Liberty
Negative Case by Alisa Stringer



In order to successfully address this resolution, the negative debater must show that truth, no matter how valuable, does not justify violation of fundamental rights. It is important for debaters to acknowledge the natural implications of this topic. The resolution presented is a fresh realm for debate, but the conflict itself is not new. This resolution pits the individual good against the collective good, which should sound familiar to returning debaters. The same conflict was presented by STOA with the topics of community moral standards versus freedom of speech and needs of the public versus private property rights. Outside of high school debate, this concept is still constantly discussed.

The choice between individualism and collectivism is one of the most important decisions that we must make in life. It informs our views of politics, work, religion, and culture. In America, we tend toward individualism. My favorite example of this concept comes from an important cultural masterpiece, Star Trek. In Star Trek: The Next Generation, Commander Data once asked Captain Jean-Luc Picard a question. “Would you choose one life over one thousand, sir?” Picard responded, “I refuse to let arithmetic decide questions like that.”[[1]](#footnote-1) This is, in essence, individualism; we do not let numbers determine the worth of human lives or rights. Negative cases will, to varying degrees, come back to this idea. We cannot sacrifice the individual for the sake of the majority.

The preceding negative philosophy is the basis of this case. The particular framework that is presented sets the grounds for negative to argue that the resolution only comes in to play when there is a forceful violation of privacy. If an individual waives their rights or presents information in public, the resolution has no effect. Negatives should remember to run affirmative examples through this paradigm to identify non-resolutional examples.

The presented value is liberty and there is only one contention that is used to prove the resolution. This structure was chosen to save time for the negative side to thoroughly respond to the affirmative case. There is one application presented under the provided contention. This is one of the most recent Supreme Court cases regarding privacy. If debaters feel that they need to spend more time building their case, they may want to consider adding a second contention and/or application. To find a suitable second example, debaters may want to start by searching for historical Supreme Court cases that ruled on privacy issues.

Meanwhile, affirmative debaters should prioritize refuting the contention, as opposed to the framework. If affirmative focuses on the theme of practical morality, they can make the negative seem unrealistic. Individualism sounds good, but can it work in the real world?

Liberty

Supreme Court Justice Louis D. Brandeis once warned the court that, “Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."[[2]](#footnote-2) It is both natural and right for us to seek the truth in court, but we cannot allow our zeal for truth to strip people of their dignity and rights. We ought to negate the resolution and say that criminal procedure should value individual privacy over truth-seeking.

# Framework

## Definitions

According to Cornell’s Legal Information Institute,

“Criminal procedure deals with the set of rules governing the series of proceedings through which the government enforces substantive criminal law.”[[3]](#footnote-3)

Black’s Law Dictionary describes truth as,

 “A fully accurate account of events.”[[4]](#footnote-4)

The Oxford English Dictionary dictates that privacy is,

“The state or condition of being alone, undisturbed, or free from public attention, as a matter of choice or right; seclusion, freedom from interference or intrusion.”[[5]](#footnote-5)

## Resolutional Analysis: All truth, all privacy

We must recognize that the defendant’s privacy is not the only privacy in question. If a witness, for example, has knowledge pertinent to the case, the resolution says that the knowledge must be disclosed in the proceedings, even if it causes the witness distress. The resolution postulates that absolute truth from all sides is necessary in the court room.

## Resolutional Analysis: Rights can be waived

It is not the negative stance that truth-seeking is bad or should be ignored. If an individual chooses to provide information, we ought to use that information in court. If evidence is found without a violation of privacy, say for example evidence from a public place, that evidence should be used. The only question we have today is whether the government can force an issue in a case through violation of an expected right. Doing so may be expedient, but it is not right.

# Value: Liberty

The concept of liberty is essential to our modern understanding of the world. We have an underlying assumption that we have a reasonable freedom to move as we please within society. The Black’s Law Dictionary defines liberty as,

“Freedom from arbitrary or undue external restraint; esp. by a government.”4

We must remember that liberty is not the same concept as freedom. Liberty carries with it connotations of reasonableness and consensual restraint. Choosing to value privacy should not, and does not, mean that we will condone any and every action that an individual may take, but it does mean that we ought to be able to move freely, to be assumed innocent until proven guilty.

# Contention: Privacy over Truth protects Liberty

The affirmative side may very well have the best intentions. However, the mindset that says that the truth supersedes privacy concerns is a dangerous precedent for the government. To understand why privacy is important we must acknowledge the rarely spoken rule of society. Private life is separate from public life. Today, these two realms often get confused. Celebrities display aspects of their private lives to the public for entertainment. Private information is stored on your phone which you frequently use in a public arena. The convenience of video feeds, social media, and GPS tracking has eroded many barriers between public and private.

