DOES EXCLUSIONARY RULE HELP ONLY THE GUILTY?

Gunhaeng Lee *April 1, 2015*

Abstract

This paper discusses the use of the Fourth Amendment exclusionary rule in judicial proceedings in criminal cases. Especially, the paper asks the validity of the selection bias argument, a major criticism to the rule, and finds the argument is invalid. Rather, the model shows the guilty always cannot benefit from the rule.

1 Introduction

The Fourth Amendment of the U.S. constitution provides "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, ... Evidences obtained as a result of unlawful search of seizure cannot be used in the court to convict." The so-called exclusionary rule is one of the cornerstones of U.S. constitutional protections, it prevents the government from using evidences obtained by violation of the defendant's constitutional right. There are two major rationales for the exclusionary rules: one, it deters law enforcement agency's misconduct, and two, it preserves judicial integrity. That is, in order to maintain the courts reputation as fair, just and equal, the court invalidates products of illicit activities.

However, the rule is seemingly paradoxical. It suppresses probative evidences regardless of the defendants guilt or innocence. Moreover, instead of punishing the person who made constitutional transgress, it simply nullifies the outcome of unlawful activity. In these reasons, this consequentialism based rule has long been criticized. Critics of this rule claims that it only protects the guilty by creating a perverse screening at trial. This selection bias argument claims that the rule does not protect innocent victim aggrieved by an unlawful search, but rather frees the guilty by eliminating reliable, but illegally obtained, evidences. It is because the cases with unlawful search or seizure of evidence as an issue are mostly those in which incriminating evidences are found.

In the present paper, we ask the validity of this selection bias argument. We provide a simple game theoretic model of evidence collection and exclusion under (Bayesian) jury trial system, and find the argument is invalid.

2 Related Literature

Most literature on the effect of exclusionary rule focus much on behavior of police with and without the rule(e.g., Cicchini (2010) and Mialon and Mialon (2008)), and its effect at the trial level has not received much attention. As far as I know, McAdams, Dharmapala, and Garoupa (2014) is the only economics literature analyzes the effect of the rule at trial level. The paper focuses on jury's respond when he knows the existence of exclusionary rule, and its effect to the innocent defendant. Related to exclusion of evidence, Lester, Persico, and Visschers (2012) introduces juror's cognitive costs of processing evidences and explains the judge may increase the accuracy of the trial by excluding some prominent evidences at pre-trial stage. Against the exclusionary rule, Jacobi (2011) claims that the rule does not have deterrence effect, and what is more is that it may lead to wrongful convictions of innocent defendants. There are literatures in attempt to model trial procedures in fact-finding models. Seidmann (2005) models interrogation and finds effects of the right to silence to conviction rate and accuracy of the trial, and shows that the right decreases wrongful conviction of innocent person. In Rizzolli and Saraceno (2013), the famous Sir Blackstone's formulation is modeled and defended when the society has positive punishment costs. Lastly, Yilankaya (2002) models costly evidence gathering in adversarial setting, and finds the optimal level of the standard of proof.

The paper is organized as follows: in Section 3.1 to 3.5, a model of evidence collection, exclusion, trial defense and jury's Bayesian inference are introduced and analyzed, while we state our main result in Section 4.

3 The Model

In this section, we model sequence of events in a criminal case from arrest to verdict. In real world examples, at least four players are involved in criminal case procedures: prosecutor, defendant, judge and jury. However, for simplicity, we only consider strategic interactions of the defendant and the prosecutor and Bayesian inference of the jury. The role of judge is to provide the exclusionary rule, but we take the rule as exogenously given.

3.1 Sequence of events in criminal cases

Our description is motivated by the following story. Suppose that a criminal activity is reported.

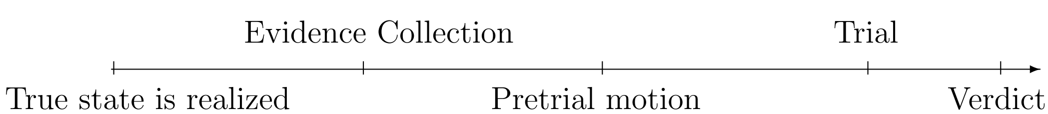
Accusation A suspect is accused of the crime. He is one of two types, g (guilty) or i (innocent) with probability $1 - \pi_0$ or π_0 respectively. The type is his private information, while the prior probability is commonly known.

