Protection  
Affirmative Case by Alisa Stringer



The purpose of this case is to place affirmative on an equal philosophical playing field with negative. The negative side of this debate has an advantage in that we live in a rights-based society. This case gives affirmative a legal and philosophical foundation for their position.

This case is heavily constitution based, which is unique in that neither truth-seeking nor individual privacy are clearly guaranteed in the Bill of Rights. However, because the rights are heavily implied both in the amendments and in common law, there is still a good basis for argumentation.

To sum up the case, the value is protection, particularly the protection of the innocent. The contentions focus on the Fourth and Fourteenth Amendments, and on the limitations of rights. Because of the importance of these amendments, there are some good examples that can be explored in United States law, although there is only one actual application used in this case.

It is highly suggested that debaters find their own application(s) as the year continues. The application used here has both pros and cons, like any, but examples are an easy place for new debaters to explore their own preferences. The case does not rely on the application; rather, it could be taken out or replaced at any time. The writer encourages debaters to take advantage of this versatility!

In opposition to this case, it is best to accept the value framework and argue the contentions. The framework is balanced, in that both sides should be able to easily argue under it. The application can be refuted by either direct refutation or counter-examples. The contentions are the strongest arguments, so they should be a priority in refutation.

Protection

# “Let the facts be known as they are, and the law will sprout from the seed and turn its branches toward the light.”[[1]](#footnote-1) Judge Benjamin Cardozo highlights the essential nature of truth in court. The courts are meant to search for the truth with vigor and to prove claims beyond reasonable doubt. The reason that cases are supposed to be in court is to prove innocence or to redress wrongs in the light of truth. Our right to privacy is important, but if the court must choose between an individual’s right and absolute truth, the court has a responsibility to choose truth. Therefore, we stand resolved that “Criminal Procedure should value truth-seeking over individual privacy.”

# 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.”[[2]](#footnote-2)

Black’s Law Dictionary describes truth as

“A fully accurate account of events.”[[3]](#footnote-3)

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.”[[4]](#footnote-4)

## Resolutional Analysis: Truth, not conviction

It is important that we realize that the affirmative does not need to prove that privacy ought to be sacrificed for efficiency or conviction. The only thing we must prove is that truth trumps privacy in court.

## Resolutional Analysis: All truth, all privacy

We must also 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 ought to be disclosed in the proceedings. The resolution postulates that absolute truth from all sides is necessary in the court room.

# Value: Protection

The purpose of the government is to protect individual citizens and society as a whole. For this reason, the affirmative value is protection. Criminal courts exist to prove innocence and therefore protect the wrongly accused, or to prove guilt, and therefore exact retribution for a violation of protected rights. Whichever side of the resolution best protects the innocent ought to be preferred in the debate.

# Contention 1: Privacy is not absolute

In addition to describing a right to privacy, Black’s Law Dictionary also details an invasion of privacy, which is “An unjustified exploitation of one’s personality or intrusion into one’s personal activity.”[[5]](#footnote-5) It is important to note that the definition distinguishes between a justified intrusion and an unjust intrusion. This implies that there is such a thing as a just intrusion, in other words, right to privacy is not absolute.

When we hear that we do not have a right to complete privacy, most of us feel uncomfortable. This is natural. But we need to remember that our entire legal system is built on the idea that rights do have limitations. In fact, we have a formal term that we use when we choose to put truth above privacy in criminal procedure. It’s actually fairly common. It’s called a search warrant. The Legal Information Institute describes a search warrant as, “A warrant issued by the competent authority authorizing a police officer to search a specified place for evidence even without the occupant’s consent.”[[6]](#footnote-6)

The foundation for the legal process of a search warrant is found in the Bill of Rights, which acknowledges that, “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause.”[[7]](#footnote-7) But probable cause is a reasonable belief that there is evidence of a crime. In other words, in criminal procedure, if there is a belief that the truth has not been acknowledged or upheld then a judge or magistrate will place the search for truth above an individual’s privacy.

# Contention 2: Truth-seeking protects

The truth is the ultimate defense in court. The Fourteenth Amendment promises due process of law. If that amendment is not respected by a court, that court’s decision often comes under review so that individual’s rights to fair trial are upheld. In order to have a fair trial, truth is a prerequisite.

