Utah V. Strieff  
Opposition Brief by Thomas Sargent



Like the picture? Sometimes I wonder if the government is doing that to us. ☺

I have to give it to the court judges: they have tough nerves. Not everyone can make definitive decisions that stand strong regardless of the heat gathered from people everywhere. They have to answer some hard questions: Does a person live or die? Do they leave in freedom or in chains? Do they live in the world around them or a prison cell? It takes thick skin to make those decisions. And sometimes, to make things even more fun, the court becomes divided with dissention galore if a case happens to be tricky. Utah v. Strieff is a great example of this, which is first introduced in the affirmative case, “Justice,” also called “Signed, Sealed, Delivered.”

A huge benefit to this resolution is the emotional aspect of persuasion. This is notably true on the affirmative. You’ll see people stand up, adjust their perfectly tied tie, and speak with a quivering conviction that would sway the most hard-hearted members of an 18th century church: “Although we violated privacy, we stopped a MURDERER. That’s good… right? We can’t have murderers plaguing our society. You could be his next victim! He could be at your door **AS WE SPEAK….**”

I’m not exaggerating. (alright, maybe a little bit)

Now, Utah v. Strieff is decidedly important and yet, admittedly, there are certainly applications with more raw impact. But if you’re dealing with court cases, one thing you can always focus on is the end result of the case. In other words, this case of “X v. Y” set a precedent for the future.

On a very basic level, to combat an impact-calculus case, some would say you either change the dynamic of the round to focus on philosophy, you neutralize the oomph of the affirmative impact, or you outweigh with your own impact calculus case. I think in this resolution, the affirmative definitely has the edge of persuasion right off the bat. But as the negative, although you have to still dismantle the construction of “truth-catches-criminals” agenda, you have some advantage when it comes to persuasion. If you can manage to change the affirmative precedent to that of an evil, destructive one, you’re already in a better position. That’s a common thread as you’ll see in this brief.

I love the dissenting opinions in Supreme Court decisions. They offer insight previously unheard of, which makes your possibility plate get a heaping helping of fresh perspective. As Anton Ego says in *Ratatouille*, “You know what I’m craving? A little…perspective. That’s it. I’d like some fresh, clear, well-seasoned perspective. Can you suggest a good wine to go with that?”

What better perspective against Utah v. Strieff than the writings of the dissents?

You’ll likely notice that there may be funny-looking citations in the middle of some evidence cards. These are *original citations for external research, included by the author who penned the evidence*, size reduced for clarity. That’s because you won’t be reading this out loud:

***https://www.justice.gov/sites  /default  /  files  / crt   /legacy  /  2014  /  07 /  22  /  newark  \_  findings  \_7-22-14.pdf.***

I mean, you certainly can…

…say all those…

…time consuming URLs…

…in the round…

…if you want to cause the judge to **f a l l a s l e e p** .

Or perhaps you’re a filibuster.

Although you won’t really be relying on those citations, it wouldn’t hurt to *check them out* - and if you can afford it, *print them out, too.* As another note, it’s reasonable to say this brief goes beyond Utah v. Strieff. Indeed, the ideas represented by the dissenting opinions can be tweaked to respond to many court cases.

One last thing: this should go without saying, but it’s best if you do not read the entire card. Find what best helps your position and leave out anything that doesn’t matter. It will suck your time up like a sponge if you read every single sentence, even those that don’t help your case.

Don’t agree what I’m saying? Let me repeat myself.

DON’T

READ

EVERYTHING

Out

Loud

IN

THE

EVIDENCE

ARTICLES

God bless you! Go debate.

Opposition Brief: Utah v. Strieff

# Dissents – Sotomayor - Dangerous Precedence:

Arbitrary Permissions

579 U. S. \_\_\_\_ (2016). Sotomayor J., dissenting.

“UTAH v. STRIEFF.” LII / Legal Information Institute, Legal Information Institute, www.law.cornell.edu/supremecourt/text/14-1373.

