# TOPICALITY – NEGATIVE

## T – ITS

### 1NC

#### A. Interpretation — “Its” is possessive — it refers to the USFG and excludes the states.

Updegrave 91 (W.C., “Explanation of ZIP Code Address Purpose”, 8-19, <http://www.supremelaw.org/ref/zipcode/updegrav.htm>)

More specifically, looking at the map on page 11 of the National ZIP Code Directory, e.g. at a local post office, one will see that the first digit of a ZIP Code defines an area that includes more than one State. The first sentence of the explanatory paragraph begins: "A ZIP Code is a numerical code that identifies areas within the United States and its territories for purposes of ..." [cf. 26 CFR 1.1-1(c)]. Note the singular possessive pronoun "its", not "their", therefore carrying the implication that it relates to the "United States" as a corporation domiciled in the District of Columbia (in the singular sense), not in the sense of being the 50 States of the Union (in the plural sense). The map shows all the States of the Union, but it also shows D.C., Puerto Rico and the Virgin Islands, making the explanatory statement literally correct.

#### B. Violation — they don’t use the USFG

#### C. Vote Negative

#### Limits — expand the topic by including plans that curtail surveillance by private contractors, companies, and states and localities. These moot functional limits by making the topic “resolved: curtail surveillance.” This makes the aff effectually topical.

#### Ground — surveillance *by the USFG* is the foundation of meaningful neg ground. They deny core private sector, state, and international CP’s and DA’s to federal surveillance.

### 2NC OV

#### Extend our interpretation – it’s is possessive and only includes the USFG while excluding any state action – Updegrave indicates that it’s can only refer to actions done in Washington D.C. itself.

#### Extend our violation – they don’t use the USFG - <<INSERT SPECIFIC AFF VIOLATION HERE>>

#### T is a voting issue –

#### Limits – the aff allows for private company, agency, and individual state action, which explodes aff limits. The aff is effectually topical because it may include the state at some point, but doesn’t directly mandate state action.

#### Ground – the USFG is key to necessary neg ground – the aff takes away states counterplans, and links to the politics disad, which are key to topic education.

### 2NC Cards

#### “Its” refers to the United States Federal Government and is possessive

Updegrave 91 (W.C., “Explanation of ZIP Code Address Purpose”, 8-19, <http://www.supremelaw.org/ref/zipcode/updegrav.htm>)

More specifically, looking at the map on page 11 of the National ZIP Code Directory, e.g. at a local post office, one will see that the first digit of a ZIP Code defines an area that includes more than one State. The first sentence of the explanatory paragraph begins: "A ZIP Code is a numerical code that identifies areas within the United States and its territories for purposes of ..." [cf. 26 CFR 1.1-1(c)]. Note the singular possessive pronoun "its", not "their", therefore carrying the implication that it relates to the "United States" as a corporation domiciled in the District of Columbia (in the singular sense), not in the sense of being the 50 States of the Union (in the plural sense). The map shows all the States of the Union, but it also shows D.C., Puerto Rico and the Virgin Islands, making the explanatory statement literally correct.

#### ‘Its’ is possessive

English Grammar 5 (Glossary of English Grammar Terms, <http://www.usingenglish.com/glossary/possessive-pronoun.html>)

Mine, yours, his, hers, its, ours, theirs are the possessive [pronouns](http://www.usingenglish.com/glossary/pronoun.html) used to substitute a [noun](http://www.usingenglish.com/glossary/noun.html) and to show possession or ownership. EG. This is your disk and that's mine. (Mine substitutes the word disk and shows that it belongs to me.)

#### Grammatically, this refers solely to U.S. policy

Manderino 73 (Justice – Supreme Court of Pennsylvania, “Sigal, Appellant, v. Manufacturers Light and Heat Co”., No. 26, Jan. T., 1972, Supreme Court of Pennsylvania, 450 Pa. 228; 299 A.2d 646; 1973 Pa. LEXIS 600; 44 Oil & Gas Rep. 214, Lexis)

On its face, the written instrument granting easement rights in this case is ambiguous. The same sentence which refers to the right to lay a 14 inch pipeline (singular) has a later reference to "said lines" (plural). The use of the plural "lines" makes no sense because the only previous reference has been to a "line" (singular). The writing is additionally ambiguous because other key words which are "also may change the size of its pipes" are dangling in that the possessive pronoun "its" before the word "pipes" does not have any subject preceding, to which the possessive pronoun refers. The dangling phrase is the beginning of a sentence, the first word of which does not begin with a capital letter as is customary in normal English [\*\*\*10]  usage. Immediately preceding the "sentence" which does not begin with a capital letter, there appears a dangling  [\*236]  semicolon which makes no sense at the beginning of a sentence and can hardly relate to the preceding sentence which is already properly punctuated by a closing period. The above deviations from accepted grammatical usage make difficult, if not impossible, a clear understanding of the words used or the intention of the parties. This is particularly true concerning the meaning of a disputed phrase in the instrument which states that the grantee is to pay damages from ". . . the relaying, maintaining and operating said pipeline. . . ." The instrument is ambiguous as to what the words ". . . relaying . . . said pipeline . . ." were intended to mean.

#### And it’s a term of exclusion

Frey 28 (Judge – Supreme Court of Missouri, Supreme Court of Missouri,

320 Mo. 1058; 10 S.W.2d 47; 1928 Mo. LEXIS 834, Lexis)

In support of this contention appellant again argues that when any ambiguity exists in a will it is the duty of the court to construe the will under guidance of the presumption that the testatrix intended her property to go to her next of kin, unless there is a strong intention to the contrary. Again we say, there is intrinsic proof of a  [\*1074]  strong intention to the contrary. In the first place, testatrix only named two of her blood relatives in the will and had she desired [\*\*\*37]  them to take the residuary estate she doubtless would have mentioned them by name in the residuary clause. In the second place, if she used the word "heirs" in the sense of blood relatives she certainly would have dispelled all ambiguity by stating whose blood relatives were intended. Not only had  [\*\*53]  she taken pains in the will to identify her own two blood relatives but she had also identified certain blood relatives of her deceased husband. Had it been her intention to vest the residuary estate in her blood relatives solely, she would certainly have used the possessive pronoun "my" instead of the indefinite article "the" in the clause, "the above heirs."its is geographical.

#### “Domestic surveillance” is conducted by government agencies

Ross 12 – Jeffrey Ian Ross, Professor in the School of Criminal Justice, College of Public Affairs, and a Research Fellow of the Center for International and Comparative Law, and the Schaefer Center for Public Policy, at the University of Baltimore, An Introduction to Political Crime, p. 101

Introduction

Domestic surveillance consists of a variety of information-gathering activities, conducted primarily by the state’s coercive agencies (that is, police, national security, and the military). These actions are carried out against citizens, foreigners, organizations {for example, businesses, political parties, etc.). and foreign governments. Such operations usually include opening mail, listening to telephone conversations (eavesdropping and wiretapping), reading electronic communications, and infiltrating groups (whether they are legal, illegal, or deviant).

#### “Surveillance” can be broad and include private entities

Utwater 13 – Charles Utwater II, Political Blogger and Writer for the DailyKos, “The Dangers of Surveillance: Harvard Law Point Counterpoint”, DailyKos, 7-13, http://www.dailykos.com/story/2013/07/18/1224589/-The-Dangers-of-Surveillance-Harvard-Law-point-counterpoint

Richards defines surveillance as the systematic, routine, and purposeful attempt to learn information about individuals. The purpose is often to control the individual. Surveillance is comprehensive, conducted by both private companies and by the government. It invades telephone conversations, any Internet activity, social networking, and reading of electronic books. Our faces are tracked with visual recognition software. We are tracked by our GPS devices. The government gives away our information to private companies, such as when it gave license plate scans to insurance companies. We even consent to some forms of surveillance, in what Richards calls "liquid surveillance."

Our legal protections are few:

"American law governing surveillance is piecemeal, spanning constitutional protections such as the Fourth Amendment, statutes like the Electronic Communications Privacy Act of 1986 (ECPA), and private law rules such as the intrusion-into-seclusion tort. But the general principle under which American law operates is that surveillance is legal unless forbidden." (emphasis added)

## T – CURTAIL

### 1NC

#### “Curtail” means to restrict

Webster’s 15 – Webster's New World College Dictionary, 4th Ed., “curtail”, http://www.yourdictionary.com/curtail

verb To curtail is defined as to restrict something, stop something or deprive of something. An example of curtail is when a town wants to stop drunk driving.

#### That refers only to outright prohibitions, not any action that has the consequence of decreasing surveillance

**Caiaccio 94** (Kevin T., “Are Noncompetition Covenants Among Law Partners Against Public Policy?”, Georgia Law Review, Spring, 28 Ga. L. Rev. 807, Lexis)

