The complete
resource handbook
of issues on

The Problems of the United States Justice System

What Changes are Most Needed in the Procedures Used in the United States Justice System

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PREFACE

Once again we are about to embark on another debate season and another topic. For many it will be a new experience. For others it will be an opportunity to synthesize information gathered over the last few years. This handbook has been designed to help both the beginning and experienced debater as he or she begin to explore the ins and outs of our justice system. The Problem of the United States Justice System offers analysis and over 1,500 pieces of evidence on such areas as search and seizure, juvenile justice, eye-witness testimony, expert testimony, insanity pleas, libel suits, bail, sentencing, prisons, hypnosis, capital punishment, rape, child napping, parental rights, exclusionary rule, contempt, hearsay evidence, jurisdiction, judges vs. juries, etc. The primary direction for our research this year was in the direction of the criminal courts topic. When looking at civil courts and methods of police investigation we tried to research areas which would cross apply to the criminal courts topic. It was not our intention to slight the other two topics in any way, but to give the debater the maximum amount of evidence possible in the limited space available since many of the journals we have researched will not be readily available to many debaters.

This handbook has been written to serve as a resource tool. The debater should remember that no handbook can serve as a substitute for the continuous, thorough research necessary for successful debate. We have discussed the issues on their own merit. Rather than trying to graft them onto one or another of the propositions, we have presented a sampling of ideas and evidence. We have outlined issues and questions that we feel will play a role in shaping this topic. It is our hope that the issues and questions we have raised will inspire debaters in their development of affirmative cases and negative approaches.

In addition to the handbook, The Problem of the United States Justice System, debaters will want to consult The Question of Justice, a basic overview of the topic, and One Justice for All!, a collection of critical essays, both published by National Textbook Company especially for the current debate year.

It has been a pleasure working with these authors and our staff of able research assistants. The coordination and editorial assistance which I have provided will hopefully enhance the structural and stylistic unity of the individually prepared materials in this book. Mr. Depoe prepared the second chapter; Mr. Cunningham prepared the third chapter chapter; Mr. Tautzauer and Ms. Tautzauer prepared the fourth chapter; Ms. Goodnight prepared the first chapter and also edited and organized the text upon completion.

L.G.

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CHAPTER I

THE UNITED STATES JUSTICE SYSTEM: A GENERAL VIEW

In college and high school debate, the appropriate definition of resolutional terms is receiving increasing attention. Whereas in years past, debaters might loosely define terms, presently attention to definitional statements are becoming more crucial. A loose definition of terms involves such time honored strategies as stating that the terms will be "operationalized" by the plan, arguing that any dictionary definition of a word will do--so long as that definition makes minimal sense, or claiming that the affirmative has presumptive right to define terms. Educators, concerned that the breadth of case development has supplanted depth of analysis, have turned to more stringent standards. The standard gaining most widespread adherence is that of the best definition. By best definition standards, the affirmative and negative are obligated to determine which definitions of the topic are the best presented in a given round of debate; thus, definitions are as arguable as any other issue. Not only must the affirmative be prepared to explain its interpretation of the topic, it must also be prepared to argue that this interpretation is more reasonable than that presented by the negative. Presumably this requirement is designed to produce fairer division of grounds between teams and to produce more concentrated analysis by limiting the arbitrary definitions which would arbitrarily delimit or restrict the topic.

While we support this effort, the function of understanding the definition of terms goes beyond jockeying for position on topicality arguments. Any debate resolution emerges from the realm of public concern. The value of academic debate is proportional to the extent its advocates deal with the major issues being discussed by the public. Thus to derive the best possible definition is to come to know the realm of argument germane to public understanding. In our discussion of definitions, we shall attempt to delineate the common grounds of public argument in the hopes that debate during the upcoming year may prove to be a productive exercise in public advocacy.

Analysis of the Debate Propositions

> Resolved: That the United States should establish uniform rules governing the procedure of all criminal courts in the nation.

More than most, this particular resolution is highly ambiguous. The resolution is written in terminology that reflects both the technical requirements of legal language and the broad based terms of public discourse. Therefore, before a detailed analysis of each word or phrase can be undertaken, we must try to guess what the resolution means in its most straightforward interpretation. This is not an easy task, but if the parts of the resolution are broken down by function perhaps something of the intent of the framers may be glimpsed. Clear, "the United States" is the agent of change. The object of change, that which is to be altered in some way, is "the

procedure of all criminal courts in the nation." What is to be done is to "establish uniform rules governing the procedure" of these courts. Let us take each operant phrase in its turn.