The Court today holds that the discovery of a warrant for an unpaid parking ticket will forgive a police officer’s violation of your Fourth Amendment rights. Do not be soothed by the opinion’s technical language: This case allows the police to stop you on the street, demand your identification, and check it for outstanding traffic warrants—even if you are doing nothing wrong. If the officer discovers a warrant for a fine you forgot to pay, courts will now excuse his illegal stop and will admit into evidence anything he happens to find by searching you after arresting you on the warrant.

Majority Unreasonable

579 U. S. \_\_\_\_ (2016). Sotomayor J., dissenting.

“UTAH v. STRIEFF.” LII / Legal Information Institute, Legal Information Institute, www.law.cornell.edu/supremecourt/text/14-1373.

In a single year in New Orleans, officers “made nearly 60,000 arrests, of which about 20,000 were of people with outstanding traffic or misdemeanor warrants from neighboring parishes for such infractions as unpaid tickets.” *Dept. of Justice, Civil Rights Div., Investigation of the New Orleans Police Department 29 (2011), online at https://www.justice.gov / sites / default / files / crt / legacy/2011/03/17/nopd\_report.pdf.* In the St. Louis metropolitan area, officers “routinely” stop people—on the street, at bus stops, or even in court—for no reason other than “an officer’s desire to check whether the subject had a municipal arrest warrant pending.” *Ferguson Report, at 49, 57*.In Newark, New Jersey, officers stopped 52,235 pedestrians within a 4-year period and ran warrant checks on 39,308 of them. *Dept. of Justice, Civil Rights Div., Investigation of the Newark Police Department 8, 19, n. 15 (2014), online at https://www.justice.gov/sites /default  /  files  / crt   /legacy  /  2014  /  07 /  22  /  newark  \_  findings  \_7-22-14.pdf.* The Justice Department analyzed these warrant-checked stops and reported that “approximately 93% of the stops would have been considered unsupported by articulated reason-able suspicion.” Id., at 9, n. 7.

Act First, Apologize Later

579 U. S. \_\_\_\_ (2016). Sotomayor J., dissenting.

“UTAH v. STRIEFF.” LII / Legal Information Institute, Legal Information Institute, www.law.cornell.edu/supremecourt/text/14-1373.

The New York City Police Department long trained officers to, in the words of a District Judge, “stop and question first, develop reasonable suspicion later.” Ligon v. New York, 925 F. Supp. 2d 478, 537–538 (SDNY), stay granted on other grounds, 736 F. 3d 118 (CA2 2013). The Utah Supreme Court described as “‘routine procedure’ or ‘common practice’ ” the decision of Salt Lake City police officers to run warrant checks on pedestrians they detained without reasonable suspicion. State v. Topanotes, 2003 UT 30, ¶2, 76 P. 3d 1159, 1160. In the related context of traffic stops, one widely followed police manual instructs officers looking for drugs to “run at least a warrants check on all drivers you stop. Statistically, narcotics offenders are . . . more likely to fail to appear on simple citations, such as traffic or trespass violations, leading to the issuance of bench warrants. Discovery of an outstanding warrant gives you cause for an immediate custodial arrest and search of the suspect.” C. Remsberg, Tactics for Criminal Patrol 205–206 (1995); C. Epp et al., Pulled Over 23, 33–36 (2014).

Two Wrongs Don’t Make a Right

579 U. S. \_\_\_\_ (2016). Sotomayor J., dissenting.

“UTAH v. STRIEFF.” LII / Legal Information Institute, Legal Information Institute, www.law.cornell.edu/supremecourt/text/14-1373.

It is tempting in a case like this, where illegal conduct by an officer uncovers illegal conduct by a civilian, to forgive the officer. After all, his instincts, although unconstitutional, were correct. But a basic principle lies at the heart of the Fourth Amendment: Two wrongs don’t make a right. See Weeks v. United States, 232 U. S. 383, 392 (1914). When “lawless police conduct” uncovers evidence of lawless civilian conduct, this Court has long required later criminal trials to exclude the illegally obtained evidence. Terry, 392 U. S., at 12; Mapp v. Ohio, 367 U. S. 643, 655 (1961). For example, if an officer breaks into a home and finds a forged check lying around, that check may not be used to prosecute the homeowner for bank fraud. We would describe the check as “‘fruit of the poisonous tree.’” Wong Sun v. United States, 371 U. S. 471, 488 (1963). Fruit that must be cast aside includes not only evidence directly found by an illegal search but also evidence “come at by exploitation of that illegality.” Ibid.