The Howard court began its analysis by examining the California Business and Professions Code, which expressly permits reasonable restrictive covenants among business partners. [139](http://www.lexis.com/research/retrieve?y=&dom1=&dom2=&dom3=&dom4=&dom5=&crnPrh=&crnSah=&crnSch=&crnLgh=&crnSumm=&crnCt=&cc=&crnCh=&crnGc=&shepSummary=&crnFmt=&shepStateKey=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&fpSetup=0&_m=2f902ef509c60febb5baa821f74f591c&docnum=69&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAb&_md5=13c4fa4ea4799356b6831f265d253078&focBudTerms=the+word+restrict+or+the+term+restrict+or+the+phrase+restrict+&focBudSel=all" \l "n139" \t "_self) The court noted that this provision had long applied to doctors and accountants and concluded that the general language of the statute provided no indication of an exception for lawyers. [140](http://www.lexis.com/research/retrieve?y=&dom1=&dom2=&dom3=&dom4=&dom5=&crnPrh=&crnSah=&crnSch=&crnLgh=&crnSumm=&crnCt=&cc=&crnCh=&crnGc=&shepSummary=&crnFmt=&shepStateKey=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&fpSetup=0&_m=2f902ef509c60febb5baa821f74f591c&docnum=69&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAb&_md5=13c4fa4ea4799356b6831f265d253078&focBudTerms=the+word+restrict+or+the+term+restrict+or+the+phrase+restrict+&focBudSel=all" \l "n140" \t "_self) After reaching this conclusion, however, the court noted that, since it had the authority to promulgate a higher standard for lawyers, the statute alone did not necessarily control, [141](http://www.lexis.com/research/retrieve?y=&dom1=&dom2=&dom3=&dom4=&dom5=&crnPrh=&crnSah=&crnSch=&crnLgh=&crnSumm=&crnCt=&cc=&crnCh=&crnGc=&shepSummary=&crnFmt=&shepStateKey=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&fpSetup=0&_m=2f902ef509c60febb5baa821f74f591c&docnum=69&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAb&_md5=13c4fa4ea4799356b6831f265d253078&focBudTerms=the+word+restrict+or+the+term+restrict+or+the+phrase+restrict+&focBudSel=all" \l "n141" \t "_self) and the court therefore proceeded to examine the California Rules of Professional Conduct. [142](http://www.lexis.com/research/retrieve?y=&dom1=&dom2=&dom3=&dom4=&dom5=&crnPrh=&crnSah=&crnSch=&crnLgh=&crnSumm=&crnCt=&cc=&crnCh=&crnGc=&shepSummary=&crnFmt=&shepStateKey=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&fpSetup=0&_m=2f902ef509c60febb5baa821f74f591c&docnum=69&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAb&_md5=13c4fa4ea4799356b6831f265d253078&focBudTerms=the+word+restrict+or+the+term+restrict+or+the+phrase+restrict+&focBudSel=all" \l "n142" \t "_self) The court avoided the apparent conflict between the business statute and the ethics rule by undertaking a strained reading of the rule. In essence, the court held that the word "restrict" referred only to outright prohibitions, and that a mere "economic consequence" does not equal a prohibition. [143](http://www.lexis.com/research/retrieve?y=&dom1=&dom2=&dom3=&dom4=&dom5=&crnPrh=&crnSah=&crnSch=&crnLgh=&crnSumm=&crnCt=&cc=&crnCh=&crnGc=&shepSummary=&crnFmt=&shepStateKey=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&fpSetup=0&_m=2f902ef509c60febb5baa821f74f591c&docnum=69&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAb&_md5=13c4fa4ea4799356b6831f265d253078&focBudTerms=the+word+restrict+or+the+term+restrict+or+the+phrase+restrict+&focBudSel=all" \l "n143" \t "_self)

#### Voting issue---

#### 1. Limits---allowing effectual reductions explodes the topic. Any action can potentially result in less surveillance. Limits are key to depth of preparation and clash.

#### 2. Ground---our interpretation is key to establish a stable mechanism of legal prohibition that guarantees core ground based on *topic direction*. They allow the Aff to defend completely different processes like “oversight” that dodge core DAs and rob the best counterplan ground.

### 2NC OV

#### Extend our interpretation – curtail means to impose a restriction on, and this doesn’t include any action that could possible decrease surveillance in the future – that’s our Webster’s and Caiaccio cards.

#### Extend our violation – the aff does not actually take the action of curtailment - <<INSERT SPECIFIC AFF VIOLATION HERE>>

#### T is a voting issue –

#### Limits – the aff justifies any action that could potentially decrease surveillance in the future – immediacy is key to neg limits and clash.

#### Ground – our interpretation is key to concrete legal reductions based on topic direction. The aff’s avoidance of curtailing surveillance takes away surveillance good ground and key disads.

### 2NC Cards

#### “Curtail” means to impose a restriction on

Oxford 15 – Oxford Dictionaries, “curtail”, http://www.oxforddictionaries.com/us/definition/american\_english/curtail

Definition of curtail in English:

verb

[WITH OBJECT]

1Reduce in extent or quantity; impose a restriction on:

civil liberties were further curtailed

#### This is based on the etymology of the word

AHD 14 – American Heritage Dictionary, “curtail”, https://www.ahdictionary.com/word/search.html?q=curtail

tr.v. cur·tailed, cur·tail·ing, cur·tails

To cut short or reduce: We curtailed our conversation when other people entered the room. See Synonyms at shorten.

[Middle English curtailen, to restrict, probably blend of Old French courtauld, docked; see CURTAL, and Middle English taillen, to cut (from Old French tailler; see TAILOR).]

cur·tailer n.

cur·tailment n.

#### “Restrictions” are direct governmental limitations

Viterbo 12 (Annamaria, Assistant Professor in International Law – University of Torino, PhD in International Economic Law – Bocconi University and Jean Monnet Fellow – European University Institute, International Economic Law and Monetary Measures: Limitations to States' Sovereignty and Dispute, p. 166)

In order to distinguish an exchange restriction from a trade measure, the Fund chose not to give relevance to the purposes or the effects of the measure and to adopt, instead, a technical criterion that focuses on the method followed to design said measure.

An interpretation that considered the economic effects and purposes of the measures (taking into account the fact that the measure was introduced for balance of payments reasons or to preserve foreign currency reserves) would have inevitably extended the Fund's jurisdiction to trade restrictions, blurring the boundaries between the IMF and the GATT. The result of such a choice would have been that a quantitative restriction on imports imposed for balance of payments reasons would have fallen within the competence of the Fund.

After lengthy discussions, in 1960 the IMF Executive Board adopted Decision No. 1034-(60/27).46 This Decision clarified that the distinctive feature of a restriction on payments and transfers for current international transactions is "whether it involves a direct governmental limitation on the availability or use of exchange as such\*.47 This is a limitation imposed directly on the use of currency in itself, for all purposes.

#### **Assess whether the means themselves are a limit---allowing actions that effect a reduction ruins precision**

Randall 7 (Judge – Court of Appeals of the State of Minnesota, “Dee Marie Duckwall, Petitioner, Respondent, vs. Adam Andrew Duckwall, Appellant”, 3-13, <http://law.justia.com/cases/minnesota/court-of-appeals/2007/opa0606> 95-0313.html#\_ftnref2)

[2] When referring to parenting time, the term "restriction[,]" is a term of art that is not the equivalent of "reduction" of parenting time. "A modification of visitation that results in a reduction of total visitation time, is not necessarily a restriction' of visitation.' Danielson v. Danielson, 393 N.W.2d 405, 407 (Minn. App. 1986). When determining whether a reduction constitutes a restriction, the court should consider the reasons for the change as well as the amount of the reduction." Anderson v. Archer, 510 N.W.2d 1, 4 (Minn. App. 1993).

#### Economic consequences do not “restrict”

Mosk 93 (J., Judge – Supreme Court of California, “Howard v. Babcock”, 25 Cal. Rptr. 2d 80, \*\*\*; 1993 Cal. LEXIS 6006, 12-6, Lexis)

(4) We are not persuaded that this rule was intended to or should prohibit the type of agreement that is at issue here. HN10 An agreement that assesses a reasonable cost against a partner who chooses to compete with his or her former partners does not restrict the practice of law. Rather, it attaches an economic consequence to a departing partner's unrestricted choice to pursue a particular kind of practice.

#### Raising costs isn’t a direct restriction, even if it has limiting effects

WTO 4 (World Trade Organization – Report of the Dispute Resolution Panel, “Dominican Republic – Measures Affecting The Importation and Internal Sale of Cigarettes”, 11-26, http://www.smoke-free.ca/trade-and-tobacco/dominicanrepublic/dr-cigarettes(panel)(full).pdf)

4.250 The foreign exchange fee is not justified under Article XV:9 of the GATT. The International¶ Monetary Fund ("IMF") has its own "guiding principle" in determining what constitutes a "[foreign]¶ exchange restriction". As cited by the Dominican Republic, "[t]he guiding principle in ascertaining¶ WT/DS302/R¶ Page 52¶ whether a measure is a restriction on payments and transfers for current transactions under¶ Article VIII, Section 2, is whether it involves a direct governmental limitation on the availability or¶ use of exchange as such".¶ 4.251 Since there does not exist in the WTO "a formal decision on how to distinguish between trade¶ and exchange controls … the [WTO Members] have thus in practice used the same definition as the¶ IMF even though they have not formally taken a decision to that effect". Thus, applying the IMF's¶ guiding principle, Honduras submits that the foreign exchange fee is not a "[foreign] exchange¶ restriction" because it is not a "direct… limitation on the availability or use of exchange as such". "As¶ such" in relation to "limitation on the availability or use" means that the limitation must be on access¶ to or the use of (foreign) exchange, as such, or per se. While the foreign exchange fee increases the costs of imports (which renders it a "trade restriction"), the availability of foreign exchange to pay for¶ those imports remains unrestricted.

#### Only direct prohibitions are “restrictions”

Sinha 6

<http://www.indiankanoon.org/doc/437310/>

Supreme Court of India Union Of India & Ors vs M/S. Asian Food Industries on 7 November, 2006 Author: S.B. Sinha Bench: S Sinha, Mark, E Katju CASE NO.: Writ Petition (civil) 4695 of 2006 PETITIONER: Union of India & Ors. RESPONDENT: M/s. Asian Food Industries DATE OF JUDGMENT: 07/11/2006 BENCH: S.B. Sinha & Markandey Katju JUDGMENT: J U D G M E N T [Arising out of S.L.P. (Civil) No. 17008 of 2006] WITH CIVIL APPEAL NO. 4696 OF 2006 [Arising out of S.L.P. (Civil) No. 17558 of 2006] S.B. SINHA, J :

We may, however, notice that this Court in State of U.P. and Others v. M/s. Hindustan Aluminium Corpn. and others [AIR 1979 SC 1459] stated the law thus:

"It appears that a distinction between regulation and restriction or prohibition has always been drawn, ever since Municipal Corporation of the City of Toronto v. Virgo. Regulation promotes the freedom or the facility which is required to be regulated in the interest of all concerned, whereas prohibition obstructs or shuts off, or denies it to those to whom it is applied. The Oxford English Dictionary does not define regulate to include prohibition so that if it had been the intention to prohibit the supply, distribution, consumption or use of energy, the legislature would not have contented itself with the use of the word regulating without using the word prohibiting or some such word, to bring out that effect."