"the United States should"

In response to the question, "Who should implement change?" we find the answer: "the United States should." Now, this agent cannot be taken literally. The United States is a geographical region. Rocks and mountains cannot act as agents. The United States is also a collection of people. Obviously not everyone in the nation is required to take action. This would be an absurd requirement. The United States is also a legal entity, a justly constituted government formed by many agencies, legislatures, and courts. Should all institutions be required to take action? Clearly not. There are portions of the government that have no responsibility for the criminal court process. It would be absurd to envision a resolution that required universal action on the part of all governments.

Formal definitions offer no greater guidance. Black's Law Dictionary (4th ed., p. 1703) says "This term has several meanings. It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in family of nations, it may designate territory over which sovereignty of United States extends, or it may be collective name of the states which are united by and under the Constitution. Hooven & Allison Co. v. Evatt, U.S. Ohio, 65 S. Ct. 870, 880, 324 U.S. 652, 89 L.Ed. 1252." All of the above definitions are equally plausible.

What this means is that the resolution leaves to the choice of the affirmative the agent of action. There are two main alternatives, however. First, the affirmative may choose one of the branches of the federal government, since the federal government is the United States government. The affirmative proposal may be enacted by the executive branch through stricter enforcement of the uniform rules that exist (see "establish"), by the congressional branch through the enactment of new standards, or by the judicial branch through the reversal of current decisions. Any or all of these agents of change may be appropriate. Second, the affirmative may eschew federal action altogether and argue that the topic mandates that states act in agreement with one another. Finally, the affirmative might find a combinatory approach of state and federal action. These are all reasonable possibilities, given the poor wording of the resolution.

The net effect of such wording is to unfairly restrict negative ground. Note, that it is as reasonable to argue about who should take action as it is to argue about what action should be taken. Both have equally valid educational results. To assume that the agent of change is not part of a controversy concerning the worth of a resolution is to make the logical fallacy of assuming as desirable that which needs to be proven desirable. For this reason, we believe that the United States is most reasonably defined in contrast to state governments within the United States. Black's (p. 1578) defines a state as "One of the component commonwealths or states of the United States of America." If the term, "the United

States" is not to have global meaning, like any collection of nations on earth, then it is appropriately defined as the Federal government in contrast to state governments and their counterpart judicial systems.

This definitional distinction is absolutely key to all of this year's resolutions. The central question in any discussion of the judicial system is the balance of powers between the individual and the state, between diverse regional governments and central government, between one branch of government and another. If the affirmative is permitted to not specify the agent of change, then this issue is vitiated. In response to any objection concerning the balance of powers, the affirmative could simply respond with picking a different agent of change. If the case restricted the power of the state to determine its own procedure, the affirmative might argue that states could enact the resolution. If the case enhanced the power of the Supreme Court by extending its rules, then the affirmative could argue that its plan through implementing by state legislatures would offset the increase. Thus, this interpretation of the United States as any and every agent of government unfairly restricts negative ground, limits clash central to the resolution, and therefore is unreasonable within the context of academic debate.

This is not to say that the negative will not carry such a distinction to the extreme. If the United States is interpreted as only the Federal government, then the negative might claim that any plan that depended upon its solvency in some measure on the cooperation of the state criminal court system would somehow be extra-topical. Note that the agent of change requirement has as its object all criminal courts in the nation. Thus, the federal government is required to act on the state judicial system. Such action is a necessary component of the resolution.

"of all criminal courts in the nation"

This term would seem to be the clearest, but it too is fraught with ambiguity. Black's (p. 448) defines "criminal court" as "One where criminal cases are tried and determined, not one where civil cases are tried, or persons charged with criminal offenses are held for action by proper authority." Now, there are several key implications to this phrase. First, any case that involves altering procedures of courts not involved with criminal procedure are extra-topical. Consider two examples, a civil court that seeks redress through payment is not a criminal court. A juvenile court, according to Black's (p. 1005) "A court having special jurisdiction of a paternal nature, over delinquent and neglected children," is probably not a criminal court. Thus, cases that would transfer jurisdiction from criminal courts to other courts in part or in whole are outside the boundaries of the topic.