Evidence collection As the legal burden of proof lies on the prosecution party, the prosecutor collects evidences to stand the suspect trial and convince the jury of his guilt. We assume that evidences are the same in their qualities, so only quantity matters in our model. Evidence collection is composed of two stages: initial search and subsequential search. In initial search, the prosecution party is assumed to conduct a search without violation of the Constitution.[1] This search produces either m or M number of incriminating items that can be used at trial, where $m < M$. After the initial search, the prosecutor decides whether to proceed to the subsequential search. If he decides to produce, he gathers $\bar{m}$ items without uncertainty in subsequential stage.

Pre-trial Stage (Exclusionary rule) In this stage, if evidences are obtained through unconstitutional searches or seizures, the defendant can file a motion to keep those evidences out of trial.

Trial In trial stage, the remaining evidences are presented to the jury. Against each evidence presented, the defendant can defend himself. The Bayesian juror acts as an impartial referee who is asked to presume that the defendant is innocent with probability π_0 at the outset of the trial, and updates his belief from observing the number of evidences presented at trial and the number of successful defenses.

Verdict The jury reaches a verdict based on his updated belief and beyond reasonable doubt as a standard of proof.



[1]A typical example of initial search includes crime scene examination, interview witnesses, etc.

3.2 Unlawful Gathering of Evidence

We begin by defining unlawful gathering of evidence. Let τ_p be the probable cause standard of proof and $Pr(m'|w)$ be the probability of finding m' number of items at initial search when the true state is w. We assume that if the suspect is innocent, it is more likely that less number of items are found during the initial search.

Assumption 1. $Pr(m|\omega = i) > Pr(M|\omega = i) \quad \text{and} \quad Pr(M|\omega = g) > Pr(m|\omega = g)$

Definition 1. Items gathered in subsequential search are unlawful if the probability of defendant's innocence after initial search is above τ_p.

This definition captures the prevailing idea that a police search is classified as a unlawful search if it is conducted without a warrant, and probable cause is a requirement that must be met before police receive a warrant. Using this definition, we can draw our first observation.

Observation 1. The subsequential search is unlawful if

$$\frac{\mu_0 Pr(m|i)}{\mu_0 Pr(m|i) + (1-\mu_0)Pr(m|g)} \leq \tau_p.$$

From now on, we assume that m number of items found in initial search is not enough to justify the subsequential search while M number of items are enough.

Assumption 2.

$$\frac{\mu_0 Pr(m|i)}{\mu_0 Pr(m|i) + (1-\mu_0)Pr(m|g)} \leq \tau_p \text{ and } \frac{\mu_0 Pr(M|i)}{\mu_0 Pr(M|i) + (1-\mu_0)Pr(M|g)} > \tau_p.$$

Under **Assumption 2**, we consider the case when the subsequential search is unlawful *if and only if* the police found smaller number of items in their initial search. If **Assumption 2** is not met, police's subsequential searches are classified as always unlawful or always lawful, which is not realistic.

If the subsequential search is conducted unlawfully, the defendant may file a motion to suppress evidence gathered from the search. We consider a simple exclusionary rule. If suppressing motion is filed, the evidence gathered in subsequential search is excluded with probability q. The entire items gathered in subsequential search are removed as they are fruits of the poisonous tree. With the remaining probability, $1 - q$, the evidence will be presented to the jury at trial. The level of q is entirely within the judge's discretion balancing judicial integrity and accuracy of trial. However, as we do not analyze strategic choice of the judge, we take the values as exogenously given.

3.3 Juror's Bayesian Inference

In order to specify the model, it is convenient to analyze jury's verdict in trial stage first. In this stage, evidence survived from the pretrial motion stage are presented to the jury by the prosecutor, and the defendant has chances to defend him/herself by refuting each item the prosecutor presents. Suppose that α number of incriminating items are presented to the jury at the court. The defendant successfully defends each item with probability δ_i if he is innocent and δ_g if he is guilty. We assume $\delta_i \geq \delta_g$. The outcome of defense is observed by the jury so that he can update his belief. Thus, the jury first updates his belief by observing the number of items prosecutor presents, and then sequentially updates after observing the outcome of rebuttal. At the outset of the trial, the jury is asked to presume that the defendant is innocent, so we set $\pi_0 \geq \frac{1}{2}$ be the prior probability of the defendant being innocent before observing the number of items. This is commonly known to every player in the model.

