Emotions Make Poor Legislators  
Negative Brief by Alisa Stringer



In round, it is often easy for both judges and debaters to get so caught up in the emotional appeal of a position that we forget the facts of a case and the implications of our decisions. This is particularly true when we are dealing with cases that involve our Justice system.

In STOA Lincoln-Douglas Release #07: “Social Contract” (AFF) (9/17/2018), Micah Chapman presented the following application.

Seven-year-old Danielle Van Dam was kidnapped in the dead of night by her neighbor, 49-year-old David Westerfield, in February 2002. Westerfield abducted the young girl and murdered her. Her parents were heartbroken over the disappearance, but no significant evidence pointed to any suspect.

A detective on the case, based on a wild hunch, marched up to Westerfield’s door, and lied; telling him that all the houses were being investigated, and she would like to see his. Upon this investigation, she found evidence of Danielle’s abduction, accused Westerfield of the crime, and he was eventually found guilty. Sometime later, Westerfield admitted to the murder. However, if the police officers and Westerfield had been more concerned with privacy, this murderous psychopath may still be walking free today.

Micah then discusses we sometimes must make difficult decisions to save lives. The following brief examines this argument in detail. There are two steps that debaters ought to take when faced with emotionally charged examples like the one used here.

First, fact check the case. The work is a bit easier with this resolution, as debaters are primarily dealing with court cases, which are accessible online. The first piece of evidence from this brief comes from the respondents brief for the case in question. In the example listed in this brief, I would suggest that debaters argue that, as there was a signed consent form, no privacy was violated so the application is non-resolutional.

Second, take a step back from any emotions that the case causes in order to examine the logical implications of the arguments at hand. We cannot allow emotions to dictate our laws. Examples like the Westerfield application all boil down to one major claim: it is moral for courts to illegally obtain and use evidence. Tags two through ten explain why this line of thinking, while appealing, is incredibly dangerous. There are some lines that the police and courts must not cross.

The tags used in this brief include:

1. No Privacy was Violated
2. The Purpose of Privacy is Protection
3. The Warrant System Provides a Constitutional Check
4. Privacy Protects Against Tyranny
5. Deterrence Benefits
6. Privacy is a Basic Protection
7. Privacy Interests Require Deterrence Practices
8. Emotional Exceptions Lead to Atrophy
9. Exceptions Render Amendments Hollow
10. Restrictions on Truth-Seeking Safeguard Our Nation

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No Privacy was Violated

“Capital Case: Case No. S112691: Respondent’s Brief.” Supreme Court of the State of California, 10/9/2012. http://www.courts.ca.gov/documents/2-s112691-resp-brief-100912.pdf

During this conversation outside of his house, Westerfield was sweating profusely despite it being about 50 to 55 degrees outside. (15 RT 4286-4287, 4403.) Then Detective Keene asked Westerfield if he would be willing to sign a consent-to-search form so that the detective could look inside his house for any indication Danielle might have been there. (15 RT 4287.) Westerfield signed it. (15 RT 4288-4289.) Inside the home, Detective Keene observed that the master bed did not have a comforter on it, but was otherwise made with the sheets. (15 RT 4297.) During the walking through, Westerfield was “overly cooperative.” He pointed out areas in the home he believed the detectives should look in or walk through. (15 RT 4298-4299.) Detective Keene and Parga also looked at Westerfield’s Toyota 4-Runner, which was parked in the garage. It was very clean inside and out (15 RT 4300-4301, 4409), although Westerfield had not mentioned cleaning the SUV as part of his weekend adventure (15 RT 4279). Also in the garage, Detective Parga detected the smell of bleach. (15 RT 4409.)

The Purpose of Privacy is Protection

Timothy Lynch “In Defense of the Exclusionary Rule.” Cato Institute, Accessed 1/24/2019. https://object.cato.org/sites/cato.org/files/pubs/pdf/pa-319.pdf

This objection has surface appeal, but close scrutiny will reveal a fatal misstep. It is important to recognize that the purpose of the Constitution and the Bill of Rights is not simply to authorize and empower government but to limit it as well. Yes, the criminal justice system searches for the truth, but not by just any means. This objection blurs the difference between the police officers of a free society and those of a police state. An example will illustrate the point. The Federal Bureau of Investigation and Fidel Castro's police force are both "law enforcement" agencies. Both agencies share general "truth-seeking" objectives. Both seek to detect and apprehend people who disobey the law. The key difference between the two agencies is that the FBI, unlike Castro's police force, must operate within a constitutional framework of limited government. In America, the truthseeking objective is subordinated to the higher objective of safeguarding liberty and preventing tyranny.