The sticky word seems to be "all." Of course all means all, right? The various interpretations of this word are more ambiguous than straightforward intuition. Black's (p. 98) reports:

> All. Means the whole of--used with a singular noun or pronoun, and referring to amount, quantity, extent,

> duration, quality, or degree. The whole number or sum of--used collectively, with a plural noun or pronoun expressing an aggregate. Every member of individual component of; each one of--used with a plural noun. In this sense, all is used generically and distributively. "All" refers rather to the aggregate under which the individuals are subsumed than to the individuals themselves. State v. Hallenberg-Wagner Motor Co., 341 Mo. 771, 108 S. W. 2d 398, 401.

What this means is that the resolution does not say that the plan must be implemented in each and every criminal court throughout the nation; rather, the resolution requires that the plan be implemented in the "aggregate". Of course, an affirmative may interpret "all" as referring to each and every by implementing some new procedure that is not currently in practice. But it may also find justification for the resolution in adopting a plan that refers to the aggregate where the whole is not now considered.

"procedure"

Here is the central term of the resolution. This is the what that is to be changed. It is the "procedure" of all criminal courts in the nation that must suffer the establishment of uniform rules of governance. Unfortunately, this term is ambiguous to the point of complete frustration. Since the topic deals with criminal courts, it would be reasonable to assume that the procedure to be altered would be criminal procedure. Black's (p. 448) definition is as follows: "The method pointed out by law for the apprehension, trial, or prosecution, and fixing the punishment, of those persons who have broken or violated, or are supposed to have broken or violated, the laws prescribed for the regulation of the conduct of the people of the community, and who have thereby laid themselves liable or imprisonment or other punishment. 4 Amer. & Eng. Enc. Law, 730." The question arises whether "criminal procedure" is equivalent to the "procedure of all criminal courts in the nation." There are two conflicting views. From a systemic point of view those issues which impinge upon the decisions of criminal courts are part of a process that cannot be demarcated at any one point. The police are implicated in the procedure of the court insofar as they employ special techniques of gathering and utilizing evidence. The penal system is implicated in the procedure insofar as conditions within the system impact upon sentencing. Thus, from the systemic viewpoint, the "procedure" of the criminal court is part and parcel determined by the inputs and outputs of the justice system as a whole. This definition broadens the topic a great deal. Any plan that influences court behavior, the formal and informal procedures followed at a trial, ultimately fulfills the requirements of the topic.

A more narrow interpretation of procedure better retains the legal context of the resolution. The procedure of criminal courts, in this context, refers to that body of law which proscribes legal conduct within that part of the legal process under the domain of court proceedings. Thus, the procedure of criminal courts refers only to the formal processes at trial. This definition is quite broad. It may

include the arraignment of the accused, the setting of bail, the selection of jurors, the use of evidence at trial, the selection of witnesses, tactics by the prosecution and defense, and sentencing. Since the topic does not say which one of these procedural choices ought to be altered, the affirmative is free to select any or all of these components in formulating an affirmative case. This definition would rule out affirmative approaches that would affect the workings of the court by altering the environment within which legal decisions are made without directly changing the formal code of conduct that governs the trial process.

One thing that is clear is that neither definition permits one to claim topicality from changing a law in some fashion. A sophistic interpretation of the resolution might be to say that any alteration in law de facto changes procedure because, if nothing else, such an alteration removes the jurisdiction of a court to rule on matter X; or, alternatively, it forces the court to rule on a matter that is presently not within its jurisdiction. Given this definition the topic would be without limit. All one would have to do is to find a plan to pass that required some kind of court enforcement. The analytical reason why such a definition would be too broad is quite simple: it obliterates the distinction between questions of law and questions of procedure. Note that the above definition states that procedure is a "method pointed out by law." Any advantages which stem from the topic must flow from a change in the method of legal practice and not from a substantive change in the nature of the law itself.

"establish uniform rules governing the procedure"

Now that we know the parameters restricting the agent of change and the object of change, we turn to the question of how the change must be enacted. Recall that the agent of change is most probably the federal government. The object of change is the procedure of all criminal courts in the United States. What must the agent of change do to the object of change? Obviously, it must "establish uniform rules" of governance. What can this statement mean? The most frank answer is that it can mean almost any and everything because of its vague wording and careless syntax.