Suppose that the true state is w. Let E_α be the number of evidences defended by the defendant when he faces α number of evidences presented at the court. In this case, the Bayesian juror's updated belief at the end of trial is the following:

$$Pr[\omega = i|E_\alpha = \beta] = Pr[E_\alpha = \beta|\omega = i]\frac{Pr[\omega = i]}{Pr[E_\alpha = \beta]}$$
$$= \frac{1}{1 + \frac{1-\pi_0}{\pi_0}\left(\frac{\delta_g}{\delta_i}\right)^\beta\left(\frac{1-\delta_g}{1-\delta_i}\right)^{\alpha-\beta}}$$

We assume that the beyond a reasonable doubt rule is applied as the standard of proof, so the jury reaches guilty verdict *if and only if* $Pr[\omega = g|E_\alpha = \beta] \geq \tau_b$, $\tau_b \geq \frac{1}{2}$. Representing this in logarithm, we reach our first observation.

Lemma 1. The jury with prior belief of innocence π declare the defendant guilty *if and only if*

$$\beta \leq \gamma_0(\pi) + \gamma_1\alpha \qquad (or \quad \alpha \geq \theta_0(\pi) + \theta_1\beta),$$

where $\gamma_0(\pi) = -\frac{\ln\pi - \ln(1-\pi) + \ln\tau_b - \ln(1-\tau_b)}{\ln(1-\delta_g) - \ln(1-\delta_i) + \ln\delta_i - \ln\delta_g}$, $\gamma_1 = \frac{\ln(1-\delta_g) - \ln(1-\delta_i)}{\ln(1-\delta_g) - \ln(1-\delta_i) + \ln\delta_i - \ln\delta_g}$, $\theta_0(\pi) = \frac{\ln\pi - \ln(1-\pi) + \ln\tau_b - \ln(1-\tau_b)}{\ln(1-\delta_g) - \ln(1-\delta_i)}$ and $\theta_1 = \gamma_1^{-1}$.

The proof is immediate if we apply logarithm. Here, we have $\theta_0(\pi) \geq 0$, $\gamma_1 \in [0, 1]$ and $\theta_1 \geq 1$. The first inequality comes from presumption of innocence assumption and our reasonable doubt standard, and the second and the third inequalities are from $\delta_i \geq \delta_g$. Note also that this threshold for conviction is a function of π.

Observation 2. If $\alpha \leq \theta_0(\pi)$, the case will be dismissed due to lack of enough evidences.

When we have $\gamma_0(\pi) + \gamma_1\alpha \leq 0$, the case will also be dismissed, but it can be easily checked that this condition is equivalent to the condition $\alpha \leq \theta_0(\pi)$. Our (α, β) approach makes the analysis handy because of its linearity.

3.4 Defendant's Decision at Pre-tial Motion Stage

In this stage, defendant and prosecutor appear before the judge to decide whether certain evidences should be kept out of the trial. Guilty or innocence is not the issue in this stage, but rather the existence of constitutional transgress when collecting evidence by prosecution party. The defendant can file a pre-trial motion to suppress evidence if evidence are gathered in violation of the Fourth Amendment. Only the judge decides the outcome of the motions, and jury cannot observe this step[2]. In practice, not all unlawfully gathered evidences are excluded. The U.S. legal system have carved out several exceptions to the exclusionary rules, so if the judge believes the prosecutor's excuse falls inside the boundary of exceptions, the evidence will still be introduced at trial[3].

Suppose now that an illegal subsequential search produced $\bar{m}$ additional evidences. Observing this, the defendant with $\omega = i$ or g decides whether to file a motion to suppress it or not. We set his utility to be a function only of verdict. He receives 1 from being acquitted and 0 from being convicted. Let $F(\beta; \alpha, \delta_w)$ denote the cumulative distribution of binomial distribution whose value is $Pr[E_\alpha \leq \beta | w = \omega]$ when jury believes that the defendant is innocent with probability π at the beginning of trial after he observes the number of items the prosecutor presents. Type ω defendant files motion to suppress unlawfully obtained items *if and only if* the utility he expects from filing $qF(\gamma_0(\pi_1) + \gamma_1 m; m, \delta_\omega) + (1-q)F(\gamma_0(\pi_2) + \gamma_1(m + \bar{m}); m + \bar{m}, \delta_w)$ is greater

[2]Even if the juror observe the outcome of the motions, he has to disregard it and update his belief as if the excluded evidence never existed.