The Warrant System Provides a Constitutional Check

“Exclusionary Rule.” Legal Information Institute, Accessed 1/5/2019. https://www.law.cornell.edu/wex/exclusionary\_rule

Though the rationale behind the exclusionary rule is based in constitutional rights, it is a court-created remedy and deterrent, not an independent constitutional right. The purpose of the rule is to deter law enforcement officers from conducting searches or seizures in violation of the Fourth Amendment and to provide remedies to defendants whose rights have been infringed. Courts have also carved out several exceptions to the exclusionary rule where the costs of exclusion outweigh its deterrent or remedial benefits. For example, the good-faith exception, below, does not trigger the rule because excluding the evidence would not deter police officers from violating the law in the future.

Privacy Protects Against Tyranny

Charles A. Reynard “Freedom from Unreasonable Search and Seizure-A Second Class Constitutional Right?” Indiana Law Journal, Spring 1950. https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=3751&context=ilj

Based upon the history reviewed to this point there seems little doubt that the Fourth Amendment's framers had at least two objectives in mind as they approached their task. First, they clearly intended to prohibit the use of general warrants and writs of assistance as means of law enforcement; and, second, in the fulfillment of this end, they intended that the guilty should be protected as well as the innocent. In fact, it is not too much to say that protection of the guilty was a matter of particular concern. Wilkes and Entick were harrassed by general warrants because of their publication of seditious libels; and the American colonists were being similarly harrassed by the writs of assistance in connection with their smuggling activities in violation of existing customs laws. It is true, of course, that these laws were considered burdensome and oppressive, but nevertheless, they were the valid and existing laws of the land to be obeyed, altered or repealed by orderly political processes, or rendered inapplicable by revolution.

Deterrence Benefits

Scott E. Sundby “Mapp v. Ohio 's Unsung Hero: The Suppression Hearing as Morality Play.” Chicago-Kent Law Review, December 2009. https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=3742&context=cklawreview

In the end, no matter what future shape the exclusionary rule takes, the essential point is the need to recognize that the very process of the suppression hearing has important values that promote Fourth Amendment compliance. Like the morality plays of the Middle Ages, the suppression hearing serves as a forum for both instructing and reinforcing the obligations of those charged with carrying out law enforcement duties as part of their everyday duties. The virtues of the suppression hearing may not have been where the Justices thought they would be finding deterrence when they decided Mapp, but they now are an important part of the legal fabric that enables police officers to better fulfill both their constitutional and law enforcement duties.

Privacy is a Basic Protection

“WOLF v. PEOPLE OF THE STATE OF COLORADO (two cases).” Cornell Law School: Legal Information Institute, Accessed 1/28/2019.

https://www.law.cornell.edu/supremecourt/text/338/25

The security of one's privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free society. It is therefore implicit in 'the concept of ordered liberty' and as such enforceable againt the States through the Due Process Clause. The knock at the door, whether by day or by night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of English-speaking peoples.

Privacy Interests Require Deterrence Practices

“493 U.S. 307 (110 S.Ct. 648, 107 L.Ed.2d 676) Darryl JAMES, Petitioner v. ILLINOIS. No. 88-6075.” Cornell Law School: Legal Information Institute , Accessed 1/28/2019

. https://www.law.cornell.edu/supremecourt/text/493/307

Held: The State Supreme Court erred in expanding the impeachment exception to encompass the testimony of all defense witnesses. Such expansion would frustrate rather than further the purposes underlying the exclusionary rule. The truth seeking rationale supporting the impeachment of defendants does not apply with equal force to other witnesses. The State Supreme Court's "perjury by proxy" premise is suspect, since the threat of a criminal prosecution for perjury is far more likely to deter a witness from intentionally lying than to deter a defendant, already facing conviction, from lying on his own behalf. Moreover, some defendants likely would be chilled from calling witnesses who would otherwise offer probative evidence out of fear that those witnesses might make some statement in sufficient tension with the tainted evidence to allow the prosecutor to introduce that evidence for impeachment. Finally, expansion of the exception would significantly weaken the exclusionary rule's deterrent effect on police misconduct by enhancing the expected value to the prosecution of illegally obtained evidence, both by vastly increasing the number of occasions on which such evidence could be used and also, due to the chilling effect, by deterring defendants from calling witnesses in the first place and thereby keeping exculpatory evidence from the jury. The exclusion of illegal evidence from the prosecution's case in chief would not provide sufficient deterrence to protect the privacy interests underlying the rule. When police officers confront opportunities to obtain illegal evidence after they have legally obtained sufficient evidence to sustain a prima facie case, excluding such evidence from only the case in chief would leave officers with little to lose and much to gain by overstepping the constitutional limits on evidence gathering.