Begin with the word "establish." Establish has several different meanings, not all of them require the affirmative to perform the same kind of action. First establish may mean "to introduce as a permanent entity," or "promulgate" (The American Heritage Dictionary of the English Language, 1978). Within this context, establish is nearly synonymous with the affirmative burden of "change." To establish uniform rules is to bring into existence a new set of edicts which the court must follow. But, "establish" may also mean "To settle, make, or fix firmly; place on a permanent footing, found," or to "put beyond doubt or dispute." Under this definition of "establish" one might simply take rules already in existence and put them on a more permanent footing. One might take a model code of criminal procedure for example and establish the model on a nation-wide basis. This action would be somewhat in line with the notion of promulgate, discussed just above. However, one might establish the present system by putting on a more secure footing those uniform

standards that already exist! Thus, an affirmative team might claim to be topical if it only made more secure any existing uniformity. Which interpretation seems to be superior?

There are good reasons to believe that neither interpretation leads to very good debate. In the first instance, if the word establish is taken to mean "promulgate" then the resolution has a redundant word. Since the affirmative already has the requirement of changing the status quo in some fashion, to say that new rules should be established is rather a limitless definition. The only requirement, then, would be that the rules would be uniform or consistent. What rule is not uniform, at least in some aspect? On the other hand, if the term means that present programs need to be on more secure footing, then the resolution, too, becomes diffuse because any policy that impinges upon the credibility of present rules, making them more established, is topical. This would premit a host of tangential cases, all increasing respect for the law. The clearest choice that can be made about the unfortunate use fo the word "establish" is that the topic committee really did not understand exactly what they were doing in using the word establish. This is more than an idle complaint.

Given that affirmative teams can legitimately interpret "establish" in antithetical ways, there are no clear choices between affirmative and negative ground. An affirmative may either say that present rules are bad and need to be supplanted with entirely new rules, or, it might say that present rules are good, and simply need to be extended, thereby making them more secure. The result is that what is affirmative evidence in one round may become negative evidence in another--and vice versa. Consider an example: wiretap evidence. An affirmative might argue that present evidence standards regarding wiretap evidence in court are bad because they are either too lenient or too strict. The plan would substitute a more lenient or more strict policy governing submission. The negative would have to be prepared to debate <u>both</u> sides of the question against any affirmative since the topic establishes no direction for change. This is bad enough, but the affirmative also has another option. It might argue that present standards employed in condiition X or state Y are all right, but these need to be "established" as universal standards. Even if the status quo has only one exception, still the policy can be made uniform. Even if the status quo's policy is uniform, still it can be made more established by removing the authority of the court or legislature to change the standards. Thus, the word establish does very little to give assistance to the debater in constructing legitimate cases, or in seeking assistance in dividing affirmative and negative positions.

Does the phrase "uniform rules" help? Let use consider several dictionary definitions to begin. <u>The American Heritage Dictionary of the English Language</u> defines uniform as "always the same, unchanging, unvarying," and further as "being the same as another or others; consistent; regular." <u>Black's Law Dictionary</u> defines uniform as "Conforming to one rule, mode, pattern, or unvarying standard; not different at different times or places; applicable to all places or divisions of a country." Further, it is stated that uniform means "Equable; applying alike to all within a class; sameness." What, then,

are the rules? Again, The American Heritage Dictionary of the English Language, comes to our aid by defining rules as "Governing power, or its possession or use; authority; control." More specifically, it says rules are "An authoritative direction for conduct or procedure," and in the context of the law further elaborates that rules are "A court order limited in application to a specific case," or "A subordinate regulation governing a particular matter." Funk & Wagnall's New Comprehensive International Dictionary of the English Language is more succinct defining rules as "A method or principle of action; common or regular course of procedure, or customary standard or form." Black's Law Dictionary specifies the common legal understanding by suggesting that rules are the following: "An established standard, guide, or regulation. A principle or regualtion set up by authority, prescribing or directing action or forbearance; as the rules of a legislative body; of a company, court, public office, of the law, of ethics...." Further, it is stated that rules may be considered as "An order made by a court, at the instance of one of the parties to a suit, commanding a ministerial officer, or the opposite party to do some act should not be done." There are several interesting aspects to these definitions that impinge upon analytical considerations in debating this resolution.

