Finding the Balance  
Negative Case by Mark Burdick



Life is... complicated. There are so many situations and possible circumstances that it is hard to make a one sentence summary of how you would react in each situation.

Let’s say you decide to go have lunch with a friend and you told your mom that you would be back home by 1:30 pm. Simple right? You go hang out with your friend and come back at 1:30.

Well, let’s say that while you are having lunch, you realize your phone battery is dead, your friend chokes on his sandwich, you have to perform the Heimlich to save your friend, and at the end of the ordeal it is 1:50. Also, you can't call your mom to say you will be home late because your phones dead.

Or let’s say you end up having a really good discussion with your friend, lose track of time, and realize that, at 2:00 pm, that you are not going to get home at 1:30.

Or lets say you have lunch with your friend, and while you are driving back home, somebody slams into the back of your car with his motorcycle. What would you do? Just making a blanket statement does not tell us what to do in these specific cases.

That is the main idea which this case is built off of: we can't make a blanket statement on the resolution, and we certainly don't want to lock ourselves into only valuing truth seeking. Therefore, we should balance truth seeking with individual privacy.

This kind of case is a little different than your typical negative. You will have the affirmative explain truth seeking should be valued over privacy. Then you usually see the negative argue that individual privacy should be valued over truth seeking. This case is a balanced negative. What it seeks to do is show that the affirmative is still wrong in that we need to find a balance between truth seeking and individual privacy and value both equally.

If you are confused, let me explain it like this. Imagine a number line from -5 to +5. Lets say that +5 is an affirmative case that says the resolution is true 100% of the time, no exceptions. -5 is a negative case which says that the resolution is wrong 100% of the time with no exceptions. Any case in between makes a statement on the resolution with varying points of view (IE: 4 = resolution is true with few exceptions, 3 = resolution is mostly true, 2 = resolution is generally true … etc.)

The one number to note on our number graph is 0. In order for it to be an affirmative case, it has to support the resolution, so it needs to be higher than 0. Thus, if a case is 0 on our number line, than that means it does not support the resolution, making it negative. It disproves the resolution by saying that both sides are true. It says that we need to find a balance between 5 and -5.

Running a balanced negative case has it's pros and cons. The nice side is that you can accept any affirmative point saying that truth seeking is a good thing. All you have to do is say yes and point out that privacy is a good thing too. The one disadvantage is that all the affirmative has to do to win is show that truth seeking is a little more important, affirming the resolution.

The advantage to running a balanced negative with this resolution is that privacy is very important and truth seeking is necessary. Seldom will you find a judge complaining that one side is inconsiderable. Proving that we should use an equal balance between both can be very persuasive.

Finding the Balance

Benjamin Franklin once famously stated, “He who gives up essential liberty for temporary security deserves neither liberty nor security.” Privacy is important, and we cannot throw it out the window. Truth seeking is important as well; in order to stop crime, police need to truth seek. It is because both sides of the resolution are important that I stand against the resolution. Criminal procedure should hold both truth seeking and individual privacy equal because doing so protects the innocent and punishes the guilty. Let's look at some key terms...

# Definitions:

Criminal Procedure - According to Cornell Law School'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](http://law.cornell.edu/wex/criminal_law).”[[1]](#footnote-1)

Privacy:

Merriam Webster defines privacy as “The quality or state of being apart from company or observation: seclusion.”[[2]](#footnote-2)

With these definitions in mind, let’s look at some observations I have about the resolution.

# Resolutional Analysis 1: Situational Balance

When we look at the resolution, we must recognize that it presents us with thousands of possible cases and examples where truth seeking conflicts with privacy. However, just making a blanket statement and expecting that we can address reality is quite impossible and is not always going to be just. There are so many examples and circumstances that just making a one size fits all statement is not going to help us determine what we should do. Therefore, we must naturally recognize that there has to be a case by case basis of determining what to do, and in many cases, finding a balance between truth seeking and privacy is just.

# Resolutional Analysis 2: Privacy Is A Freedom

Another thing to note is that privacy is a part of our freedom. If I am innocent, I have a right to privacy and that should not be violated. Only if I am guilty and if the police have a legitimate reason based on evidence can they violate that privacy.

We need to establish a goal for the round. Something that will show you which side to vote for.

# Value: Justice

I am presenting the value of Justice, which is operationally defined as protecting the innocent and punishing the guilty. Justice is a big part of criminal procedure, and the reason why is that criminal procedure was created to do so. People have a tendency to to what they please, even if it means that they will have to hurt others. Without any sort of government, society would be a mess. Therefore, we have a law system to keep order by stopping any who desire to do harm to others by protecting innocent individuals.

# Contention I: Disregarding Privacy Impedes Justice

Valuing truth seeking over privacy will do harm to individuals by not giving them what they deserve. Police don't know know for sure who the criminal is and who is innocent. Upholding truth seeking will often allow for the police to go too far by violating the privacy of an innocent individual. This is injustice because the innocent individual is being treated as if he is guilty.

## App1: Stop and Frisk

In New York, If the police have reasonable suspicion and think you are committing or will commit a crime, they can stop you and conduct a search. The problem is that it hurts innocent individuals. The National review reported in 2018 that, “more than 80 percent of those subjected to stop-and-frisk since the start of the Bloomberg administration were, according to the NYPD, completely innocent.”[[3]](#footnote-3) Though it may have been able to stop a few criminals, New York's police stops are unjust because they treat innocent individuals as guilty ones. Valuing truth seeking over individual privacy will allow police to go too far which does not achieve justice.

# Contention II: Balancing Upholds Justice

Upholding Individual privacy and truth seeking is important for criminal procedure. Finding a balance between the two is important and essential. There are so many possible circumstances in reality. Allot of these cases must be determined on a case by case basis. Thus, a balance needs to be found. Placing truth seeking first in value above privacy is harmful to the innocent and does not give each person what he ore she justly deserves. Therefore, it is important to find the area where both are valued equally.

## App 2: Search Warrants

The US has found a way to allow for truth seeking and yet still value individual’s privacy. The Fourth amendment states, “The 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, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”[[4]](#footnote-4) A warrant is the exception to your privacy, if the police have legitimate reason to violate your privacy, they can do so. The forth amendment also states that a search warrant must specify exactly what it is allowing the police to take. So when the police use a search warrant to enter your house, they can truth seek, but they cannot violate all of your privacy. The US has found a way to balance truth seeking and privacy to uphold justice.

**Conclusion**

A concept that Franklin pointed out over two hundred years ago is still a concept that remains true. We can't let out liberties be trampled upon. Individual privacy is something which must be balanced with truth seeking. Otherwise, we will no longer protect innocent individuals, we will allow their liberties to be unjustly violated and we will not achieve our goal as criminal procedure.

1. “Criminal Procedure” *Legal Information Institute,* Cornell Law School, www.law.cornell.edu/wex/criminal\_procedure [↑](#footnote-ref-1)
2. “Privacy.” Merriam Webster, 2019, https://www.merriam-webster.com/dictionary/privacy [↑](#footnote-ref-2)
3. “We were wrong about stop and frisk.” Kyle Smith, National Review, January 1, 2018, https://www.nationalreview.com/2018/01/new-york-city-stop-and-frisk-crime-decline-conservatives-wrong/ [↑](#footnote-ref-3)
4. “Fourth Amendment,” *Legal Information Institute*, Cornell Law School. https://www.law.cornell.edu/constitution/fourth\_amendment [↑](#footnote-ref-4)