Seeking Truth, Ethically
Resolutional Overview by Mark Csoros



The conflict between privacy and truth-seeking dates back a long way. If you really think about it, Adam and Eve trying to hide from an omniscient God was the first failed attempt to put privacy first, resorting to the killing of animals to keep privacy (rather than fig leaves). In the 21st century, things have gotten a little more complicated, and the aim of this publication is to give you a head start on some of the key concepts that will factor into this resolution.

By way of a roadmap, let’s start by defining and explaining **criminal procedure, privacy, and truth-seeking.** From there, we’ll examine some potential values and criterions behind the sides of the resolution. Throughout this article, I’ll summarize some philosophical concepts and Supreme Court jurisprudence.

I’ll occasionally use direct quotes, but I highly recommend you follow the links in the citations and read from the primary sources. Secondary sources (like myself) are useful because they synthesize and compile information, but they can’t give you the texture or context that primary source material provides. So, follow the URLs like breadcrumbs, down the yellow brick road of diligence, riding the magic carpet of your internet browser. And yes, my fairy tales got a little mixed there, but I think you get the point.

# Part I: Terms and Definitions

## Criminal Procedure

It’s tempting to describe “criminal procedure” as “any procedure having to do with criminals,” because it’s a tad more complex than that. It’s true that part of criminal procedure deals with the accusation, sentencing, and treatment of people who have committed crimes, but criminal procedure affects everyday citizens almost all the time. Cornell University’s Wex Legal Dictionary writes:

A portion of the criminal procedure process deals with an officers’ ability to stop individuals, search them or their properties, and seize any incriminating evidence the officer finds. This pre-arrest investigation is limited by the [*Fourth*](https://www.law.cornell.edu/constitution/fourth_amendment), [*Fifth*](https://www.law.cornell.edu/constitution/fifth_amendment), [*Sixth*](https://www.law.cornell.edu/constitution/sixth_amendment), and [*Fourteenth Amendments*](https://www.law.cornell.edu/constitution/amendmentxiv).*[[1]](#footnote-1)*

So, on affirmative, don’t assert that you only want to violate the privacy of criminals. You need to take into account that criminal procedure involves people who may never have committed a crime and deserve the full protection of the law. On negative, don’t feel forced to claim that murderers and drug dealers deserve to keep their deeds in the dark. You stand for the protection of innocents, as well as due process for the guilty. On both sides, go read up on the Fourth, Fifth, Sixth, and Fourteenth Amendments, so that you’re fluent in the key principles of criminal procedure.

## Truth-Seeking

Truth-seeking is a loaded term that will add some complexity (rightly or wrongly) to an otherwise straightforward resolution. I can understand why the resolution committee used this term, because privacy is a touchy subject, and phrasing its opposite kindly helps balances the debate toward aff. But, I can’t shake the feeling that somewhere, this year, an affirmative debater will close a speech by saying “truth is good, my opponent is trying to hide the truth, vote for me.” If you’re reading this, please don’t do that. The pursuit of truth, especially for governmental organizations, does not justify any and all means. There are things that should stay private.

Since the term “truth-seeking” is fairly self-explanatory, I won’t spend much time on it, except to point out two things. First, truth-seeking, in the context of criminal investigation, is not a human right. In some conversations with students, I’ve been asked if human rights could be an affirmative value, since truth-seeking is recognized by the United Nations as a human right. Yes, you can use human rights as a value, but truth-seeking is not a human right here. Since only governments can justly perform criminal procedures, this resolution refers only to governmental truth-seeking, and human rights are reserved to individuals, not to governments. Secondly, truth-seeking can be a boon to the accused. If, as a completely hypothetical example, I was accused of a felony I didn’t commit, I would be in full support of an invasion of privacy if it resulted in my acquittal and the sentencing of the actual criminal. So, remember that the truth is impartial, and while some things might need to stay hidden, uncovering secrets can ensure that justice is done.

## Privacy

Finally, let’s take a look at privacy. If you’ve been in homeschool speech and debate for a while, chances are you’ve previously debated about privacy, because resolution committees across both homeschool leagues (and nearly every format of debate) love to use it as a topic, and it’s an important one. Unfortunately, most people have only the vaguest notion of what privacy actually is, so let’s try to clear it up.

Privacy, fundamentally, is the right that we have to keep things secret, as long as we have a reasonable expectation that that right applies to the situation. Merriam Webster defines privacy as:

a) the quality or state of being apart from company or observation: seclusion

b) freedom from unauthorized intrusion*[[2]](#footnote-2)*

The confusing part comes when we start to define what an unauthorized intrusion is. In my house, I have a different level of expected privacy than I have in the middle of the street. Watching me in the middle of the street is not an invasion of my privacy but peering through my windows to watch me in my house is almost certainly an unauthorized intrusion.

This way of thinking about privacy stems from a landmark Supreme Court case, *Katz v. U.S*. This case was decided during Prohibition, when the consumption or sale of alcohol was illegal. Mr. Katz was a fairly successful small-time gangster, who was making a good amount of money dealing illegal spirits. Federal agents, without trespassing on Katz’ property, tapped into his telephone wires to overhear his conversations, and were able to convict him based on what they heard. The only issue was that they did all this without a warrant. When the case got to the Supreme Court, SCOTUS ruled that because Katz’ information was taken without a warrant, the 4th Amendment was violated. That transition set the stage for current 4th Amendment jurisprudence and for modern privacy theory. In his concurrence, Justice Harlan wrote:

My understanding of the rule that has emerged from prior decisions is that there is a twofold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as "reasonable." Thus, a man's home is, for most purposes, a place where he expects privacy, but objects, activities, or statements that he exposes to the "plain view" of outsiders are not "protected," because no intention to keep them to himself has been exhibited. On the other hand, conversations in the open would not be protected against being overheard, for the expectation of privacy under the circumstances would be unreasonable.*[[3]](#footnote-3)*

In other words, you have a right to privacy when you have a reasonable expectation of privacy. If you know you’re being observed, or you unreasonably think you aren’t being observed, that right to privacy vanishes. So, if you consent to a search, your privacy isn’t violated by that search.