Yet even today, we naturally act differently when we are in public. How many parents have told their children, ‘Stop that! We are in a public place.’? When we are in private, we relax because we naturally feel safer and freer. This resolution strips us of that opportunity. If privacy is violated for the convenience of court, then the concept of private vs public disappears. This naturally endangers the liberties that we often take for granted.

## Evidence: Carpenter v United States[[6]](#footnote-6)

Just earlier this year, this resolution was contemplated by the Supreme Court in the 2018 case of Carpenter v United States. The case addressed the use of evidence collected from cellphone location data without a warrant. It was ruled that collection and use of such information is illegal and unconstitutional. As Chief Justice Robert wrote,

“Mapping a cell phone’s location over the course of 127 days provides an all-encompassing record of the holder’s whereabouts. As with GPS information, the timestamped data provides an intimate window into a person’s life, revealing not only his particular movements, but through them his ‘familial, political, professional, religious, and sexual associations.’”6

Note that the question answered by the Supreme Court does not deal with the defendant’s innocence or guilt. However, the Court is clear that guilt cannot be proven using methods that violate the expected privacy of individuals.

# Conclusion

The controversial figure, Edward Snowden, reminded us of the nature of privacy in a statement that should be much less controversial.

"Privacy isn't about something to hide. Privacy is about something to protect. That's who you are," he said. "Privacy is baked into our language, our core concepts of government and self in every way. It's why we call it 'private property.' Without privacy you don't have anything for yourself."[[7]](#footnote-7)

Truth-seeking is important, but we cannot allow ourselves to become so obsessed with finding the truth in court that we trample on fundamental rights to obtain the facts. Criminal Procedure should value individual privacy over truth-seeking.

Opposing This Case

This negative case is a patchwork case. The value works with the resolutional analysis and contention, but the three need not work together. This means that refutation should address the three aforementioned sections separately. In terms of priority, the contention is the heart of this case, so if affirmative debaters are short on time, they should concentrate on refuting the contention.

There is a certain level of idealism that comes with the individualism of this case. Affirmative debaters may want to argue for a practical morality that comes with protecting many people, even if a few people get hurt. This ideology seems cruel at first, but it helps to remind the judge that every action has an opportunity cost. If someone is forced to choose between saving one person and saving many, they must act. Inaction would likely be wrong. Because all life is valuable, the only practical way to determine the correct action is to consider the consequences. Which action saves more people? In the same way, if we can help more people in seeking the truth, shouldn’t we?

In addition to practicality arguments, the affirmative side can argue for truth as a good in and of itself. Debaters may want to familiarize themselves with the ‘right to truth.’ The search for truth is usually considered to be naturally compelling. In court, truth-seeking becomes even more important. If privacy is always put above the truth, the courts simply could not function.

Keen debaters may have noticed the particular portion of criminal procedure that is this cases’ focus. There is more to criminal procedure than admissible evidence standards. How can a prosecutor cross examine a witness if the witnesses right to privacy is more important than truth? How can the warrant system exist if privacy is the primary concern? How can courts use juries, who may learn private information over the course of the proceedings? While the negative side may sound like the best way to protect people, there are many obstacles that make it impractical. Affirmative debaters should seek to show that, while privacy is important, the purpose of criminal procedure is to find truth. Privacy cannot be allowed to obstruct justice.

1. "Star Trek: The Next Generation: Justice." IMDB, www.imdb.com/title/tt0708739/

 quotes. [↑](#footnote-ref-1)
2. United States, Supreme Court. Olmstead v. United States. 4 June 1928. Legal

 Information Institute, Cornell U, [www.law.cornell.edu/supremecourt/text/277/](http://www.law.cornell.edu/supremecourt/text/277/)

 438. 19 F. [↑](#footnote-ref-2)
3. "Criminal Procedure." Cornell Legal Information Institute, [www.law.cornell.edu/wex/criminal\_procedure](http://www.law.cornell.edu/wex/criminal_procedure). [↑](#footnote-ref-3)
4. Garner, Bryan A, and Henry C. Black. Black’s Law Dictionary. St. Paul, Minn: West Group, 2003. Print. [↑](#footnote-ref-4)
5. Oxford English Dictionary Online. Oxford, England: Oxford University Press, 2002. Internet resource. [↑](#footnote-ref-5)
6. United States, Supreme Court. Carpenter v. United States. 22 June 2018. Legal

 Information Institute, Cornell U, [www.law.cornell.edu/supremecourt/text/](http://www.law.cornell.edu/supremecourt/text/)

 16-402. 819 F. [↑](#footnote-ref-6)
7. Schrodt, Paul. "Edward Snowden Just Made an Impassioned Argument for Why Privacy

 Is the Most Important Right." Business Insider, 15 Sept. 2016,

 [www.businessinsider.com/edward-snowden-privacy-argument-2016-9](http://www.businessinsider.com/edward-snowden-privacy-argument-2016-9). [↑](#footnote-ref-7)