Legally Speaking
Resolution Strategies by Alisa Stringer



Before we do anything else, we are going to stop and take two minutes to write everything that comes to mind when we read the resolution. The writing does not have to be perfect, the only goal is that our pens do not stop moving. These are our first and only untainted thoughts about the resolution. So, set your timer. Ready…Set…Go.[[1]](#footnote-1)

(Here’s my two-minute thoughts): Criminal procedure is a complex balance. When the blindfolded Lady Justice holds the scales in her hand, it is a picture for her fairness and her balance of rights. The purpose of the criminal justice system is to find the truth and give out the consequences accordingly, but she cannot do anything and everything to fulfill that goal. She has limitations and boundaries set in place. Lines in the sand. Our privacy is important because it protects us from an otherwise unstoppable force. We have given up our privacy in today’s society out of convenience. We cannot do the same for justice.

The notes we just made are important because they are unique thoughts. Your beliefs about the resolution and your understanding of the topic can change throughout the year. In fact, your viewpoint absolutely should change. Just remember that what you believe matters in every debate. Search for relevant information and helpful tips. Use the provided materials, including the rest of this article, to your advantage. However, there is one strategy that is more effective than any other... that you believe what you are saying, and that you communicate your conviction to the judge.

Now that we have covered the importance of our unique preliminary thoughts, we can begin to study our topic and discover how we can effectively understand and debate this particular resolution. The heart of this resolution is justice. We are attempting to ensure that all individuals are treated fairly in the search for the truth of innocence or guilt. This resolution asks whether it is more just to find the truth or to respect an individual’s rights. It is a perfect example of when an individual’s rights are pitted against the good of the community. However, before we get into how these facts affect affirmative and negative strategies, we need to grasp the meaning of the resolution.

# General Strategies

## The Meaning of Criminal Procedure

Cornell’s Legal Information Institute describes criminal procedure in this way:

“Criminal procedure deals with the set of rules governing the series of proceedings through which the government enforces substantive criminal law.”[[2]](#footnote-2)

In the context of the resolution, this means that we are debating truth and privacy in terms of how the government should apply the law. Discussions will likely include wiretapping, video surveillance, privacy of internet habits, GPS usage, etc. How far can the government go in order to find the truth and ensure that the established rules of society are followed?

## The Government

Because we have the words “criminal procedure,” we know that the resolution is asking what the government ought to value. In debate, this idea is often called a “government actor paradigm,” which is simply fancy terminology that says that we are not considering what we as individuals prefer, but rather what the government ought to value.

## International Resolution

We also must notice that the resolution does not state that we are only considering United States criminal procedure. This opens up a plethora of examples and analysis points comparing countries that have clearly chosen one side of the resolution over another. A good place to begin exploring the legal differences in national privacy law is the World Legal Information Institute. This institute provides information concerning the laws of countries all around the world, including a comprehensive study on privacy and human rights in law. In the section on Malaysia, we find information on wiretapping that can easily fit into our resolution.

“The most controversial of Malaysia's laws remains the Internal Security Act (ISA), which was enacted in the 1960s in response to Communist insurgency. In the past, the ISA has been used to suppress both political opposition and peaceful dissent. [3484] Since 2001, the law has been used primarily against suspected Islamic militants and individuals suspected of counterfeiting and forgery. [3485] The ISA allows police to enter and search the homes of persons suspected of threatening national security without a warrant; police may also seize evidence.”[[3]](#footnote-3)

Recognizing how this resolution has played out in multiple different countries can keep the debate open and fresh throughout the year.

# Affirmative

## Use a Lampshade

In fiction writing, particularly in mystery or crime stories, there are often plot holes that make us feel uncomfortable. A daring escape doesn’t add up to the timeline. A character is in a too convenient place at a too convenient time, where he overhears information relevant to the plot. Sometimes, writers simply can’t find a way to patch up these plot holes. When this happens, many storytellers turn to the lampshading technique. The idea is to draw particular attention to the problem at hand. In drawing attention to the inconsistencies, writers prepare their readers to accept that sometimes life doesn’t make sense, even in the lives of fictional characters. One popular example is in Shakespeare’s Twelfth Night. One character, Sir Toby, asks another, “Is’t possible?” The second character, Fabian, replies, “If this were play’d upon a stage now, I could condemn it as an improbable fiction.”[[4]](#footnote-4)

Here is why lampshading is important…in acknowledging the concerns of the audience, the person speaking is able to mitigate those concerns. This is incredibly powerful when it comes to debate, and it will come in handy on the affirmative side this year. Judges may be initially skeptical of the affirmative. After all, our society is incredibly individualistic and rights driven. Affirmative should acknowledge concerns such as privacy violations to show judges that we have considered the possible problems but still know the resolution to be true. It can be as simple as saying, ‘Judge, I sincerely believe that privacy is important. But if privacy comes into conflict with ensuring that the rights of other individuals are also protected, the right to privacy is not absolute.’

## Remember the Resolution Limitations

It is likely that many negative cases this year will discuss all the ways that we have already lost our privacy and that lack of privacy can be abused. Remind the judge that we have a limited scope to the resolution. We are only talking about criminal procedure. We are not getting rid of privacy, and we are not saying that the government should have unlimited access to our personal data. All we are saying is that private information ought to be admissible in criminal court. If there was no crime, the information will help to prove innocence. If there was a crime, the information helps to show guilt.