Emotional Exceptions Lead to Atrophy

William Geller “Enforcing the Fourth Amendment: The Exclusionary Rule and Its Alternatives.” Washington University Law Review, January 1975. https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=2960&context=law\_lawreview

The exclusionary rule should be retained in federal and state criminal proceedings. Currently, there exists no other mechanism for the meaningful judicial articulation of fourth amendment rights; without this articulation, those rights might atrophy. Despite gaps in the rule's deterrent ability, even its most ardent detractors concede that police are probably dissuaded from conducting unreasonable searches and seizures when successful prosecution is their goal. As legislatures continue their efforts to decriminalize "victimless" crimes, efforts that might resolve many of the difficulties associated with the exclusionary rule, the legislatures should also experiment with promising supplementary devices for enforcing the fourth amendment. If and when these devices prove superior to the exclusionary rule, the rule might be modified to allow reception of evidence seized wrongfully but in good faith. At that point only vigilance could prevent the police and courts from abusing such flexible tests. In any event, the strange fruit of egregiously unconstitutional searches must never be allowed to underpin a criminal conviction, lest justice in our democracy appear the height of hypocrisy.

Exceptions Render Amendments Hollow

“Collins v. Virginia – Certiorari to the Supreme Court of Virginia.” Supreme Court of the United States, May 2018.

https://www.supremecourt.gov/opinions/17pdf/16-1027\_7lio.pdf

Because the scope of the automobile exception extends no further than the automobile itself, it did not justify Officer Rhodes’ invasion of the curtilage. Nothing in this Court’s case law suggests that the automobile exception gives an officer the right to enter a home or its curtilage to access a vehicle without a warrant. Such an expansion would both undervalue the core Fourth Amendment protection afforded to the home and its curtilage and “ ‘untether’ ” the exception “ ‘from the justifications underlying’ ” it. Riley v. California, 573 U. S. \_\_\_, \_\_\_. This Court has similarly declined to expand the scope of other exceptions to the warrant requirement. Thus, just as an officer must have a lawful right of access to any contraband he discovers in plain view in order to seize it without a warrant—see Horton v. California, 496 U. S. 128, 136–137—and just as an officer must have a lawful right of access in order to arrest a person in his home—see Payton v. New York, 445 U. S. 573, 587–590—so, too, an officer must have a lawful right of access to a vehicle in order to search it pursuant to the automobile exception. To allow otherwise would unmoor the exception from its justifications, render hollow the core Fourth Amendment protection the Constitution extends to the house and its curtilage, and transform what was meant to be an exception into a tool with far broader application. Pp. 6–11.

Restrictions on Truth-Seeking Safeguard Our Nation

Catherine Richardson “Letters to the Editor: Exclusionary Rule Protects Us All.” Wall Street Journal, February 1997.

*https://www.wsj.com/articles/SB855699749737561000*

While it might be politically savvy to cast the exclusionary rule as a "get out of jail free" card, that rule is one of the many safeguards that ensures that we will continue to be a nation of laws and not one ruled by the whims and caprices of individual men and women. If you want evidence of the latter, just ask anyone who has suffered in a nation ruled by a despot or who has lived under martial law. We have the right to live free of the fear of crime, to be able to take our children to the park or walk to the corner store without fear of assault. However, if in pursuit of that right we look the other way when a high school student is searched illegally, when a driver is intimidated into allowing police to search his car, or when vehicle stop-and-checks become discretionary (because "we know they're guilty"), then all safeguards can become expendable and all rights become alterable. As New York's Chief Judge Judith S. Kaye has said, "The courts are not extensions of the police," nor should judicial decisions be tempered so that each complies with our individual notions of common sense. The real concern must be about respect for the rule of law, which in the final analysis will serve to protect and preserve all of our freedoms.