OPP Brief: Exclusionary Rule  
by Mark Csoros



On negative, you’ve probably run across the popular aff case centered around the exclusionary rule. It’s a popular application because it makes a lot of sense, plays on the judge’s idea of justice, and isn’t hard to explain or impact. It usually looks something like this:

*The exclusionary rule is set up in American courts to protect privacy. Because of various Supreme Court rulings, evidence obtained in a manner that violates search and seizure law cannot be used in court. This means that guilty people sometimes get off free, just because truth seeking occurred in a way that violates privacy. This doesn’t make sense. If a police officer violated the law, let’s punish him in accordance with the law. But why would we let a criminal go free on a technicality? We should allow violations of privacy in the name of truth seeking so that justice can be served.*

It makes sense, right? If we know the truth, it doesn’t really matter how we got it, we should act on what we know to make sure the criminal goes to jail.

From the justice angle, the best way to defeat this application is to point out that you can’t obtain justice with an unjust process. We can’t very well punish people for breaking the law if we prosecute them using information we found because we broke the law. As Justice Clark wrote in his opinion in Mapp v. Ohio:

*“There are those who say, as did Justice (then Judge) Cardozo, that, under our constitutional exclusionary doctrine, "[t]he criminal is to go free because the constable has blundered."* People v. Defore, *242 N.Y. at 21, 150 N.E. at 587. In some cases, this will undoubtedly be the result.****[[n9]](https://www.law.cornell.edu/supremecourt/text/367/643" \l "ZO-367_US_643n9)****But, as was said in* Elkins, *"there is another consideration -- the imperative of judicial integrity." 364 U.S. at 222. The criminal goes free, if he must, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence.”[[1]](#footnote-1)*

If we’re going to have laws, we have to abide by them. We can’t violate privacy just because we feel like it, even if we feel like it because there’s a criminal we want to convict.

The exclusionary rule application can also be run with a public safety value. In this case, aff will argue that we need to seek the truth effectively so that we can protect citizen’s lives. This one is a little more complicated, but the best negative response runs on very similar lines. Here, the argument is centered around human rights. If we’re interested in protecting the public’s safety (and therefore life) we shouldn’t violate individual’s rights. What is life without the rights that make life worth living? It doesn’t make sense to sacrifice inherent human rights merely to preserve physical life.

Secondly, it’s important to remember that truth seeking doesn’t guarantee that we will find the truth. This compounds the argument in the last paragraph, because it means aff sacrifices our real and precious privacy for the chance that we may find information that may convict a criminal. Bob Jones Sr., the founder of the aptly named Bob Jones University, once said “It is never right to do wrong in order to get a chance to do right”. Violating essential human rights for a chance to protect essential human rights is bad ethical calculus.

1. https://www.law.cornell.edu/supremecourt/text/367/643#ZO-367\_US\_643n9 [↑](#footnote-ref-1)