#### Conditions aren’t restrictions---this distinction matters

Pashman 63 Morris is a justice on the New Jersey Supreme Court. “ISIDORE FELDMAN, PLAINTIFF AND THIRD-PARTY PLAINTIFF, v. URBAN COMMERCIAL, INC., AND OTHERS, DEFENDANT,” 78 N.J. Super. 520; 189 A.2d 467; 1963 N.J. Super. Lexis

HN3A title insurance policy "is subject to the same rules of construction as are other insurance policies." Sandler v. N.J. Realty Title Ins. Co., supra, at [\*\*\*11] p. 479. It is within these rules of construction that this policy must be construed.¶ Defendant contends that plaintiff's loss was occasioned by restrictions excepted from coverage in Schedule B of the title policy. The question is whether the provision in the deed to Developers that redevelopment had to be completed [\*528] within 32 months is a "restriction." Judge HN4 Kilkenny held that this provision was a "condition" and "more than a mere covenant." 64 N.J. Super., at p. 378. The word "restriction" as used in the title policy cannot be said to be synonymous with a "condition." A "restriction" generally refers to "a limitation of the manner in which one may use his own lands, and may or may not involve a grant." Kutschinski v. Thompson, 101 N.J. Eq. 649, 656 (Ch. 1927). See also Bertrand v. Jones, 58 N.J. Super. 273 (App. Div. 1959), certification denied 31 N.J. 553 (1960); Freedman v. Lieberman, 2 N.J. Super. 537 (Ch. Div. 1949); Riverton Country Club v. Thomas, 141 N.J. Eq. 435 (Ch. 1948), affirmed per curiam, 1 N.J. 508 (1948). It would not be inappropriate to say that the word "restrictions," as used [\*\*\*12] by defendant insurers, is ambiguous. The rules of construction heretofore announced must guide us in an interpretation of this policy. I find that the word "restrictions" in Schedule B of defendant's title policy does not encompass the provision in the deed to Developers which refers to the completion [\*\*472] of redevelopment work within 32 months because (1) the word is used ambiguously and must be strictly construed against defendant insurer, and (2) the provision does not refer to the use to which the land may be put. As the court stated in Riverton Country Club v. Thomas, supra, at p. 440, "HN5equity will not aid one man to restrict another in the uses to which he may put his land unless the right to such aid is clear, and that restrictive provisions in a deed are to be construed most strictly against the person or persons seeking to enforce them." (Emphasis added).

#### “Regulation” is not “restriction”

Mohammed 7 Kerala High Court Sri Chithira Aero And Adventure ... vs The Director General Of Civil ... on 24 January, 1997 Equivalent citations: AIR 1997 Ker 121 Author: P Mohammed Bench: P Mohammed

Microlight aircrafts or hang gliders shall not be flown over an assembly of persons or over congested areas or restricted areas including cantonment areas, defence installations etc. unless prior permission in writing is obtained from appropriate authorities. These provisions do not create any restrictions. There is no total prohibition of operation of microlight aircraft or hang gliders. The distinction between 'regulation' and 'restriction' must be clearly perceived. The 'regulation' is a process which aids main function within the legal precinct whereas 'restriction' is a process which prevents the function without legal sanction. Regulation is allowable but restriction is objectionable. What is contained in the impugned clauses is, only regulations and not restrictions, complete or partial. They are issued with authority conferred on the first respondent, under Rule 133A of the Aircraft Rules consistent with the provisions contained in the Aircraft Act 1934 relating to the operation, use etc. of aircrafts flying in India.

#### “Restriction” requires binding enforcement---policies that have discouraging effects on surveillance but don’t legally limit it aren’t topical

Barnett 3 (Stephen R., Boalt Professor of Law Emeritus – University of California, Berkeley, “No-Citation Rules Under Siege: A Battlefield Report and Analysis”, The Journal of Appellate Practice and Process, Fall, 5 J. App. Prac. & Process 473, Lexis)

C. "Restrictions" on Citation: Introducing Draft B

Despite this assurance, under the present drafting it is not clear that the proposed Rule 32.1 does preserve circuit choice on the question of citation weight. When the proposed Rule says, "No prohibition or restriction may be imposed upon the citation of [unpublished] judicial opinions," what does "restriction" [\*491] mean? If a circuit's rule provides - as several do 122 - that unpublished opinions may be cited only for their "persuasive" value, is that not a "restriction" on their citation? One might think so. And if so, it would follow that circuit rules limiting citation to persuasive value are forbidden by Rule 32.1, because no such limit is imposed on the citation of published opinions. 123

Two possible remedies come to mind. One is legislative history, or drafter's gloss. The Committee Note might declare the committee's view that the Rule deals only with citability and "says nothing whatsoever about the effect that a court must give" to the cited opinions. 124 If we may assume that the judges and lawyers operating in the federal appellate courts have no aversion to legislative history, 125 this approach might produce the committee's desired interpretation of its Rule.

The other approach would proceed on the basis that if you want to permit citation, you might just say that citation is permitted. 126 Draft B thus would simply provide:

Any opinion, order, judgment, or other disposition by a federal court may be cited to or by any court.

This language would make quite clear the committee's view that the Rule deals only with permitting citation and says nothing about the weight to be given citations. Draft B also would take the lead out of the drafting. You don't have to be Bryan Garner to object to the present draft's double negative ("no prohibition)"; its vast passive ("may be imposed"); its [\*492] awkward laundry list of unpublished dispositions; or its backhanded approach of making opinions citable by banning restrictions on citation.

Before concluding, however, that the elegant Draft B should replace the committee's cumbersome Draft A, it is necessary to consider how each draft would handle a major problem that will arise.

D. Discouraging Words

This is the problem of discouraging words. Although nine of the thirteen circuits now allow citation of their unpublished opinions, all nine discourage the practice; they all have language in their rules stating that such citation is "disfavored," that unpublished opinions should not be cited unless no published opinion would serve as well, that the court "sees no precedential value" in unpublished opinions, and so forth. 127 The question is whether such discouraging words are a forbidden "restriction" on citation under proposed Rule 32.1.

The Advisory Committee addresses this question with the following Delphic pronouncement:

Unlike many of the local rules of the courts of appeals, Rule 32.1(a) does not provide that citing "unpublished" opinions is "disfavored" or limited to particular circumstances (such as when no "published" opinion adequately addresses an issue). Again, it is difficult to understand why "unpublished" opinions should be subject to restrictions that do not apply to other sources. 128

The first sentence of this passage does not say that Rule 32.1 would overrule those local rules - only that it is "unlike" them. The second sentence, however, characterizes the discouraging words as "restrictions," so in the committee's apparent view, Rule 32.1 would overrule them.

Four questions follow: (1) Are discouraging words "restrictions" on citation under Rule 32.1? (2) What difference, if any, does it make? (3) What is the risk of judicial resistance to [\*493] no-citation rules, through discouraging words or other means? and (4) Should discouraging words be forbidden?

1. Are Discouraging Words "Restrictions" under Rule 32.1?

The committee's statement notwithstanding, it is not clear that discouraging words have to be considered "restrictions" on citation under the proposed Rule 32.1. These words may be wholly admonitory - and unenforceable. The Fourth Circuit's rule, for example, states that citing unpublished opinions is "disfavored," but that it may be done "if counsel believes, nevertheless, that [an unpublished opinion] has precedential value in relation to a material issue in a case and that there is no published opinion that would serve as well." 129 On the question of what counsel "believes," surely counsel should be taken at her word; counsel's asserted belief that an unpublished opinion has precedential or persuasive value should not be considered a falsifiable fact. Hence no sanction should be available for violating the Fourth Circuit's rule, and the rule's discouraging language in turn would not be a "prohibition or restriction" that was barred by Rule 32.1 as presently drafted.

In the rules of some other circuits, however, the language disfavoring citation of unpublished opinions is unmoored from anyone's "belief" and arguably does impose an objective "prohibition or restriction" determinable by a court. 130 A court might find, for example, that the required "persuasive value with respect to a material issue that has not been addressed in a published opinion" 131 was not present, and hence that the citation was not permitted by the circuit rule.

With what result? It would follow, paradoxically, that the opinion could be cited - because the circuit rule would be struck down under Rule 32.1 as a forbidden "restriction" on citation.

The committee's double-negative drafting thus creates a Hall of Mirrors in which citation of an unpublished opinion [\*494] would be allowed either way. If the local rule's discouraging language is merely hortatory, it is not a "restriction" forbidden by Rule 32.1; but that doesn't matter, because such a rule does not bar the citation in the first place. If, on the other hand, the local rule's language has bite and is a "restriction," then Rule 32.1 strikes it down, and again the citation is permitted.

2. What Difference Does It Make Whether Discouraging Words Are "Restrictions"?

There is one live question, however, that would turn on whether a local rule's discouraging language constituted a "restriction" on citation. If the language was a restriction, it would be condemned by Rule 32.1 132 and so presumably would have to be removed from the local circuit rule. Each circuit's rule thus would have to be parsed to determine whether its discouraging words were purely hortatory or legally enforceable; and each circuit thus would have to decide - subject to review by the Judicial Conference? - which of its discouraging words it could keep.

#### “Restrictions” mean regulation

**Words and Phrases 7** (37A W&P, p. 406)

N.H. 1938. As used in statute giving towns power to “regulate and restrict” buildings by zoning regulations, “regulation” is synonymous with “restrict” and “restrictions” are embraced in “regulations.” Pub.Laws 1926, c. 42, 48—53.—Stone v. Cray, 200 A. 517, 89 N.H. 483.—Zoning 9.

#### That excludes non-binding guidance

Pfister 10 (Kara, DOI, Office of the Solicitor, Twin Cities, “Policy Making 101”, 4-29, http://www.bie.edu/cs/groups/xbie/documents/text/idc-008058.pdf)

In general, there are two types¶ of agency policy that impact members of the public:

Regulations and Guidance.

◦Regulations are legally binding.

◦ Guidance is non-binding.

#### Recommendations aren’t “restrictions”

Chasanow 11 (Deborah K., United States District Judge, “Young v. United Parcel Service, Inc.”, 2-14, 2011 U.S. Dist. LEXIS 14266, Lexis)

Young had another checkup appointment on October 11, 2006 with nurse midwife Cynthia Shawl. (Young Dep., at 156). Following an "encouraging appointment" (Young Dep., at 157), Shawl released Young "without limitations" (ECF No. 76-12 ¶ 2). Nonetheless, Shawl wrote a note stating: "Due to her pregnancy it is recommended that she not lift more than 20 pounds." (ECF Nos. 76-12 ¶ 3; 60-13, at 1). Shawl did not normally [\*14] write such notes, but "wrote this note only because Ms. Young told me she needed a letter for work stating her restrictions." (ECF No. 76-12 ¶ 4). Her letter did not include the word "restriction" because she felt she "was making only a recommendation." (ECF No. 76-12 ¶ 4).