The Exclusionary Rule

579 U. S. \_\_\_\_ (2016). Sotomayor J., dissenting.

“UTAH v. STRIEFF.” LII / Legal Information Institute, Legal Information Institute, www.law.cornell.edu/supremecourt/text/14-1373.

This “exclusionary rule” removes an incentive for officers to search us without proper justification. Terry, 392 U. S., at 12. It also keeps courts from being “made party to lawless invasions of the constitutional rights of citizens by permitting unhindered governmental use of the fruits of such invasions.” Id., at 13. When courts admit only lawfully obtained evidence, they encourage “those who formulate law enforcement polices, and the officers who implement them, to incorporate Fourth Amendment ideals into their value system.” Stone v. Powell, 428 U. S. 465, 492 (1976). But when courts admit illegally obtained evidence as well, they reward “manifest neglect if not an open defiance of the prohibitions of the Constitution.” Weeks, 232 U. S., at 394. Applying the exclusionary rule, the Utah Supreme Court correctly decided that Strieff ’s drugs must be excluded because the officer exploited his illegal stop to discover them. The officer found the drugs only after learning of Strieff ’s traffic violation; and he learned of Strieff ’s traffic violation only because he unlawfully stopped Strieff to check his driver’s license.

# Dissents – Kagan - The Fourth Amendment:

Unconstitutional

579 U. S. \_\_\_\_ (2016). Kagan J., dissenting.

“UTAH v. STRIEFF.” LII / Legal Information Institute, Legal Information Institute, www.law.cornell.edu/supremecourt/text/14-1373.

If a police officer stops a person on the street without reasonable suspicion, that seizure violates the [Fourth Amendment](https://www.law.cornell.edu/supct-cgi/get-const?amendmentiv). And if the officer pats down the unlawfully detained individual and finds drugs in his pocket, the State may not use the contraband as evidence in a criminal prosecution. That much is beyond dispute. The question here is whether the prohibition on admitting evidence dissolves if the officer discovers, after making the stop but before finding the drugs, that the person has an outstanding arrest warrant. Because that added wrinkle makes no difference under the Constitution, I respectfully dissent.

This Court has established a simple framework for determining whether to exclude evidence obtained through a [Fourth Amendment](https://www.law.cornell.edu/supct-cgi/get-const?amendmentiv) violation: Suppression is necessary when, but only when, its societal benefits outweigh its costs. See *ante,* at 4; *Davis* v. *United States*, [564 U. S. 229](http://www.law.cornell.edu/supremecourt/text/564/229), 237 (2011). The exclusionary rule serves a crucial function—to deter unconstitutional police conduct. By barring the use of illegally obtained evidence, courts reduce the temptation for police officers to skirt the [Fourth Amendment](https://www.law.cornell.edu/supct-cgi/get-const?amendmentiv)’s requirements. See *James* v. *Illinois*, [493 U. S. 307](http://www.law.cornell.edu/supremecourt/text/493/307), 319 (1990). But suppression of evidence also “exacts a heavy toll”: Its consequence in many cases is to release a criminal without just punishment. *Davis,* 564 U. S., at 237. Our decisions have thus endeavored to strike a sound balance between those two competing considerations—rejecting the “reflexive” impulse to exclude evidence every time an officer runs afoul of the [Fourth Amendment](https://www.law.cornell.edu/supct-cgi/get-const?amendmentiv), *id.,*at 238, but insisting on suppression when it will lead to “appreciable deterrence” of police misconduct, *Herring* v. *United States*, [555 U. S. 135](http://www.law.cornell.edu/supremecourt/text/555/135), 141 (2009).

Unreasonable Suspicion

579 U. S. \_\_\_\_ (2016). Kagan J., dissenting.

“UTAH v. STRIEFF.” LII / Legal Information Institute, Legal Information Institute, www.law.cornell.edu/supremecourt/text/14-1373.