## Be a Consequentialist

Encyclopedia Britannica describes consequentialism, also known as teleological ethics, as follows:

“Teleological ethics, (teleological from Greek telos, “end”; logos, “science”), theory of morality that derives duty or moral obligation from what is good or desirable as an end to be achieved. Also known as consequentialist ethics, it is opposed to deontological ethics (from the Greek deon, “duty”), which holds that the basic standards for an action’s being morally right are independent of the good or evil generated.”[[5]](#footnote-5)

In real life, morality is often a mix of consequentialism and deontology. We ought to save lives (an end), but not by violating other people’s rights (an independent standard). In debate rounds, consequentialism is commonly pitted against deontology. This is especially true in this year’s resolution, where we are asked whether individual privacy (a standard) can be violated to seek truth (an end). As affirmative, one effective option that we have is to adopt a consequentialist approach to the debate. In understanding and accepting that we are seeking an end (good, truth), we are able to focus on convincing the judges that truth is the goal of criminal procedure; therefore, truth ought to be valued above individual privacy.

# Negative

## Remember Precedence

A likely affirmative refutation will argue that the negative applications are fringe examples and outliners. For example, “some privacy will be undermined, but think of all the people you are helping!” Negatives should strive to show the judge how one violation of privacy for ‘a good cause,’ will lead to a cascade of devaluation. Most legal systems work off of precedent; that is, once a court has ruled on a topic, that ruling will be used to justify future rulings. A paper titled *Network Analysis and the Law: Measuring the Legal Importance of Precedents at the U.S. Supreme Court* discussed the number of times a case is cited in later decisions in the Supreme Court.

“The average majority opinion for the Court received 9.1 inward citations from other majority opinions of the Court over its life, with a standard deviation of 13.8 citations. The number of inward cites varies from 0 to 355 […]”[[6]](#footnote-6)

This means that if there is a case that allows precedent to admit evidence that was obtained through a violation of privacy rights, that case would, on average, be cited nine times in later cases. If the case is particularly influential, the precedent of violation could affect the decisions of over 300 cases. There is no such thing as a completely isolated or outlier case when it comes to criminal procedure. One allowance for violation of rights always leads to just one more.

## Use Examples

One advantage of negative this year is that negative is arguing for an individual. This means that negative gets to act as the champion for the underdog. People love a good underdog story, so use the emotional appeal to your advantage. Find an example where an innocent person’s privacy was violated because they had been incorrectly charged with a crime. Truth-seeking is a very vague goal, because it is difficult to determine what is true in court, even with evidence. Remind the judge that even if you violate an individual’s rights, you may not be able to discover the truth, which means that you are violating privacy for no reason.

## Be a Deontologist

If consequentialist ethics is a driving force of the affirmative, deontological ethics is negative’s champion philosophy. Stanford Encyclopedia of Philosophy describes deontology as follows:

“The most familiar forms of deontology, and also the forms presenting the greatest contrast to consequentialism, hold that some choices cannot be justified by their effects—that no matter how morally good their consequences, some choices are morally forbidden.”[[7]](#footnote-7)

This framework provides nice standing for the negative because it says that even if truth-seeking (a good effect) is achieved, that does not justify the violation of individual privacy (the choice).

To be clear, we do not have to use the words ‘consequentialism’ and ‘deontology’ in the debate round. In fact, if dealing with a community judge, the best strategy is to avoid such terms. However, understanding a general philosophy that summarizes a side or case is incredibly important because it helps us to stay logically consistent in our arguments. The purpose of understanding ethics-based philosophies is not to show off a fancy vocabulary. The purpose is to strengthen our argumentation by learning from the debates that have been argued through the centuries.

So here we are! We have begun our journey through this year’s resolution. The strategies above should be our first steps, not our last. Explore the resolution and what you believe, find a way to show the judge why that matters, and you will have a great year!

1. Erickson, Matthew. Speech. Monument Publishing Speech Camp, 29 July 2014. [↑](#footnote-ref-1)
2. "Criminal Procedure." Legal Information Institute, Cornell U, [www.law.cornell.edu/wex/criminal\_procedure](http://www.law.cornell.edu/wex/criminal_procedure). [↑](#footnote-ref-2)
3. EPIC - Privacy and Human Rights Report. UTS / UNSW Faculties of Law. World Legal Information Institute, [www.worldlii.org/int/journals/EPICPrivHR/2006/](http://www.worldlii.org/int/journals/EPICPrivHR/2006/). [↑](#footnote-ref-3)
4. Shakespeare, William. "Act III. Scene IV." Twelfth Night; or, What You Will, Grolier / Spencer, p. 659. [↑](#footnote-ref-4)
5. "Teleological Ethics." Encyclopedia Britannica, [www.britannica.com/topic/teleological-ethics](http://www.britannica.com/topic/teleological-ethics). [↑](#footnote-ref-5)
6. Fowler, James H. and Johnson, Timothy R. and Spriggs II, James F. and Jeon, Sangick and Wahlbeck, Paul J., Network Analysis and the Law: Measuring the Legal Importance of Supreme Court Precedents. Political Analysis, 15 (3): 324-346 (July 2007). Available at SSRN: [https://ssrn.com/abstract=1008025](https://ssrn.com/abstract%3D1008025). [↑](#footnote-ref-6)
7. "Deontological Ethics." Stanford Encyclopedia of Philosophy, <http://plato.stanford.edu/entries/ethics-deontological/>. [↑](#footnote-ref-7)