Take for example the Supreme Court case of Alcorta v. Texas in 1957. In this criminal case, the defendant was being tried for the murder of his wife. The defendant, Alvaro Alcorta, claimed that the act was “murder without malice.” In other words, the defendant attempted to argue that the act was not premediated but was done in a moment of irrational anger because he found his wife kissing another man. However, the alleged other man, Castilleja, was a witness for the case and testified that these facts were untrue. Alcorta was held guilty of murder with malice. Sometime later, the witness issued a sworn statement admitting that he had lied on the stand. The case went to the Texas Criminal Court of Appeals, where it was reversed and remanded.

The witness, Castilleja, gave up private information late in the criminal procedure.[[8]](#footnote-8) This information harmed his reputation and his privacy, but it furthered truth. The case was taken to a higher court where truth was valued over the individual’s privacy.

# Conclusion

In the case of People v. Savvides, the Court noted that,

“A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth.”[[9]](#footnote-9)

The Criminal Justice system has a responsibility to uphold absolute truth in the courts. If our justice system gives up truth, what is then the purpose of the system? There are many problems with the courts, we cannot allow lies and omissions to be among those problems. American philosopher Allan Bloom put it best when he said that, “The truth is the one thing most needful.”[[10]](#footnote-10) Criminal Procedure should value truth-seeking over individual privacy.

Opposing This Case

This case blatantly argues that we are choosing between two rights: privacy and truth. Privacy has a better historical foundation. This means that you can combat this case by pushing the debate into completely into the realm of philosophical rights. There is a reason that the fourth amendment is written the way it is. The amendment implies that truth is important, but it clearly states that people have rights to be secure in their persons and property.

In way of values, it would be smart for negative to accept the affirmative value. Most negative values for this resolution would provide very little clash against the value of protection. Accept the value but show that your side best upholds it.

The application used in contention two involves information that was willingly given, albeit after false testimony. This means that the example has only a tentative grasp on the resolution. The best way for negative to respond is first to question whether the example proves the resolution true.

1. Hatcher, Collin D. "The Whole Truth or Anything but ...: How Fairness, Reliability, and the Rule of Completeness Affect the Jury's Truth-Seeking Function." American Journal of Trial Advocacy, vol. 39, no. 3, Jan. 2016, pp. 683-711. EBSCOhost, search.ebscohost.com/login.aspx?direct=true&AuthType=cookie,ip,shib&db=a9h&AN=118293782&site=eds-live&custid=s8492860. [↑](#footnote-ref-1)
2. "Criminal Procedure." Cornell Legal Information Institute, [www.law.cornell.edu/wex/criminal\_procedure](http://www.law.cornell.edu/wex/criminal_procedure). [↑](#footnote-ref-2)
3. Garner, Bryan A, and Henry C. Black. Black's Law Dictionary. St. Paul, Minn: West Group, 2003. Print. [↑](#footnote-ref-3)
4. Oxford English Dictionary Online. Oxford, England: Oxford University Press, 2002. Internet resource. [↑](#footnote-ref-4)
5. Garner, Bryan A, and Henry C. Black. Black's Law Dictionary. St. Paul, Minn: West Group, 2003. Print. [↑](#footnote-ref-5)
6. "Search Warrants." Cornell Legal Information Institute, <https://www.law.cornell.edu/wex/search_warrant> [↑](#footnote-ref-6)
7. U.S. Constitution. Amend. IV [↑](#footnote-ref-7)
8. Supreme Court Of The United States. U.S. Reports: Alcorta v. Texas, 355 U.S. 28. 1957. Periodical. Retrieved from the Library of Congress, <www.loc.gov/item/usrep355028/>. [↑](#footnote-ref-8)
9. Warren, Earl, and Supreme Court Of The United States. U.S. Reports: Napue v. Illinois, 360 U.S. 264. 1958. Periodical. Retrieved from the Library of Congress, <www.loc.gov/item/usrep360264/>. [↑](#footnote-ref-9)
10. [↑](#footnote-ref-10)