#### “Restriction” must be created by authorities with statutory powers

Rees 10 (Neil, Chair – Victorian Law Reform Commission and Professor of Law – University of Newcastle, “Chapter 6 – Purpose and Nature of Covenants”, Easements and Covenants, 12-17, http://www.lawreform.vic.gov.au/sites/default/files/EandC\_Final\_Report\_ch\_6.pdf)

31. A restriction created by section 24(2)(d) of the Subdivision Act 1988 (Vic) should be defined as a restriction that is required by a responsible authority or a referral authority in the exercise of its statutory powers.

#### Only governmental “restrictions” are topical --- privately-created limitations are restrictive covenants

Rees 10 (Neil, Chair – Victorian Law Reform Commission and Professor of Law – University of Newcastle, “Chapter 6 – Purpose and Nature of Covenants”, Easements and Covenants, 12-17, http://www.lawreform.vic.gov.au/sites/default/files/EandC\_Final\_Report\_ch\_6.pdf)

Restrictions

6.32 The term ‘restriction’ is sometimes used in a functional sense, to mean the effect¶ of any legal instrument (such as a transfer, plan or statutory agreement) that¶ imposes a specific restriction on the use of a lot. Sometimes it is used to mean the¶ instrument itself. For the sake of clarity, we use the term in its functional sense.30

6.33 ‘Restriction’ has no fixed meaning in legislation. Its meaning depends on the context. The Subdivision Act contains a definition but it is inadequate and the¶ related statutes do not assist:

• The Subdivision Act defines ‘restriction’ as ‘a restrictive covenant or¶ restriction which can be registered or recorded in the register under the¶ Transfer of Land Act’.31

• The Transfer of Land Act provides for the recording of ‘restrictive covenants’¶ only.32 Plans that may include restrictions can be registered, but the¶ restrictions specified in the plans are not recorded.33

• Adding to the confusion, the Planning and Environment Act defines¶ ‘registered restrictive covenant’ to mean ‘a restriction within the meaning¶ of the Subdivision Act’.34

6.34 This ‘circle of definitions’ was the subject of comment by VCAT in Focused Vision¶ Pty Ltd v Nillumbik SC :35

[I]t is confusing to employ the defined word itself in a definition. The result¶ is that there is no effective definition and no fixed meaning in law of the¶ concept of restriction.36

VCAT added that ‘the definitions make clear that the primary, if not exclusive,¶ meaning of a “restriction” is a “restrictive covenant”’.37

6.35 In Gray v Colac Otway SC, VCAT said ‘[a] restriction is a limitation placed on the¶ use or enjoyment of land’.38 VCAT noted that the references to both a ‘restrictive¶ covenant’ and a ‘restriction’ in the Subdivision Act’s definition of ‘restriction’¶ indicate a distinction between a restrictive covenant created privately between parties and a restriction created under a statutory power.39

#### The division is clear --- private parties have no statutory power and can only create covenants that have the effect of “restricting” --- “restriction” refers to a specific legal category that requires authority and the exercise of specific powers

Rees 10 (Neil, Chair – Victorian Law Reform Commission and Professor of Law – University of Newcastle, “Chapter 6 – Purpose and Nature of Covenants”, Easements and Covenants, 12-17, http://www.lawreform.vic.gov.au/sites/default/files/EandC\_Final\_Report\_ch\_6.pdf)

6.47 We consider that developers should not be able to use section 24(2)(d) of the Subdivision Act to create restrictions that are not required by the public planning system. Private parties should not be able to create restrictions by exercising a statutory power provided for a regulatory purpose. If restrictions are to be created by developers independently of the requirements of regulatory authorities, they should be created as restrictive covenants in accordance with the rules of property law.

6.48 To create a restrictive covenant, equity requires the benefited owner to enter¶ a valid agreement with the burdened owner. In addition, section 88(1) of the Transfer of Land Act requires the consent of all registered owners and¶ mortgagees of the burdened land for the covenant to be recorded. We see no¶ policy justification for dispensing with the requirement that a restrictive covenant¶ be created by an agreement. A developer should not be able to bypass the¶ market and create restrictions unilaterally with the aid of a statute.

6.49 There is a need to change the procedures in the Subdivision Act to prevent¶ the inclusion in registered plans of restrictions other than those required by¶ responsible authorities or referral authorities. Currently, plans are drafted by or¶ on behalf of developers, and councils must certify the plans if they satisfy the¶ requirements in section 6(1) of the Subdivision Act. There is a need to empower¶ councils to refuse certification if the plan includes restrictions other than those¶ required by the responsible authority or a referral authority.

6.50 Any restrictions required by authorities should be consistent with the planning scheme¶ and policies. In Northern Land Investments Pty Ltd v Greater Bendigo City Council,53¶ VCAT deleted a condition in a permit for subdivision issued by a council that required¶ the plan to include a restriction on further subdivision and a restriction on the¶ construction of more than one dwelling per lot. The restrictions were inconsistent¶ with planning policies and with the purpose of the Residential 1 zone, which included promoting a range of densities and housing types. VCAT said that the council should not attempt, by imposing a restriction, to rule out exercising its discretion to grant¶ permission for future proposals that might otherwise be acceptable.54

Recommendations

32. Section 6(1) of the Subdivision Act 1988 (Vic) should be amended to¶ provide that, if a plan creates a restriction, the restriction must be one that is required by a responsible authority or referral authority in the exercise of its statutory powers.

#### “Statutory power” means governmental limitation

Feigenbaum 12 (Eric, Contributing Writer – eHow, “What are Statutory Powers?”, eHow, http://www.ehow.com/info\_7934027\_statutory-powers.html)

Statutes

Statutes are laws. In the United States, law are created and passed by the legislatures, including the federal legislature --- Congress --- and state legislatures and assemblies. Bills become laws when an executive --- the president or a governor --- signs them. If an executive refuses to sign a bill into law, then the legislature can still make the law valid by super-majority vote known as a veto-override. In the case of the federal government, this requires three quarters of both the House of Representatives and Senate.

Powers

Statutes can do many things, including creating budgets, criminalizing behaviors and developing new forms of governmental agencies. When a statute creates a new agency or governmental position, it usually gives legal authority. For example, when Congress created the Social Security Administration, it gave the director the authority to run the agency in accordance with its mission and within guidelines prescribed by Congress. Similarly, Congress and the president created the United States Citizenship and Immigration Services (USCIS) and gave it the authority to control and oversee immigration and visa issuance.

#### Don’t trust contextual evidence. “Restrictions” are commonly confused because of poor legal understanding.

Rees 10 (Neil, Chair – Victorian Law Reform Commission and Professor of Law – University of Newcastle, “Chapter 6 – Purpose and Nature of Covenants”, Easements and Covenants, 12-17, http://www.lawreform.vic.gov.au/sites/default/files/EandC\_Final\_Report\_ch\_6.pdf)

WHY A ‘RESTRICTION’ ON A PLAN OF SUBDIVISION IS NOT A RESTRICTIVE COVENANT

6.40 It is commonly assumed that a restriction created by registration of a plan is a¶ restrictive covenant and that all lot owners in the subdivision have the benefit of¶ it. The idea is likely to have been fostered by the inclusion of ‘restrictive covenant’¶ in the definition of ‘restriction’ in the Subdivision Act. It also finds some support¶ from administrative provisions recently inserted into the Transfer of Land Act,¶ which refer to a ‘restrictive covenant created by plan’.45

6.41 We disagree with this assumption. A restriction created in a plan is not one that¶ equity would recognise or enforce, as the restriction is not created for the benefit of¶ specified land. Equity has strict requirements about identifying the benefited land.46¶ 6.42 In order for a restriction in a plan to operate as a restrictive covenant, the¶ legislation would need to expressly give it that effect and confer the benefit of the¶ covenant on other land.47 Section 24(2)(d) of the Subdivision Act does not deem a¶ restriction in a plan to be enforceable as if it were a restrictive covenant or provide¶ for the benefit to be attached to other land. Nor does anything in the Transfer¶ of Land Act give a restriction created under the Subdivision Act the effect of a¶ restrictive covenant.

6.43 If, as we maintain, statutory restrictions are not restrictive covenants, they¶ are enforceable under administrative law rather than as property rights.48¶ Administrative law is the branch of public law that regulates the exercise of public¶ powers and duties. Statutory duties and restrictions can be enforced by obtaining¶ an injunction or declaration by a court. The Attorney-General has the right to¶ enforce the public interest in the observance of a statutory duty or a restriction,¶ and can apply to a court for an injunction or declaration or authorise somebody¶ else to do it.49

6.44 A private person otherwise has ‘standing’ to apply for an injunction or declaration¶ where ‘the interference with the public right is such that some private right of his¶ [or hers] is at the same time interfered with’,50 or where he or she has ‘a special¶ interest in the subject matter’.51 Although a neighbour may have standing under¶ administrative law to enforce a statutory restriction on the use of other land, there¶ are no ‘benefited owners’ of a statutory restriction in the property law sense.¶ 6.45 We believe the term ‘restrictive covenant’ is a misnomer for a ‘restriction’¶ created upon registration of a plan by section 24(2)(d) of the Subdivision Act. A ‘restriction’ created upon registration of a plan should be confined to a restriction required by a responsible authority or referral authority in the exercise of their statutory powers.

## T – SURVEILLANCE – CRIME

### 1NC

#### A. Interpretation — “Surveillance” is watching related to crime.

Cambridge 15 – Cambridge Advanced Learners Dictionary & Thesaurus, “surveillance”, http://dictionary.cambridge.org/dictionary/british/surveillance

surveillance

noun [U] UK /səˈveɪ.ləns/ US /sɚ-/

› the careful watching of a person or place, especially by the police or army, because of a crime that has happened or is expected:

The police have kept the nightclub under surveillance because of suspected illegal drug activity.

More banks are now installing surveillance cameras.