Move on to the purposefulness of Fackrell’s conduct, where the majority is less willing to see a problem for what it is. The majority chalks up Fackrell’s Fourth Amendment violation to a couple of innocent “mistakes.” Ante, at 8. But far from a Barney Fife-type mishap, Fackrell’s seizure of Strieff was a calculated decision, taken with so little justification that the State has never tried to defend its legality. At the suppression hearing, Fackrell acknowledged that the stop was designed for investigatory purposes—i.e., to “find out what was going on [in] the house” he had been watching, and to figure out “what [Strieff] was doing there.” App. 17–18. And Fackrell frankly admitted that he had no basis for his action except that Strieff “was coming out of the house.” Id., at 17. Plug in Fackrell’s and Strieff ’s names, substitute “stop” for “arrest” and “reasonable suspicion” for “probable cause,” and this Court’s decision in Brown perfectly describes this case: “[I]t is not disputed that [Fackrell stopped Strieff] without [reasonable suspicion]. [He] later testified that [he] made the [stop] for the purpose of questioning [Strieff ] as part of [his] investigation . . . . The illegality here . . . had a quality of purposefulness. The impropriety of the [stop] was obvious. [A]wareness of that fact was virtually conceded by [Fackrell] when [he] repeatedly acknowledged, in [his] testimony, that the purpose of [his] action was ‘for investigation’: [Fackrell] embarked upon this expedition for evidence in the hope that something might turn up.” 422 U. S., at 592, 605 (some internal punctuation altered; footnote, citation, and paragraph break omitted). In Brown, the Court held those facts to support suppression—and they do here as well. Swing and a miss for strike two.

# Other Sources

Definition Obscure

Stern, Mark Joseph. “Read Sonia Sotomayor's Atomic Bomb of a Dissent Slamming Racial Profiling and Mass Imprisonment.” Slate Magazine, Slate, 20 June 2016, slate.com/news-and-politics/2016/06/sonia-sotomayor-dissent-in-utah-v-strieff-takes-on-police-misconduct.html.

In an opinion by Justice Clarence Thomas, the court found that if an officer illegally stops an individual then discovers an arrest warrant—even for an incredibly minor crime, like a traffic violation—the stop is legitimized, and any evidence seized can be used in court. The only restriction is when an officer engages in “flagrant police misconduct,” which the decision declines to define.

Contradicts Purpose

Tyler, Ronald. “Utah v. Strieff: A Bad Decision on Policing With a Gripping Dissent by Justice Sotomayor.” Stanford Law School, Los Angeles Times, 5 July 2016, law.stanford.edu/2016/07/05/utah-v-strieff-a-bad-decision-on-policing-with-a-gripping-dissent-by-justice-sotomayor/.

Justice Kagan delivers a compelling warning at the close of her dissent: The majority opinion “creates unfortunate incentives” for the police to violate the Constitution.  After Strieff, an officer who has no reasonable suspicion but wants to stop someone for investigative purposes has an incentive to conduct an unlawful stop, anyway.  He knows that if the targeted person is “one of the many millions of people in this country with an outstanding arrest warrant,” any evidence he finds will not be suppressed.  *That is precisely the ill that the exclusionary rule was designed to prevent.* [emphasis added]

Civil Impact

“Utah v. Strieff.” Harvard Law Review, 10 Nov. 2016, harvardlawreview.org/2016/11/utah-v-strieff/.

In the last part of her dissent — which no other Justice joined — Justice Sotomayor argued that “unlawful ‘stops’ have severe consequences.”45×45. Id. Addressing the public at large, she outlined the consequences of the Court’s modern Fourth Amendment jurisprudence. Police offers can stop you pretextually for a “minor, unrelated, or ambiguous” infraction46×46. Id. and “ask for your ‘consent’ to inspect your bag or purse without telling you that you can decline.”47×47. Id. at 2070. If the officer thinks you could be dangerous, he can frisk you.48×48. Id. For even a minor offense, like driving without a seatbelt, the officer can take you to jail, “fingerprint you, swab DNA from the inside of your mouth,” and strip search you.49×49. Id. Even if you’re innocent, you’ll have an arrest record and experience the “civil death” of having this detail show up on background checks conducted by landlords, employers, and others.