This raises interesting questions about data security, and what counts as consent. If we click “accept” without reading Apple’s terms and conditions, do we have grounds to argue if our information is misplaced?

# Part II: Values and Principles

## The Inherent Worth Group

A value is an overarching goal that is inherently good (good in and of itself), and a criterion is something that either achieves the value (by far the most common type), limits the value (very rare), or tells us when we’ve achieved the value (reasonably rare). There are a cluster of values and criteria that I like to group together, because they’re usually restatements of the same idea.

The “Inherent Worth” group of values consists of things like human dignity, the inherent worth of man, and human worth. Basically, the main thrust of these values is that humans are valuable, and we ought to treat them as such. On affirmative this year, debaters will likely use criteria like safety or honesty, and on negative will link to due process, property rights, or straight to privacy. As an example, affirmatives might say “the highest value is human dignity, which means we should protect human life by keeping people safe. Truth-seeking accomplishes safety, which upholds human dignity.” Negatives might argue something like: “Truth-seeking violates privacy by exposing a person’s secrets to the world. This harms human dignity by taking away our autonomy over our information.”

## The Human Rights Group

These values and criteria link back to rights that society recognizes as inherent and applicable to all humans. You can run human rights itself as a value or identify an individual right that you’d like to focus on. Criteria like safety, security, and public defense all link back to life. Criteria like due process, justice, and freedom can link back to liberty. Other objectives, like free speech, could link to the pursuit of happiness.

You’ll notice that a lot of these values and criteria fall under two groups, which can be a little confusing. But, you can make a case that due process leads to human dignity or to human rights, depending on which you’d like to focus on.

## Pragmatic

The pragmatic values, depending on how well they’re run, can either be quite clever or completely pointless. These values tend to rely on the utilitarian concept of “the most good for the most people.” These values are things like quality of life, or public welfare. The genius of these values is that they have more inherent importance than most other values. Why is justice important? Lots of reasons, but mainly because it improves our quality of life. Why is safety important? A few reasons, but mostly because the public is much happier when they’re safe. Because most things link back to a general, broadly utilitarian value, it’s easy to subsume other values to win the value clash.

The problem is that those values are often generalized to mean practically nothing. It’s like saying that you’re trying to accomplish “good stuff.” Your intentions are admirable, but “good stuff” is so broad that it could mean anything. So, it’s better to pick a narrower value that makes a real impact. Ask yourself what’s important, and then ask why that thing is important, then ask why that’s important, until you reach a point where a thing is valuable because it just IS. If effective policing is important, ask why? Well, because it keeps us safe. Why is safety important? Because lives are saved. Why is human life worth protecting? Well…because we’re made in the image of God and are creatures made by His hand. In other words, life is valuable because it’s valuable, so life is the most inherent value. You might use safety or effective policing as a criterion to achieve the preservation of life, or as a measurement to tell us when we’ve achieved an acceptable level of protection for life, but neither safety nor policing are the real values behind your case.

# In Conclusion

I feel like it’s becoming a Monument tradition for me to close by extolling the virtues of hard work and effective research. And it’s true that you need to use this article as a springboard to launch your own research, and you do need to work hard.

But in this closing, I want to remind you of what the goal is. You aren’t in speech and debate to win trophies. You aren’t there for Speechranks points or gavels or medals. You are in speech and debate to learn skills that you will use every day for the rest of your life.

I go to the University of Texas, a very liberal school in a very liberal city, and it shocks me how few of my fellow students examine the doctrines and ideas they’re taught. It is increasingly rare to find people who know how to research, reason, and communicate. It is increasingly common to find people who believe whatever they hear from a pseudo-scientific study or a professor with atheistic assumptions. You are in speech and debate to learn to challenge assumptions and ask hard questions and reason through difficult problems and stand strong when you’re right.

So this year, I want you to go out and compete to win. I know I just said that winning isn’t the goal, and I meant that. But competition breeds excellence, iron sharpens iron, and what doesn’t kill you makes you stronger. When you go chase trophies, and understand the purpose behind the trophy, you will improve. Forensics is training ground, where you have competitions with your friends. Strive to win those competitions. Strive to excel, because an ideological battle is coming, and the stakes are too high to be unprepared.

1. “Criminal Procedure” *Legal Information Institute,* Cornell University, 12 July 2016 [www.law.cornell.edu/wex/criminal\_procedure](http://www.law.cornell.edu/wex/criminal_procedure) [↑](#footnote-ref-1)
2. Merriam Webster. *Privacy.* [www.merriam-webster.com/dictionary/privacy](http://www.merriam-webster.com/dictionary/privacy) [↑](#footnote-ref-2)
3. Harlan, John. “Concurrence, Katz v. United States.” Legal Information Institute, Cornell University, 18 Dec. 1967, [www.law.cornell.edu/supremecourt/text/389/347](http://www.law.cornell.edu/supremecourt/text/389/347). [↑](#footnote-ref-3)