#### B. Violation – the aff curtails surveillance of << insert aff here >>, not crime

#### C. Vote Negative

#### Limits — only limiting to crime based cases provides ANY limit on this topic. It allows core affs like NSA, DEA and FBI surveillance, while limiting out scores of cases like FDA, Department of Agriculture and the Arctic Research Commission. Treated loosely, EVERY federal agency has dozens of so-called “surveillance” operations.

#### Ground — limiting to crime affs gives the neg core ground like the Terrorism, War on Drugs and Crime disadvantages. If the aff can defend any reduction in any federal monitoring, there’s no stable negative ground.

### 2NC OV

#### Extend our interpretation – surveillance is watching related to crime. It includes the careful watching of a person who is actually suspected of committing a crime, instead of any random citizen – that’s Cambridge.

#### Extend our violation – the aff curtails the surveillance of <<INSERT AFF HERE>> instead of crime.

#### T is a voter –

#### Limits – limiting the topic to debates about crime is good because it allows for core affs like NSA surveillance, while limiting out far-fetched affs like agriculture surveillance. Limits are key to clash and competitive debates.

#### Ground – the aff takes away key neg ground like the Terror DA and crime DA’s. allowing the aff to defend and type of surveillance completely ruins and hope of stable neg ground.

### 2NC Cards

#### “Surveillance” must be individuated---general overlook isn’t topical

Zoufal 8 – Donald R. Zoufal, Retired Colonel in the US Army Reserve and Master of Arts in Security Studies from the Naval Postgraduate School ““SOMEONE TO WATCH OVER ME?” PRIVACY AND GOVERNANCE STRATEGIES FOR CCTV AND EMERGING SURVEILLANCE TECHNOLOGIES”, Naval Postgraduate School Thesis, March, http://calhoun.nps.edu/bitstream/handle/10945/4167/08Mar\_Zoufal.pdf?sequence=1

A more comprehensive definition of surveillance is offered in A Report on the Surveillance Society, the work of the Surveillance Studies Network, for the United Kingdom’s Information Commissioner.89 That work provides this definition of surveillance:

Rather than starting with what intelligence services or police may define as surveillance it is best to begin with a set of activities that have a similar characteristic and work out from there. Where we find purposeful, routine, systematic and focused attention paid to personal details, for the sake of control, entitlement, management, influence or protection, we are looking at surveillance.90

This definition adds important components to understanding surveillance. Perhaps most importantly, it links the concept to identifying individuals. It is not just a generalized overlook of the crowd, although the technology may be used to gather the big picture view. Ultimately, observations must be linked to the individual to be surveillance. Moreover, this definition recognizes that the results of surveillance activity can be (and usually are) manipulated in a variety of ways all linked to the individual.

The Report’s definition also requires the observation to be systematic in nature. Unlike the historic concept of surveillance described by Lyons, with people watching over each other, this definition presupposes a more organized and comprehensive examination. The only real controversial component of this definition is the requirement that the surveillance be routine. While such a definition may characterize surveillance in the United Kingdom, it is unclear why occasional surveillance could not occur. Despite this quibble, the Report’s definition provides a good starting point for understanding surveillance. It links together the concepts of observation and the compiling and processing of the data generated by observation.

**There are so many federal agencies that the government can’t even count them — each has monitoring responsibilities.**

**Peterson 13** — Josh Peterson, Daily Caller Staff Writer, 2013 ("The government has no idea how many agencies it has," Daily Caller, May 3rd, Available Online at http://dailycaller.com/2013/05/03/the-government-has-no-idea-how-many-agencies-it-has/, Accessed 7-6-2015)

**The U.S. government does not know how many agencies and programs it is asking taxpayers to fund**, The Daily Caller has learned.

Even though the editors of Wikipedia have been able to assemble a list of federal agencies, **no complete official government list of federal agencies and programs currently exists**.

The Government Performance and Results Modernization Act of 2010 (GPRAMA) — which became law on January 4, 2011 — established required quarterly performance assessments of government programs.

That bill also mandated that **the Office of Management and Budget** (OMB) create a website that would publish quarterly performance reports by the heads of each agency.

Currently that website — Performance.gov, which was launched in 2011 — **contains only a partial list of government programs**, and important agencies such as the FCC aren’t on the list.

OMB is an office within the executive that is responsible for budget development and agency oversight. A spokesperson for the OMB did not respond to The Daily Caller’s request for comment.

**A spokesperson** for the Congressional Budget Office also **confirmed** to The Daily Caller **that the CBO did not have a list of agencies and programs**, and instead referred The Daily Caller to the Government Accountability Office (GAO).

A GAO spokesman, in turn, referred The Daily Caller to OMB, stating that **no list of programs has existed in the past because of the lack of a consensus within the federal government about what constitutes a program**.

“OMB has not released the list of federal programs but has an effort underway to develop a count,” said another GAO official.

The CBO is a non-partisan legislative branch agency responsible for providing the “budget committees and Congress with objective, impartial information about budgetary and economic issues.”

#### Precision’s vital because surveillance debates shape policy

Fuchs 11 – Christian Fuchs, Chair in Media and Communication Studies Uppsala University, Department of Informatics and Media Studies. Sweden, “How Can Surveillance Be Defined?”, http://www.matrizes.usp.br/index.php/matrizes/article/viewFile/203/347

These randomly collected news clippings from newspapers give us an idea of how important the topic of surveillance has become for the media and for our lives. Economic and state surveillance seem to be two issues that affect the lives of all citizens worldwide. Economic organizations are entangled into both workplace/workforce surveillance and consumer surveillance in order to enable the capital accumulation process. State institutions (like the police, the military, secret services, social security and unemployment offices) are using surveillance for organizing and managing the population. All of this takes place in the context of the extension and intensification of surveillance (Ball and Webster, 2003; Lyon, 2003) in post-9/11 new imperialism that is afraid of terrorism and at the same time creates this phenomenon and in the context of neoliberal corporate regimes that subjugate ever larger spheres and parts of life to commodity logic (Harvey, 2003, p. 2005). If organizations are an important source and space of surveillance, then it is important to understand how surveillance can be defined.

Given the circumstance that there is much public talk about surveillance and surveillance society, it is an important task for academia to discuss and clarify the meaning of these terms because academic debates to a certain extent inform and influence public and political discourses. The task of this paper is to explore compare ways of defining surveillance. In order to give meaning to concepts that describe the realities of society, social theory is needed. Therefore social theory is employed in this paper for discussing ways of defining surveillance. “Living in ‘surveillance societies’ may throw up challenges of a fundamental – ontological – kind” (Lyon, 1994, p. 19). Social philosophy is a way of clarifying such ontological questions that concern the basic nature and reality of surveillance.

## T – SURVEILLANCE – MONITORING

### 1NC

#### “Domestic surveillance” is a form of intelligence gathering that acquires non-public information about U.S. persons. The plan is not topical because it curtails *information* gathering, not *intelligence* gathering.

Small 8 — Matthew L. Small, Presidential Fellow at the Center for the Study of the Presidency, Student at the United States Air Force Academy, now serves as an Operational Analyst at the United States Air Force, 2008 (“His Eyes are Watching You: Domestic Surveillance, Civil Liberties and Executive Power During Times of National Crisis,” Paper Published by the Center for the Study of the Presidency, Available Online at <http://cspc.nonprofitsoapbox.com/storage/documents/Fellows2008/Small.pdf>, Accessed 07-11-2015, p. 2-3)

Before one can make any sort of assessment of domestic surveillance policies, it is first necessary to narrow the scope of the term “domestic surveillance.” Domestic surveillance is a subset of intelligence gathering. Intelligence, as it is to be understood in this context, is “information that meets the stated or understood needs of policy makers and has been collected, processed and narrowed to meet those needs” (Lowenthal 2006, 2). In essence, domestic surveillance is a means to an end; the end being intelligence. The intelligence community best understands domestic surveillance as the acquisition of nonpublic information concerning United States persons (Executive Order 12333 (3.4) (i)). With this definition domestic surveillance remains an overly broad concept. This paper’s analysis, in terms of President Bush’s policies, focuses on electronic surveillance; specifically, wiretapping phone lines and obtaining caller information from phone companies. Section f of the USA Patriot Act of 2001 defines electronic surveillance as: [T]he acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes; Adhering to the above definition allows for a focused analysis of one part of President Bush’s domestic surveillance policy as its implementation relates to the executive’s ability to abridge certain civil liberties. However, since electronic surveillance did not become an issue of public concern until the 1920s, there would seem to be a problem with the proposed analysis. Considering an American citizen’s claim to a right to privacy, the proposed analysis is not limited to electronic surveillance alone but rather includes those actions that would seek, or at least appear, to abridge a civil liberty. The previously [end page 2] presented definition of electronic surveillance itself implies an infringement into a person’s expected right, in this case the right is to privacy. Acknowledging the intrusion inherent in the definition, the question of how far the president can push this intrusion becomes even more poignant. As such, President Bush’s policies are not the sole subject of scrutiny, but rather his supposed power to abridge civil liberties in the interest of national security. The first part of the analysis, then, turns to a time where the national security of the United States was most at jeopardy, during its fight for independence.

#### They violate – they defend curtailing information gathering, not intelligence gathering.

#### Vote neg:

#### Limits: anything else explodes the topic making clash impossible – that hurts advocacy skills and case specific research

#### Ground: they can spike out of core generics like politics, terror, FISC, etc. those are all key to neg ground

### 2NC OV

#### Extend our interpretation – domestic surveillance includes intelligence gathering, not information gathering. These two terms are distinct because while information is broad and can be used in many ways, intelligence has specific uses for policy makers – that’s Small.

#### Extend our violation – the aff curtails information gathering, not intelligence gathering. <<INSERT SPECIFIC AFF VIOLATION HERE>>

#### T is a voter -

#### Limits – information gathering explodes aff limits and justifies random affs like Common Core testing and Disease monitoring. This precludes educational debates about the core issues of the topic.

#### Ground – information gathering allows the aff to spike out of core disads like the Terror disad, robbing basic neg ground and creating a skewed debate.

### 2NC Cards

#### The plan is not intelligence gathering because its purpose is not identifying and disrupting a future security threat. This interpretation is crucial to effective policy analysis.

