking over individual privacy.** Before we examine why I believe that, let’s define our key terms.

# Definitions

Criminal Procedure “deals with the set of rules governing the series of proceedings through which the government enforces substantive [criminal law](http://law.cornell.edu/wex/criminal_law).”[[1]](#footnote-1)

Truth-seeking**,** in this context, is the pursuit of factual information pertaining to an ongoing criminal investigation

Privacyis operationally defined as “The right to withhold information, provided that there is a reasonable expectation that the information is not publicly known.[[2]](#footnote-2)

Finally, the **Exclusionary Rule** is “a legal rule that bars unlawfully obtained evidence from being used in court proceedings.[[3]](#footnote-3) The exclusionary rule will serve as the prime example of how valuing individual privacy over truth-seeking succeeds at protecting criminals and fails to support viable criminal procedure.

# Value: Justice

With that in mind, we need to ask ourselves about the goal of criminal procedure. It should be clear that the main objective of our criminal proceedings should be to bring criminals to justice. That’s why the Value for today’s debate round should be Justice.This simply means that if truth-seeking provides justice more effectively than privacy, affirmative should win. If the inverse is true, negative should win. But either way, we should decide this debate based on which side best achieves the most important thing: justice. Let’s observe why truth-seeking obtains justice in our first contention.

# Contention 1: Discovery of Wrongdoing

When governments seek truth, they find out that people break the law. Sometimes they seek the truth in ways that support individual privacy, but sometimes truth-seeking violates privacy rights. It’s important to remember, though, that truth-seeking only reveals facts, regardless of how the truth was obtained. Unfortunately, some laws are written in a way that helps criminals avoid punishment. We’ll see that in…

# Contention 2: Punishment Avoided

In the U.S., the exclusionary rule that we defined earlier helps criminals avoid convictions. We’ll look at an example in

## Application 1: Collins v. Virginia

The Heritage Foundation writes about this case:

“An Albemarle County, Virginia, police officer walked up the driveway of a woman’s home to inspect what he believed to be a motorcycle that had been involved in two separate traffic violations and high-speed police evasions, and was likely stolen. The officer confirmed that it was the motorcycle in question and that it was stolen, and later arrested Ryan Collins, who had left the motorcycle there at his girlfriend’s home.”*[[4]](#footnote-4)*

When he was brought to trial, Collins argued that because the “search” included a short walk up the driveway, his constitutional rights were violated. After losing twice and appealing to the Supreme Court, he finally got his conviction overturned. The Supreme Court ruled that his constitutional right to privacy was violated, and the evidence that proved Collins’ wrongdoing was inadmissible in court. This suppression of evidence lets wrongdoers walk free, which is why emphasizing privacy over truth-seeking leads to injustice. We’ll see that in…

# Contention 3: Privacy over Truth-seeking is Injustice

Justice Benjamin Cardoza, of the New York Court of Appeals, explained the impact of the exclusionary rule thusly:

“The criminal is to go free because the constable blundered.”*[[5]](#footnote-5)*

Cardozo wasn’t supporting that concept, he was protesting it. It’s unjust for a criminal to walk free merely because he expected his wrongdoing to stay secret. If a police officer violates privacy, we can have a discussion of how he ought to be punished. But it is the height of injustice for society to be endangered by a criminal who should be behind bars, merely because we’re too afraid to use the evidence we have at hand. Privacy is a good thing, but truth-seeking enables the justice that is at the heart of our republic. Vote affirmative to restore justice, and value truth-seeking above privacy.

Opposing This Case

It’s going to be difficult to fight against the value of justice, so my recommendation is that you coopt it. If you can convince the judge that it’s unjust to let our justice system use illegal evidence to convict a criminal, you’ve made an admirable defense of the exclusionary rule. Draw on Supreme Court decisions to back you up, and don’t let affirmative take the moral high ground. At my first NITOC, there was a sign in one of the rooms that said something along the lines of: “It is never right to do wrong in order to get a chance to do right”. Our entire justice system is on shaky ground if we allow ourselves to convict people through illegal means.

You can also point out that privacy is an individual right, and violations of that right without probable cause assumes guilt. Our justice system is built on the mantra “innocent until proven guilty” and taking away rights before a crime is proved is a form of preemptive punishment. You don’t have to argue against warrants issued with probable cause, but you should probably point out that there needs to be a very good reason to invade individual rights, because those are sacred.

Finally, you can argue that the affirmative’s rhetoric is an overstatement of a relatively small problem. Not many cases are dismissed because of the exclusionary rule, and there are several exceptions that allow warrantless searches in some situations. Those exceptions are listed in Monument’s Applications Article, which I highly recommend you read. I know the author pretty well.

Overall, keep coming back to how your side protects justice. If you can keep the moral high ground, you can unseat affirmative, achieve your opponent’s value better than they can, and simultaneously support the individual’s human right to privacy. We are a nation of laws. Letting our justice system break those laws to convict lawbreakers is a hypocritical, unjust, and untenable system. Win that narrative and you win the round.

1. “Criminal Procedure” *Legal Information Institute,* Cornell University, 12 July 2016 [www.law.cornell.edu/wex/criminal\_procedure](http://www.law.cornell.edu/wex/criminal_procedure) [↑](#footnote-ref-1)
2. Composite definition from Merriam Webster. *Privacy*. [www.merriam-webster.com/dictionary/privacy](http://www.merriam-webster.com/dictionary/privacy). [↑](#footnote-ref-2)
3. “Exclusionary Rule.” Merriam-Webster, Merriam-Webster, www.merriam-webster.com/dictionary/exclusionary rule. [↑](#footnote-ref-3)
4. Slattery, Elizabeth. “Supreme Court to Police: Get Off the People's Lawn.” *The Heritage Foundation*, [www.heritage.org/crime-and-justice/commentary/supreme-court-police-get-the-peoples-lawn](http://www.heritage.org/crime-and-justice/commentary/supreme-court-police-get-the-peoples-lawn). [↑](#footnote-ref-4)
5. *People v. Defore* [1962] 242 N.Y. 13; 150 N.E. 585 (Court of Appeals of New York). [↑](#footnote-ref-5)