First, uniform and rule are closely related terms. What rule is not uniform, at least in some aspects? What uniformity may not be known as the rule? Now, this observation might seem to be somewhat trivial, unless one realized that by merging the meaning of the two terms, the affirmative is permitted to virtually delimit the topic. Note that if no distinct meaning between the requirements of uniformity and rule making are required, then all the affirmative is required to do, in effect, is to have an enforcement plank in some plan that affects all of the criminal courts in the United States. The topic within this view would read resolved that the United States should establish rules governing procedure in all criminal courts. Moreover, if the notion of "rule" was taken in its widest sense, then a rule would simply be some new regualtion required of the courts. Clearly, this expansion of the meaning of the topic would be too broad. Though licensed by dictionary interpretations, the combinatory use of these definitions unreasonably opens up the range of the resolution.

Second, the best definition of the term uniform, and one that maintains its status independent from the notion of rule in general, is that which highlights the legal context of uniformity; namely, a uniform rule is one that does not discriminate according to person, place, or class. A non-uniform rule would permit the court to make decisions differently, depending upon the ability to grant exception to the particular circumstances of the person on trial, the area or region of the country in which the trial was held, or a class of activity that is exempted from the general rule. In the case by case approach, judges are allowed latitudes of discretion. So too, each state is permitted to adopt its own regulations of procedures. What the topic clearly requires is that the affirmative reduce the amount of discretion by making the judicial system conform to more standardized practices. The affirmative may do this in one of three ways. First, the affirmative can make uniform that which is presently permitted as discretionary to all judges or participants in the trial process. Second, the affirmative can make uniform that which is standardized in some regions of the country but inconsistent with other areas of

the country. Third, the affirmative can make uniform procedure which is now universal and not subject to judge discretion but which permits some degree of class discrimination.

The term, "rules," also helps to limit the topic. It is clear that there is a distinction between a "rule" and a "law." Although it might be necessary to change the law in order to change the rules governing criminal court procedure, changing the law is not necessarily the same thing as changing rules. Rules are a subset of the law, the methods by which the courts operate. Of course, one can change the method of operation by altering some law. To change drunk driving laws, for example, might alter court procedure somewhat by making the courts reschedule their calendars or accomodate the onslaught of arrests and trials. But even though this new rule (or law) effects court procedure, it is not a rule governing court procedure. A rule of governance is one that requires some change in method by statute. The effects standard of topicality is not legitimate because any new law might effect court procedure, even though it would not directly alter its rules.

In sum, then, "uniform rules" may be interpreted broadly. But the term also offers reasonable grounds for debate. To establish uniform rules is most simply to bring about new, codified norms of court conduct that do not discriminate on any basis. These rules must govern--rather than merely influence--the procedures used by criminal courts in the trial process. From bail reform to jury selection, from the presentation of evidence to the processes of determining sentences, the affirmative can choose whichever of these presently non-uniform rules that it wishes to standardize.

The remaining two topics are less complex to analyze, for they are but variations on the main topic for national debate. Therefore, we shall attempt only to highlight the different terms in these particular resolutions.

Resolved: That the United States should establish uniform rules governing the procedure of all civil courts in the nation.

This topic is nearly identical to the one previously discussed, and it suffers from all the same problems of definition. The obvious exception, of course, is the object of change. Instead of discussing criminal courts, the debaters will be discussing the procedures of civil courts. Black's Law Dictionary distinguishes between civil and criminal courts when it states that "The former being such as one established for the adjudication of controversies between individual parties, or the ascertainment, enforcement, and redress of private rights; the latter, such as are charged with the administration of the criminal laws, and the punishment of wrongs to the public." Presumably, cases falling within this topic would focus upon the quality of justice presently dispensed under current civil court procedure, and the likelihood of improving justice by establishing uniform rules governing procedure.

Resolved: That the United States should adopt uniform rules governing the criminal investigation procedure of all public law enforcement agencies in the nation.

What is most noteworthy about this topic is that most, if not all, of the issues one might be likely to discuss under its rubric also pertain to the criminal courts question. Since evidence is gathered for trial, it might be assumed that stipulation of any investigation procedure is likely to effect the rules governing criminal court procedure. Conversely, one might change criminal court procedure as a way of adopting uniform rules governing the criminal investigation procedure. By making certain kinds of evidence more or less useful, or by making certain methods of obtaining evidence more or less legitimate, these rules would govern criminal investigation procedure.