Jackson 9 — Brian A. Jackson, Senior Physical Scientist and Director of the Safety and Justice Program at the RAND Corporation, holds a Ph.D. in Bioinorganic Chemistry from the California Institute of Technology and an M.A. in Science, Technology, and Public Policy from George Washington University, 2009 (“Introduction,” *Considering the Creation of a Domestic Intelligence Agency in the United States: Lessons from the Experiences of Australia, Canada, France, Germany, and the United Kingdom*, Report Prepared for the Department of Homeland Security and Published by the RAND Corporation, ISBN 9780833046178, Available Online at http://www.rand.org/content/dam/rand/pubs/monographs/2009/RAND\_MG805.epub , Accessed 07-11-2015, p. 34-38)

Defining Domestic Intelligence

What do we mean by the term domestic intelligence? The term intelligence sparks a range of associations, many of which stem from intelligence’s connection with the secret activities of governments seeking to advance their interests in international affairs. In recent years, the term intelligence has been integrated into domestic law enforcement and public safety agencies as part of the phrase intelligence-led policing. Definitions of intelligence-led policing vary, but common elements include the use of information-gathering capabilities and the analysis and application of resulting information in crime prevention and response activities in addition to their more traditional use in the prosecution of past [end page 34] criminal acts (see, e.g., Weisburd and Braga, 2006; Milligan, Clemente, and Schader, 2006; Ratcliffe, 2002; Peterson, 2005). Use of the term intelligence has also spread beyond government organizations into private-sector organizations and elsewhere.1 To some, the term is most closely associated with the collection of information; others see intelligence as a more general category that includes a much broader range of activities. Such variety in the use and understanding of these terms complicates policy debate, and the lack of standard definitions for intelligence activities focused on homeland security and domestic counterterrorism (CT) efforts has been cited as a significant impediment to designing and assessing policy in this area (Masse, 2003, 2006).

To guide the work reported in this volume, we define domestic intelligence as efforts by government organizations to gather, assess, and act on information about individuals or organizations in the United States or U.S. persons elsewhere2 that are not related to the investigation of a known past criminal act or specific planned criminal activity.3

It is often the case that an individual or organization that carries out a terrorist attack—or has specific plans to do so (e.g., the attacker has conspired [end page 35] to acquire weapons for a future attack)—has committed one or more specific crimes. In these cases, traditional law enforcement approaches for investigating and prosecuting these crimes apply. The major difference between intelligence approaches and those used during traditional law enforcement stems from the former’s emphasis on preventing future events—i.e., on acting when the individuals or organizations planning an attack may not yet have committed any prosecutable criminal offenses. Intelligence activities can be investigative in nature and may resemble law enforcement activities. However, they do not have to satisfy the same legal requirements that constrain the initiation of a law enforcement investigation. An example of such an intelligence activity is investigating a tip about the suspected terrorist behavior of an unknown group to determine whether the tip is credible and, if it is, acting to prevent the attack. However, given substantial concern about the ability of even a single individual working alone to plan and execute acts of terrorist violence, investigative follow-up may not be enough to address the threat of terrorism. As a result, another type of intelligence effort can be more explorative in character, seeking proactively to (1) identify individuals or groups that might be [end page 36] planning violent actions and (2) gather information that might indicate changes in the nature of the threat to the country more broadly (see, e.g., DeRosa, 2004). Such explorative activity inherently involves gathering a broader spectrum of data about a greater number of individuals and organizations who are unlikely to pose any threat of terrorist activity.

Our definition of domestic intelligence parallels those that appear in the academic literature that has examined U.S. policy in this area over the past several decades (see, e.g., Morgan, 1980). However, it is narrower than more-general definitions that seek to capture the full breadth of intelligence requirements associated with homeland security or homeland defense.4 Our focus on the collection and use of information about individuals and organizations means that we have focused on the tactical threat-identification and threat-disruption parts of homeland security intelligence. Thus, we do not consider activities such as analyses designed to identify societal vulnerabilities or map the threat to those identified vulnerabilities to guide broader homeland security policies.5 Others have noted that the boundary between intelligence and law enforcement activities has blurred over time, particularly [end page 37] in response to transnational threats such as drug trafficking and terrorism. This blurring of the boundary between the two complicates an examination focused largely on the CT mission.6

#### “Domestic surveillance” is focused on the prevention of future attacks, not the prosecution of ordinary crimes. This is from an authoritative Supreme Court decision.

Powell 72 — Lewis Franklin Powell, Jr., Associate Justice of the United States Supreme Court (succeeded by Anthony Kennedy), 1972 (United States Supreme Court Majority Decision in United States v. United States District Court, Number 70-153, June 19th, Available Online at <http://caselaw.findlaw.com/us-supreme-court/407/297.html>, Accessed 07-05-2015)

We emphasize, before concluding this opinion, the scope of our decision. As stated at the outset, this case involves only the domestic aspects of national security. We have not addressed, and express no opinion [407 U.S. 297, 322] as to, the issues which may be involved with respect to activities of foreign powers or their agents. 20 Nor does our decision rest on the language of 2511 (3) or any other section of Title III of the Omnibus Crime Control and Safe Streets Act of 1968. That Act does not attempt to define or delineate the powers of the President to meet domestic threats to the national security.

Moreover, we do not hold that the same type of standards and procedures prescribed by Title III are necessarily applicable to this case. We recognize that domestic security surveillance may involve different policy and practical considerations from the surveillance of "ordinary crime." The gathering of security intelligence is often long range and involves the interrelation of various sources and types of information. The exact targets of such surveillance may be more difficult to identify than in surveillance operations against many types of crime specified in Title III. Often, too, the emphasis of domestic intelligence gathering is on the prevention of unlawful activity or the enhancement of the Government's preparedness for some possible future crisis or emergency. Thus, the focus of domestic surveillance may be less precise than that directed against more conventional types of crime.

## T – DOMESTIC

### 1NC

#### A. “Domestic” surveillance is defined by the target---the subject of surveillance must be U.S. persons

Donohue 6 Laura K. Donohue is a Professor of Law at Georgetown Law, Director of Georgetown’s Center on National Security and the Law, and Director of the Center on Privacy and Technology. Professor Donohue writes on U.S. Constitutional Law, British legal history, and national security and counterterrorist law in the United States and United Kingdom. “ANGLO-AMERICAN PRIVACY AND SURVEILLANCE”, Journal of Criminal Law & Criminology, Spring, 96 J. Crim. L. & Criminology 1059, Lexis

5. The Foreign Intelligence Surveillance Act As the extent of the domestic surveillance operations emerged, Congress attempted to scale back the Executive's power while leaving some flexibility to address national security threats. n183 The legislature focused on the targets of surveillance, limiting a new law to foreign powers, and agents of foreign powers - which included groups "engaged in international terrorism or activities in preparation therefor." n184 Congress distinguished between U.S. and non-U.S. persons, creating tougher standards for the former. n185 [FOOTNOTE] n185. The former included citizens and resident aliens, as well incorporated entities and unincorporated associations with a substantial number of U.S. persons. Non-U.S. persons qualified as an "agent of a foreign power" by virtue of membership - e.g., if they were an officer or employee of a foreign power, or if they participated in an international terrorist organization. Id. 1801(i). U.S. persons had to engage knowingly in the collection of intelligence contrary to U.S. interests, the assumption of false identity for the benefit of a foreign power, and aiding or abetting others to the same. Id. 1801(b). [END FOOTNOTE] The Foreign Intelligence Surveillance Act ("FISA") considered any "acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication," as well as other means of surveillance, such as video, to fall under the new restrictions. n186 Central to the statute's understanding of surveillance was that, by definition, consent had not been given by the target. Otherwise, the individual would have a reasonable expectation of privacy and, under ordinary circumstances, the Fourth Amendment would require a warrant. n187

#### B. They curtail foreign, not domestic, surveillance

#### C. Voting issue:

#### Limits---the explode the topic to include all foreign spying and espionage. There are hundreds of military and specific country Affs, each with distinct lit bases and advantages---makes in-depth preparation impossible

#### Precision---our interpretation is based on FISA, the gold standard for defining surveillance

Chiarella 97 – Major Louis A Chiarella, Chief, Administrative Law Office of the Staff Judge Advocate Fort Carson, Colorado and Major Michael A. Newton Professor, International and Operational Law Department The Judge Advocate General’s School, United States Army Charlottesville, Virginia, ““So Judge, How Do I Get That FISA Warrant?”: The Policy and Procedure for Conducting Electronic Surveillance”, THE ARMY LAWYER, October, http://fas.org/irp/agency/doj/fisa/sojudge.pdf

What is the FISA? On 25 October 1978, President Carter signed the FISA into law. The explicit purpose of the FISA was to balance the protection of individual privacy with the needs of national security through the development of a regulatory framework for certain counterintelligence activities of the executive branch of the federal government.31 Many factors necessitated this express balancing act. First, the Supreme Court’s decision in Keith did not address the extent of the executive’s constitutional powers in the area of counterintelligence.32 Writing for the majority, Justice Powell explicitly stated that the opinion made no judgment on the scope of the President’s surveillance power with respect to the activities of foreign powers or their agents.33 Second, congressional hearings revealed that both the FBI and the Central Intelligence Agency (CIA) had operated outside the law, in the name of intelligence collection.34 The Church Committee35 realized that counterintelligence was essential to the preservation of American civil liberties, and it recognized the need to collect intelligence and to establish appropriate limits on intrusive investigative techniques.36 Through the efforts of key officials from the DOJ and the Church Committee,37 the FISA became “the gold standard of legality in the world of counterintelligence.” 38 The FISA is a complex statute, with an elaborate structure and flexible procedures. 39 It is not, however, a comprehensive statute for all intelligence activities. The FISA regulates counterintelligence investigations;40 it does not extend to domestic security investigations. The FISA also regulates specific counterintelligence collection techniques—primarily “electronic surveillance,”41 but physical searches as well. Other intelligence collection techniques have separate statutory and regulatory provisions.42 Additionally, the FISA has no extraterritorial applicability;43 therefore, it does not regulate the use of electronic surveillance outside of the United States. Because of the limited application under the FISA, there are other statutory and regulatory sources which control other counterintelligence activities. All electronic surveillance for counterintelligence purposes within the United States is subject to the requirements of the FISA. This does not mean, however, that prior judicial authorization is always required. The Attorney General may acquire foreign intelligence information for periods up to a year without a judicial order if the Attorney General certifies in writing under oath that: (A) the electronic surveillance is solely directed at . . . communications used exclusively between or among foreign powers44. . . [or] technical intelligence, other than the spoken communications of individuals, from property or premises under the open and exclusive control of a foreign power . . .; (B) there is no substantial likelihood that the surveillance will acquire the contents of any communication to which a United States person is a party; and (C) the proposed minimization procedures45 . . . meet [the statutory definition] of minimization procedures . . . . 46

### 2NC OV

#### Extend our interpretation – domestic is defined by the target, therefore USFG domestic surveillance means the watching of U.S. Persons – this means that foreign surveillance measures are not justified by the resolution – that’s Donohue.