[3]For example, in O.J. Simpson case, a blood-stained glove was found at Simpson's estate by detective Fuhrman, who did not have a search warrant at the time he collected the evidence. The defense team of Simpson repeatedly argued that the evidence is seized illegally and filed motion to suppress it, but the judge denied the requests. The judge claimed that search had been justified because the reason why the detective entered Simpson's property is that he found blood stains from Simpson's car, and believed Simpson might be in danger.

than the utility when he does not file $F(\gamma_0(\pi_2) + \gamma_1(m + \bar{m}); m + \bar{m}, \delta_\omega)$, where π_1 (π_2 resp.) is the jury's belief after he observes $m+\bar{m}$ (m resp.) number of items presented. Equivalently, type ω defendant files motion to suppress unlawfully obtained items *if and only if*

$$F(\gamma_0(\pi_1) + \gamma_1 m; m, \delta_w) \geq F(\gamma_0(\pi_2) + \gamma_1(m + \bar{m}); m + \bar{m}, \delta_w).$$

As γ_0 is a strictly decreasing function of π, $F(\gamma_0(\pi) + \gamma_1 N; N, \delta_w)$ is non-increasing in π for any N. From now on, we will denote $F(\gamma_0(\pi) + \gamma_1 N; N, \delta_w)$ by $C_w(N; \pi)$ which we can interpret as the defendant's conviction probability when the true state is w and juror's belief of his innocence is π after observing the number of items presented at the court.

3.5 Prosecutor Behavior at Evidence Collection Stage

In this subsection, we analyze the prosecutor's evidence collection behavior taking q and its corresponding optimal strategy of defendant as given. We begin by defining his utility function. The role of prosecutor in many countries is not only to persuade the jury that the defendant is guilty, but also to prevent wrongful conviction or acquittal. In this paper, we set his utility function as a weighted sum of two index fuctions:

$$\frac{1}{2}\mathbf{1}_{\text{conviction}} + \frac{1}{2}\mathbf{1}_{accuracy}$$

Here the value $\mathbf{1}_{\text{conviction}}$ is 1 when the jury reaches guilty verdict, and 0 otherwise. Similarly, $\mathbf{1}_{\text{accuracy}}$ is 1 when the verdict matches with the true state, and 0 otherwise. The decision problem of the prosecutor is whether to proceed to the subsequential search or not given m items he found in the initial search. In the game, when juror is Bayesian, the prosecutor's expected payoff from mixed strategy is not a convex combination of payoffs one can expect from playing pure strategies in the support. It is because Bayesian juror infers from prosecutor's play. For instance, if the prosecutor plays producing m and producing $m+\bar{m}$ with the same probability, then the jury who observed m evidences cannot distinguish the case when the outcome of prosecutor's play is producing m from the case when the outcome is $m+\bar{m}$ and the defendant effectively suppressed $\bar{m}$ items. In this reason, prosecutor's choice and belief will be specified in next section with the other players' play and belief.

4 Main Results

In this section, we first find equilibria of the game specified above, and then check whether the selection bias argument is valid.

4.1 Equilibrium

The solution concept we use is perfect Bayesian equilibrium as our solution concept. In this game, as only the defendant has private information, an equilibrium is composed of all three players' play and jury's and prosecutor's beliefs on the defendant's type which are derived by Bayes' rule.

We will begin by specifying Bayesian inferences of the jury and the prosecutor. Suppose that either m or $m+\bar{m}$ number of items are presented at trial. That is only m items are presented at initial search stage. Observing this, the prosecutor and the jury's belief is

$$\pi_0^m = Pr(i|m) = \frac{\pi_0 Pr(m|i)}{\pi_0 Pr(m|i) + (1-\pi_0)Pr(m|g)} > \pi_0$$