Black's Law Dictionary defines criminal as "That which pertains to or is connected with the law of crimes, or the administration of penal justice, or which relates to or has the character of crime." Investigation is defined as "to follow up step by step by patient inquiry or observation," and further as "To trace or track, to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry." Procedure is defined as "The mode of proceeding by which a legal right is enforced, as distinguished from the substantive law which gives or defines the right, and which, by means of the proceeding, the court is to administer; the machinery, as distinguished from its product." Putting together these definitions, it is clear that the object of change for this topic is the methods by which police and other public law enforcement agencies look into what is proposed to be criminal conduct. Note that an investigation could include any inquiry from tipsters to arrest to interrogation. Note also that the kind of criminal conduct to be investigated is not specified nor is the context of that activity limited. One can adopt uniform rules governing the criminal investigation procedure into any particular kind of crime--so long as all law enforcement agencies in the nation are interested in resolving that kind of crime. One might also choose to make uniform rules governing criminal investigation into crimes that might be committed by the investigators themselves! The topic does not require that uniform rules be adopted for all kinds of criminal investigation. Presumably, the affirmative has a great variety of choice in this area.

The term, "public law enforcement agencies," seems to need little clarification. A public law enforcement agency is different than a private law enforcement agency insofar as the police may be distinguished from security guards or vigilante groups. The sticky term of the resolution is, of course, "all." Clearly, the affirmative need not assume the burden of proving that its case covers such agencies as the military police or the Department of Justice; for even though these agencies enforce laws of various types, they are not "public" law enforcement agencies in the sense that public requires general applicability. Yet, it would seem that the affirmative is required to assure that every policy department is obligated to follow the same procedure.

To conclude our chapter on definition of terms, we wish to say that this year's resolutions pertain to exciting, vital areas of discussion and debate. Perhaps no resolution for debate is ever perfectly worded. These propositions contain ambiguities, but careful analysis should make their meaning reasonably clear.

A Program of Research

There are two common misconceptions of the role that a debate handbook should play in studying a topic area. The first misconception is based on the assumption that a handbook exhausts all materials of value for a debater. This fallacy often takes the form of a conviction that if a particular line of argument does not appear in the handbook, then it can only be of dubious validity. Another common form of the fallacy asserts that if a certain type of evidence is not included in the handbook, then such evidence is not available anywhere. The finite amount of time and space allocated for the preparation and presentation of a handbook make it mandatory that handbook authors select from among their study of the topic areas only a limited number of items. No matter how complete they may attempt to be, a handbook can represent only the best ideas and the best research done by its authors and not all of their ideas nor all possible research.

The second misconception is related to the first, for it assumes that the materials contained in a debate handbook are the only materials that a debater needs to possess for a successful debate season. This fallacy depicts a debater depositing his or her handbook in a briefcase and traveling about the country from one tournament victory to another for an entire season without ever darkening the doorway of a library. It should be evident that this dream will not come to pass, for while the handbook is the product of one moment in time, a debate season is a much more extended period. The debater who relies only on the research and arguments found in a handbook will soon find himself or herself argumentatively stranded behind those debaters who continue to research regularly, develop new arguments, and exercise their creativity. The arguments that were adequate in September will probably be without much probative force in May.

Recognition of these two misconceptions begins your understanding that a successful debater will be one who has sufficient faith in his or her own abilities to engage in creative research. The suggestions for research that follow are designed to help the debater pursue his or her research in the most fruitful manner; further on in the chapter are descriptions of specific research materials with which all debaters should become familiar. The task of research need not be formidable or tiresome if it is approached systematically and efficiently.

1. Get a firm background knowledge of the topic area. There are two major classes of background information: historical and comparative. Historical background information helps the debater understand how present situations evolved, and by implication, where future trends may be going. Past legislation and reform movements do not bind the directions for future changes, but they are indicative of the forces shaping societal preferences. Similarly, comparative background information gives the debater a working perspective of the major competing alternatives to existing institutions and practices. The experiences of others are useful indicators of what

may be expected should restrictions be loosened for the use of wiretaps, the punishment for victimless crimes be reduced and/or eliminated, or capital punishment made mandatory in certain types of crimes. These types of information are not ends in themselves but should give the debater a clearer understanding of the present system. Therefore, historical and comparative research should always culminate in an examination of the implications of implementing any form of change in our system of justice.