#### Extend our violation – the aff curtails non-domestic surveillance - <<INSERT SPECIFIC AFF VIOLATION HERE>>

#### T is a voter –

#### Limits – including foreign spying measures absolutely explodes the topic for the aff while robbing the negative of core topic ground like the states counterplan and any domestic terror impacts.

#### Precision – you should prefer our interpretation because it comes directly from the FISA, which is commissioned by the government to deal with surveillance policy – it is the gold standard for defining surveillance and should be evaluated first. 7

### 2NC Cards

#### Domestic surveillance is info gathering on US persons

IT Law Wiki 15 IT Law Wiki 2015 http://itlaw.wikia.com/wiki/Domestic\_surveillance

Definition Edit

Domestic surveillance is the acquisition of nonpublic information concerning United States persons.

#### Domestic surveillance is intelligence gathering on US persons

Small 8 MATTHEW L. SMALL. United States Air Force Academy 2008 Center for the Study of the Presidency and Congress, Presidential Fellows Program paper "His Eyes are Watching You: Domestic Surveillance, Civil Liberties and Executive Power during Times of National Crisis" <http://cspc.nonprofitsoapbox.com/storage/documents/Fellows2008/Small.pdf>

Before one can make any sort of assessment of domestic surveillance policies, it is first necessary to narrow the scope of the term “domestic surveillance.” Domestic surveillance is a subset of intelligence gathering. Intelligence, as it is to be understood in this context, is “information that meets the stated or understood needs of policy makers and has been collected, processed and narrowed to meet those needs” (Lowenthal 2006, 2). In essence, domestic surveillance is a means to an end; the end being intelligence. The intelligence community best understands domestic surveillance as the acquisition of nonpublic information concerning United States persons (Executive Order 12333 (3.4) (i)). With this definition domestic surveillance remains an overly broad concept. This paper’s analysis, in terms of President Bush’s policies, focuses on electronic surveillance; specifically, wiretapping phone lines and obtaining caller information from phone companies. Section f of the USA Patriot Act of 2001 defines electronic surveillance as:

[T]he acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

#### US person defined

Jackson et al 9 Brian A. Jackson, Darcy Noricks, and Benjamin W. Goldsmith, RAND Corporation

The Challenge of Domestic Intelligence in a Free Society RAND 2009 BRIAN A. JACKSON, EDITOR

http://www.rand.org/content/dam/rand/pubs/monographs/2009/RAND\_MG804.pdf

3 Federal law and executive order define a U.S. person as “a citizen of the United States, an alien lawfully admitted for permanent residence, an unincorporated association with a substantial number of members who are citizens of the U.S. or are aliens lawfully admitted for permanent residence, or a corporation that is incorporated in the U.S.” (NSA, undated). Although this definition would therefore allow information to be gathered on U.S. persons located abroad, our objective was to examine the creation of a domestic intelligence organization that would focus on—and whose activities would center around—individuals and organizations located inside the United States . Though such an agency might receive information about U.S. persons that was collected abroad by other intelligence agencies, it would not collect that information itself.

#### Domestic surveillance is whatever is needed to complete dossiers on US citizens

Jones 8 Chris Jones October 7, 2008 Prison Planet Forum FBI creates panic to justify their lawless Police State Fascism http://forum.prisonplanet.com/index.php?topic=63282.0

Domestic surveillance includes every aspect necessary to complete dossiers on American citizens to include phone tapping, internet, credit, finances, property,sexual preference and the company kept.

Domestic surveillance is surveillance within national borders

Avilez et al 14 Marie Avilez et al, Carnegie Mellon University December 10, 2014 Ethics, History, and Public Policy Senior Capstone Project Security and Social Dimensions of City Surveillance Policy

<http://www.cmu.edu/hss/ehpp/documents/2014-City-Surveillance-Policy.pdf>

Domestic surveillance – collection of information about the activities of private individuals/organizations by a government entity within national borders; this can be carried out by federal, state and/or local officials

Domestic refers to surveillance done in the US

Truehart 2 Carrie Truehart, J.D., Boston University School of Law, 2002. Boston University Law Review April, 2002 82 B.U.L. Rev. 555 CASE COMMENT: UNITED STATES v. BIN LADEN AND THE FOREIGN INTELLIGENCE EXCEPTION TO THE WARRANT REQUIREMENT FOR SEARCHES OF "UNITED STATES PERSONS" ABROAD lexis

n18. 50 U.S.C. 1801-1829 (1994 & Supp. V 1999). This Case Comment uses the word "domestic" to refer to searches and investigations conducted within the United States. The term "domestic foreign intelligence investigations" at first glance seems like an oxymoron, but it is not. As used in this Case Comment, the term refers to investigations conducted within the United States to obtain foreign intelligence information - that is, information pertaining to foreign nationals and their respective governments or international groups - as opposed to investigations conducted within the United States to obtain domestic intelligence information - that is, information pertaining to United States persons only. Notice that a United States person residing in the United States, however, could become the target of a foreign intelligence investigation if the Government were investigating that individual's relationship with a foreign government or international terrorist group. In other words, the difference between whether an investigation is a "domestic foreign intelligence investigation" or a "domestic intelligence investigation" turns on whether the investigation focuses in part on a foreign government or international group.

#### Domestic surveillance is surveillance in the US

Jordan 6 DAVID ALAN JORDAN, LL.M., New York University School of Law (2006); J.D., cum laude, Washington and Lee University School of Law (2003). Member of the District of Columbia Bar.

Boston College Law Review May, 2006 47 B.C. L. Rev 505 ARTICLE: DECRYPTING THE FOURTH AMENDMENT: WARRANTLESS NSA SURVEILLANCE AND THE ENHANCED EXPECTATION OF PRIVACY PROVIDED BY ENCRYPTED VOICE OVER INTERNET PROTOCOL lexis

n100 See FISA, 50 U.S.C. § 1801(f). Section 1801(f) of FISA defines four types of conduct that are considered "electronic surveillance" under FISA. Signals collection operations that target U.S. persons outside the United States do not fit within any of these four definitions. The first three definitions require the targeted individual to be located inside of the United States to be considered "electronic surveillance." The fourth definition applies only to the use of surveillance devices within the United States. Therefore, the NSA's signals monitoring stations in the United Kingdom, Canada, Australia, and New Zealand are not regulated by FISA. U.S. personnel located at these foreign stations presumably may monitor U.S. persons who are outside the United States, and that conduct technically would not be considered electronic surveillance under FISA's definitions. This highlights the fact that FISA was meant to govern only domestic surveillance taking place within U.S. borders. Although such efforts would not fall under FISA's definition of "electronic surveillance," USSID 18's minimization procedures still would apply and offer some protection to the rights of U.S. persons abroad. See generally USSID 18, supra note 13.

#### Domestic surveillance includes transmission to or from abroad and can be for foreign intelligence

Seamon 8 Richard Henry Seamon, Professor, University of Idaho College of Law. Hastings Constitutional Law Quarterly Spring, 2008 35 Hastings Const. L.Q. 449 ARTICLE: Domestic Surveillance for International Terrorists: Presidential Power and Fourth Amendment Limits lexis

First, FISA generally falls within Congress's power to regulate domestic surveillance for foreign intelligence information. That power comes from the Commerce Clause, to the extent that the surveillance involves interception of information that travels through channels of interstate or foreign commerce such as telephone lines. n188 Additional power flows from congressional powers associated with war and foreign affairs as amplified by the Necessary and Proper Clause. n189 Indeed, the executive branch has never questioned that FISA generally falls within Congress's power, except to the extent that it infringes on the President's congressionally irreducible power under the Constitution. n190

#### Calls to, from, or within the US is domestic surveillance

Kravets 14 David Kravets 03.12.14. CIA Hack Scandal Turns Senate’s Defender of Spying Into a Critic

<http://www.wired.com/2014/03/feinstein-blasts-cia-snooping/>

Feinstein’s statements criticizing the CIA have particular significance because she is perhaps the biggest senatorial cheerleader for domestic surveillance, including the telephone snooping program in which metadata from calls to, from and within the United States is forwarded in bulk to the National Security Agency without probable cause warrants. A federal judge declared such snooping unlawful last year but stayed the decision pending appeal. The case is before the U.S. Supreme Court.

#### Communication from the US are domestic surveillance

Carter 13 Chelsea J. Carter and Jessica Yellin, CNN August 10, 2013 Obama: Snowden can 'make his case' in court; no Olympics boycott <http://www.cnn.com/2013/08/09/politics/obama-news-conference/>

Since Snowden leaked secret documents to the media, critics have called the NSA's domestic surveillance -- including a program that monitors the metadata of domestic phone calls -- a government overreach. Many of those same critics have asked the Obama administration and Congress to rein in the programs.

#### Domestic surveillance deals with information transmitted within a country

HRC 14 Human Rights Council 2014 IMUNC2014 https://imunc.files.wordpress.com/2014/05/hrc-study-guide.pdf

Domestic surveillance: Involves the monitoring, interception, collection, analysis, use, preservation, retention of, interference with, or access to information that includes, reflects, or arises from or a person’s communications in the past, present or future with or without their consent or choice, existing or occurring inside a particular country**.**

#### Any foreign element means it is not domestic

Olberman 6 Countdown with Keith Olberman, msnbc.com updated 1/26/2006 7:05:00 PM ET White House defines 'domestic' spying <http://www.nbcnews.com/id/11048359/ns/msnbc-countdown_with_keith_olbermann/t/white-house-defines-domestic-spying/#.VU1lZJOYF2A>

The White House is trying to sell this so hard that it actually issued an official press release titled, “Setting the Record Straight, Charges of Domestic Spying.”