We first find separating equilibria in which the innocent's and the guilty's behavior do not coincide. Let the prosecutor plays $(\lambda, 1-\lambda)$ of mixed strategy over his strategy space $\{$*not proceed*, *proceed*$\}$. Suppose that the guilty files a motion to suppress illegally gathered items while the innocent does not. Later, we will show these are indeed equilibrium behaviors. His expected utility from this play $(\lambda, 1-\lambda)$ is

$$\frac{\pi_0^m}{2} + (1-\pi_0^m)\big[(\lambda(1-q)+q)C_g(m;\pi_1) + (1-\lambda(1-q)-q)C_g(m+\bar{m};\pi_2)\big]$$

where π_1 is the jury's belief after he observes m of items, and π_2 is his belief after observing $m+\bar{m}$ items. We will show that this utility level is what the prosecutor expects from a separating equilibrium in **Proposition 1**. The specific levels of beliefs derived by Bayes rule are as follows

$$\pi_1 = \frac{\lambda\pi_0^m}{\lambda + (1-\pi_0^m)(1-\lambda)q} \quad \text{and} \quad \pi_2 = \frac{\pi_0^m}{\pi_0^m + (1-\pi_0^m)(1-q)}$$

Here, we have $\pi_1 < \pi_0^m$ and $\pi_2 > \pi_0^m$. From pure strategies, the prosecutor expects $\frac{\pi_0^m}{2} + (1-\pi_0^m)C_g(m;\pi_0^m)$ from playing 'not proceed' and $\frac{\pi_0^m}{2} + (1-\pi_0^m)C_g(m+\bar{m};\pi_0^m)$ from playing 'proceed'. Given these jury's beliefs, we can specify the defendant's preferences.

Lemma 2. $C_i(m;\pi_0^m) \geq C_i(m+\bar{m};\pi_0^m)$, $C_g(m;\pi_0^m) < C_g(m+\bar{m};\pi_0^m)$, $C_g(m;\pi_1) < C_g(m+\bar{m};\pi_2)$, and $C_i(m;\pi_1) \geq C_i(m+\bar{m};\pi_2)$

Proof. To be added. This is true when $\delta_g = 1-\delta_i$ and $\bar{m}$ is large enough. □

Not only does **Lemma 2** state the two types endow a separating preference, but also the preference is preserved when jury's belief is changed. Based on this defendant's preference, the following proposition states the condition when a mixed strategy equilibrium exists.

Proposition 1. If $q \geq C_g(m + \bar{m}; \pi_0^m)$, then the prosecutor prefers mixed strategy.

Proof. Notice first that the playing 'proceed' dominates 'not proceed' by **Lemma 2**. Thus, it is sufficient to show that for any $q \geq C_g(m + \bar{m}; \pi_0^m)$, $\exists \lambda \in (0, 1)$ such that

$$[\lambda(1-q) + q]C_g(m; \pi_1) + [1 - \lambda(1-q) - q]C_g(m + \bar{m}; \pi_2) > C_g(m + \bar{m}; \pi_0^m) \quad (1)$$

so that the utility maximizing mixed strategy brings higher expected utility then any pure strategy. As π_1 is decreasing in λ, we will take λ small so that $C_g(m; \pi_1) = 1$. We have $C_g(m; \pi_1) = 1$ *if and only if* $m \leq \gamma_0(\pi_1) + \gamma_1 m$, which is equivalent to

$$m \leq \frac{\ln(\lambda + (1-\lambda)q) - \ln \lambda}{\ln(1-\delta_g) - \ln(1-\delta_i)} - \frac{\ln \pi_0^m - \ln(1-\pi_0^m) + \ln \tau_b - \ln(1-\tau_b)}{\ln(1-\delta_g) - \ln(1-\delta_i)}$$

The right hand side is continuous in $\lambda > 0$ and diverges to ∞ as λ_0. Thus, for each q, $\exists \bar{\lambda}$ such that $\lambda \leq \bar{\lambda}$, $C_g(m|\pi_1) = 1$. As $C_g(m + \bar{m}; \pi_2) \geq 0$, we are done. □

The first implication of **Proposition 1** is that when the exclusionary rule is severe, the rule does have a deterrence effect. The second is that the prosecutor uses mixed strategy not because its support brings him the same utility, but in order to make jury's belief favorable to him.

Corollary 1. If $q \geq C_g(m + \bar{m}; \pi_0^m)$, then there exists a separating equilibrium.

Proof. By **Proposition 1**, the prosecutor's play $(\lambda, 1-\lambda)$ dominates any other pure strategies for some $\lambda \in (0, 1)$, and by **Lemma 2**, the guilty files a motion to suppress illegally obtained items and the innocent does not, and they do not have deviation incentives. The jury's belief π_1 and π_2 at the information set he observes m and $m + \bar{m}$ items respectively are consistent beliefs as they abide by the Bayes rule. □

There also exists a pooling equilibrium. In any pooling equilibrium, the prosecutor and the jury will share this π_0^m as the probability of defendant's innocence after they observe m and before trial. Note that if the prosecutor plays pure strategy, only pooling equilibrium can arise.