2. Plan a pattern of research in advance. Random reading on a subject area will rarely prove useful; much of the material available on a topic will be unintelligible or useless if basic information is not secured in sequential order. The wise debater will begin research with basic materials which give a general survey of our justice system and then gradually work into more technical resource materials as his or her understanding progresses. The wise debater will also avoid lingering too long over the simple materials solely because they are easier to understand. Specifically, it is suggested that research begin by looking at regulations and laws governing our justice system (search and seizure; causes of court congestion and delay; admissibility of evidence; the use of the insanity defense; admissibility of evidence taken under hypnosis; deterrence effect of DWI penalties), then consider specific problems posed by these mandates, and finally consider the implications of each specific alternative available. A good research practice would be to look for the possible implications of changes in an institution or practice on all other parts of the ecosystem, no matter how obscure the relationship may seem at first.

3. Read selectively for greater efficiency. Any researcher is more effective when reading only relevant material. To select materials for the most efficient research, start with the title, table of contents, index, and chapter headings to focus the search for evidence more precisely. Once materials have been selected, read rapidly, skipping all material which is clearly irrelevant and reading more slowly over passages of possible importance. The risk of missing some item by skimming is more than compensated for by the greater amount of material surveyed, and comprehension will increase with practice in rapid reading.

4. The date of evidence is of critical importance. Evidence becomes dated (and therefore useless) when the conditions and facts referred to in the evidence no longer hold true. As the subject matter of evidence becomes more general, the evidence is usually less subject to rapid outdating. For instance, evidence related to the crime rate in major metropolitan cities and the efforts to bring it under control would be outdated with the compilation of new statistics on the subject, and a poll of public opinion about the rising crime rate might be out of date as soon as a new poll is published, but a study of the social conditions underlying the increase in crime and the need for a proposal for change might be accurate even though many years old, and a statement of the fundamental philosophical position justifying the adoption of new programs might be as old as civilization without losing its force. A safe rule of thumb, however, is to choose the most recent date available on any given

subject. However, the debater should beware of automatically consigning old evidence to antiquity, but he or she must be sure to stay abreast of the latest developments in the fields of science, technology, economics, as well as the law.

5. The values underlying behavior must be explicitly examined. Social behavior is a function of basic motivational drives and philosophical assumptions concerning the rights, duties, and nature of man; these values determine the type of society that will be considered appropriate, workable, and just. The real values of a society are revealed by examining who benefits and who suffers from the institutions that comprise it. Debaters should recognize that values and principles may have some worth in and of themselves, so that a gain or loss of some value, such as the right to a democratic government or a life free from the fear of violent crime, may have a real and meaningful harm or benefit even though the direct consequences of that gain or loss might remain beyond specific enumeration or quantification; to disregard values in debate because they are not subject to tangible testing is to ignore a critical aspect to discussion as well as a large segment of this year's topic.

6. It is especially important to be aware of what is not available and cannot be proven. Ignorance is no sin when data do not exist. More importantly, the lack of basic information should induce caution in evaluating our system of justice. The rest of this handbook is dedicated to convincing the debater that there are no simple answers to such questions as deterring repeat offenders who drive while intoxicated, finding a balance of protection of parental rights as well as the rights of the child in abuse cases, rehabilitating the criminal offender, development of a program of punishment which will deter crime, simplifying court procedures without stripping the accused of his or her rights, or the use of the insanity defense to save criminals from lengthy prison terms. Even where empirical studies are available, there can be criticism of the methodology of these studies, and these criticism must be evaluated before evidence can be used.

7. Every attempt should be made to become aware of the biases of individuals and groups. The position of the police on probable cause and search warrants for searches of homes and cars or MADD (Mothers Against Drunk Drivers) on the issue of laws governing driving while intoxicated offenses are two examples. In other cases, however, one must research beneath the surface for ulterior motives that might have influenced the source of evidence. While it is possible to become oversensitive to trivial possible sources of bias, the debater seeking the best possible evidence should always be especially vigilant.

8. Do not confuse the force of an argument with the forcefulness with which it is stated. In examining evidence of this or any other topic, the debater should steer clear of the over-extended metaphor, the false analogy, the emotional langauge, and the pious platitude in which arguments sometimes are expressed. Even highly credible sources, in their commitment to their conclusions, may