Proposition 2. If the prosecutor plays pure strategy, there exists a pooling equilibrium.

Proof. Given q, suppose that prosecutor plays a pure strategy. Then, by **Lemma 2**, it should be 'proceed'. If he proceeds, the innocent always does not file. By the definition of pooling equilibrium, the guilty also does not file. The jury's belief is π_0^m at the information set he observes $m + \bar{m}$ and 0 at the information set he observes m. We only have to show that the guilty does not have an incentive to deviate. If he deviates and files a suppressing motion, he expects 0 when he successfully suppress items and $C_g(m + \bar{m}; \pi_0^m)$ when the judge rejected the motion. Thus, he expects $(1 - q)C_g(m + \bar{m}; \pi_0^m)$ from deviation, while he can expect $C_g(m + \bar{m}; \pi_0^m)$ from the equilibrium play. □

4.2 Main Results

In this section, we state our main result based on the findings from our analysis. Our finding refutes the selection bias argument.

Proposition 3. The guilty cannot benefit from exclusionary rule.

Proof. Suppose that $q = 0$. That is, there is no exclusionary rule. Then, the prosecutor and the jury share the same belief π_0^m after they observe m outcomes from initial search, and jury does not further update his belief until he observes the outcome of trial. In this case expected utility from prosecutor's play $(\lambda, 1 - \lambda)$ is

$$\frac{\pi_0^m}{2} + (1 - \pi_0^m)\left[\lambda C_g(m; \pi_0^m) + (1 - \lambda)C_g(m + \bar{m}; \pi_0^m)\right]$$

which is a convex combination of two pure strategies. As $C_g(m;\pi_0^m) < C_g(m+\bar{m};\pi_0^m)$, the prosecutor always proceeds to the subsequential search if $q = 0$. Thus, the expected utility of the guilty under $q = 0$ is $1 - C_g(m+\bar{m};\pi_0^m)$ and that of the innocent is $1 - C_i(m+\bar{m};\pi_0^m)$. In the pooling equilibrium, both types cannot be better off. In separating equilibrium where the prosecutor plays $(\lambda^*, 1-\lambda^*)$, the guilty expects

$$1 - (\lambda^*(1-q)+q)C_g(m;\pi_1) - (1-\lambda^*(1-q)-q)C_g(m+\bar{m};\pi_2).$$

However, the fact that the prosecutor plays mixed strategy means that

$$(\lambda^*(1-q)+q)C_g(m;\pi_1) + (1-\lambda^*(1-q)-q)C_g(m+\bar{m};\pi_2) \geq C_g(m+\bar{m};\pi_0^m).$$

Thus, the existence of exclusionary rule leave the guilty worse off. □

The rule's effect to the innocent is ambiguous. Consider the innocent's expected utility under the separating equilibrium. It is

$$\lambda^*(1 - C_i(m;\pi_1)) + (1-\lambda^*)(1 - C_i(m+\bar{m};\pi_2))$$

As $C_i(m;\pi_1) \geq C_i(m+\bar{m};\pi_0^m) \geq C_i(m+\bar{m};\pi_2)$, whether the innocent benefits or not depends on the exact level of λ^* and model parameters.

In our analysis, we have not considered disutility or externalities generated by the prosecutor due to his Constitutional transgress. In this reason, in reality, the innocent may also suffer from prosecutor's misconduct. However, if we think that both the guilty and the innocent will be suffered in the same amount, we can say that our main finding is still valid and the selection bias is untrue.

5 Conclusion

The use of exclusionary rule in criminal cases has long been criticized. This paper checks the validity of one conventional critique to the rule, and shows the argument is invalid in our framework. The framework provides a handy analysis of events happens in the court, and shows monotone preference of each type of defendant. The intuition of the model is quite simple. Suppose that the innocent prefers to confront more pieces of evidence at court as he can successfully refute more and the guilty does not. If Bayesian jury updates his belief not only by observing the outcome of rebuttal but also by observing the number of items presented at court, then the less items presented at court implies that the defendant is more likely to be guilty under existence of exclusionary rule. This impedes the guilty from benefiting from the exclusionary rule.

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