Look, your tax dollars in action. Word wealth, SAT training class. As a public service, COUNTDOWN will now review, and, where applicable, provide translations of the White House take on what “domestic” means versus what “international” means, and then we‘ll add a few bonus examples of our own.

Quoting, “Deputy Director Of National Intelligence General Michael Hayden,” semicolon; “One End Of Any Call Targeted Under This Program Is Always Outside The United States.”

This is the glass-is-half-full view of warrantless eavesdropping, much as if a U.S. soldier, who, like the average human male, has about 12 pints of blood in his body, would lose six of those pints.

Critics of the NSA terrorist surveillance program would say, That soldier is half empty. The White House would remind you that that soldier is half full.

Anyway, the press release actually gives several examples of the differences between the meanings of these two words. “Definition, Domestic Versus International. Domestic Calls are calls inside the United States. International Calls are calls either to or from the United States.”

And don‘t forget to deposit $2 for the first five minutes, and an extra $2 to cover the cost of the guy listening in at the NSA.

“Domestic Flights,” the White House reminds us, “are flights from one American city to another. International Flights are flights to or from the United States.”

So what happens if I call a domestic airline about a flight to Europe, but they‘ve outsourced their reservation agents to India? Is that a domestic call about an international flight, or an international call about a domestic flight?

Wait, there‘s more. “Domestic Mail consists of letters and packages sent within the United States,” the press release reads. “International Mail consists of letters and packages sent to or from the United States.”

Advertise

And don‘t forget, we can not only open either kind, kind if we damn well feel like it, but if you‘re using an international stamp and we need it for our collection, we‘re keeping it.

One more item from the press release, “Domestic Commerce involves business within the United States. International Commerce involves business between the United States and other countries.”

International commerce. You know, the kind of stuff Jack Abramoff did for the -- Huh, leave Abramoff out of it? Gotcha, sorry.

Well, anyway, if you‘re still not clear on this domestic-versus-international stuff, as promised, a couple of more definitions to help pull you through.

Domestic is an adjective describing your dog or cat or any other animal you have as a pet, like a tiger or a boa constrictor. “The Internationale,” meanwhile, is the worldwide anthem of those socialists and communists.

Internationals are soccer players who play in countries in which they were not born. Domestics is an old-timey kind of term for people who cleaned your house.

International is the kind of law that lets us take terror suspects to old Soviet-era gulags in Eastern Europe and beat the crap out of them, while domestic is the kind of wine they bottle in California.

Thank you for your attention. Please pass your examination papers forward.

#### Statutes define domestic as wholly in the US

Mayer 14 Jonathan Mayer PhD candidate in computer science & law lecturer at Stanford. December 3, 2014 Web Policy Executive Order 12333 on American Soil, and Other Tales from the FISA Frontier

<http://webpolicy.org/2014/12/03/eo-12333-on-american-soil/>

Once again unpacking the legalese, these parallel provisions establish exclusivity for 1) “electronic surveillance” and 2) interception of “domestic” communications. As I explained above, intercepting a two-end foreign wireline communication doesn’t constitute “electronic surveillance.” As for what counts as a “domestic” communication, the statutes seem to mean a communication wholly within the United States.7 A two-end foreign communication would plainly flunk that definition.

So, there’s the three-step maneuver. If the NSA intercepts foreign-to-foreign voice or Internet traffic, as it transits the United States, that isn’t covered by either FISA or the Wiretap Act. All that’s left is Executive Order 12333.

# TOPICALITY – AFFIRMATIVE

## 2AC – ITS

### 2AC

#### We meet – we use the federal government

#### Counter interpretation – its means belonging to or associated with

Oxford Dictionary 10 (“Of”, http://www.oxforddictionaries.com/definition/its?view=uk)

Pronunciation:/ɪts/

possessive determiner

belonging to or associated with a thing previously mentioned or easily identified:turn the camera on its side he chose the area for its atmosphere

#### Standards –

#### Limits - our interp allows the best limits for debate because we still use the usfg – they overlimit and restrict core aff ground

#### Ground- the neg still gets access to core ground because we do curtail surveillance on the federal level – make them prove what we didn’t allow them to read

#### Prefer reasonability- Competing interps leads to over limiting which is infinitely regressive and leads to a race to the bottom which precludes the education we would get from actually debating about the aff.

### Additional Definitions

#### Its means of or relating to

Webster’s 10 (Merriam-Webster’s Online Dictionary, “its”, http://www.merriam-webster.com/dictionary/its)

Main Entry: its

Pronunciation: \ˈits, əts\

Function: adjective

Date: circa 1507

: of or relating to it or itself especially as possessor, agent, or object of an action <going to its kennel> <a child proud of its first drawings> <its final enactment into law>

## 2AC – CURTAIL

### 2AC

#### We meet — the aff prohibits surveillance.

#### Counterinterpretation - “Curtail” means to reduce

AHD 14 – American Heritage Dictionary, “curtail”, https://www.ahdictionary.com/word/search.html?q=curtail

tr.v. cur•tailed, cur•tail•ing, cur•tails

To cut short or reduce: We curtailed our conversation when other people entered the room. See Synonyms at shorten.

#### Standards

#### They overlimit –if the aff isn’t topical that means you would have to end all surveillance, which no aff does —link turns topic education and proves you should prioritize topic coherence.

#### Ground – their core DA’s and CP’s that contest the viability of restricting the process of surveillance still apply.

#### Limits loss — Literature, substantial, and other words in the resolution check infinite regression.

#### Reasonability – prevents an arbitrary race to the bottom – judge intervention is inevitable — don’t vote on potential abuse.

### Additional Definitions – CURTAIL

#### “Curtail” means to reduce

AHD 14 – American Heritage Dictionary, “curtail”, https://www.ahdictionary.com/word/search.html?q=curtail

tr.v. cur•tailed, cur•tail•ing, cur•tails

To cut short or reduce: We curtailed our conversation when other people entered the room. See Synonyms at shorten.

#### Reduce or limit

Macmillan 15 – Macmillan Dictionary, “curtail”, http://www.macmillandictionary.com/dictionary/american/curtail

to reduce or limit something, especially something good

a government attempt to curtail debate

#### Reduce or diminish

Flatt 14 – Victor Flatt\* and Heather Payne\*\*, Thomas F. and Elizabeth Taft Distinguished Professor in Environmental Law, and Director, Center for Law, Environment, Adaptation, and Resources (CLEAR) at the University of North Carolina School of Law, Fellow, Center for Law, Environment, Adaptation, and Resources (CLEAR) at the University of North Carolina School of Law, “CURTAILMENT FIRST: WHY CLIMATE CHANGE AND THE ENERGY INDUSTRY SUGGEST A NEW ALLOCATION PARADIGM IS NEEDED FOR WATER UTILIZED IN HYDRAULIC FRACTURING”, University of Richmond Law Review, March, 48 U. Rich. L. Rev. 829, Lexis

With water shortages, policy requires that supplies be curtailed. Curtailment is defined as a reduction or diminishment of the water available for a particular use or user. The curtailment mechanism - the amount of the curtailment, whether it affects all users or only some users, and whether it affects all uses or only specific uses - is often determined by local or state law. n27

#### “Curtail” means to regulate, not ban

Oluwagbemi 7 – Michael Oluwagbemi, Co-founder and Executive Partner at LoftyInc Allied Partners Limited, “How Dangote Is Double-Crossing Nigeria!”, Nigeria Village Square, 7-19, http://www.nigeriavillagesquare.com/articles/michael-oluwagbemi/how-dangote-is-double-crossing-nigeria.html

Note however, that Dangote is not the problem. Business for a few thrives in the absence of regulation simply because businessmen are opportunistic. If you were Aliko Dangote, what will you do? Assuming you were connected to the powers that be, won't you at least try to obtain some favors? Hence, Dangote's behavior while perfectly opportunistic and capitalistic should be curtailed by a society interested in capitalism and its twin which is competition. Note, that I have not used the word "banned", or "stopped", rather I used the word, "curtailed". Our government is failing sorely in curtailing the activities of the Oligarchs by instituting minimum standards and regulations to encourage competition and discourage monopoly and collusion either in the disposal of public assets or after such assets are in the hands of the new generation Nigerian multi-trillionaires –Dangote, Otedola, Jimoh Ibrahim, Mike Adenuga (actually IBB) or Emeka Offor.

#### “Curtail” means to cut short

Collins 15 – Collins Dictionary, “curtail”, http://www.collinsdictionary.com/dictionary/english/curtail

curtail (kɜːˈteɪl Pronunciation for curtail )

Definitions

verb

(transitive) to cut short; abridge

#### “Curtail” means to diminish and includes actions less than termination

Zuccaro 6 – Edward R. Zuccaro, Chairperson of the Vermont Labor Relations Board, “GRIEVANCE OF VERMONT STATE COLLEGES FACULTY FEDERATION,”, 4-14, http://vlrb.vermont.gov/sites/vlrb/files/AlchemyDecisions/Volume%2028/28%20VLRB%20220.pdf

We first address whether the President was obligated by the Contract to bring his decision to not enroll new students to the attention of the Faculty Assembly. Article 19 of the Contract provides: “Recognizing the final determining authority of the President, matters of academic concern shall be initiated by the Faculty Assembly or by the President through the Faculty Assembly which shall consider the matter and respond within a reasonable time”. Included among “matters of academic concern” is the “curtailment . . . of academic programs”. The Employer contends that the decision to stop the enrollment of new students in a program is not a ”curtailment” of a program because curtailment means that the program is actually being closed, and the non-enrollment of new students is not the same as final termination of a program.

We disagree with the Employer’s interpretation of the word “curtailment”. A contract will be interpreted by the common meaning of its words where the language is clear. In re Stacey, 138 Vt. 68, 71 (1980). Black’s Law Dictionary (6th Ed., West Pub. Co., 1990) defines “curtail” as “to shorten, abridge, diminish, lessen, or reduce”. Thus, curtailment of a program may constitute something less than closure of a program. The non-enrollment of new students squarely fits within the dictionary definition of “curtail”. Accordingly, we conclude that the VTC President had a contractual obligation to consult with the Faculty Assembly with respect to the matter of academic concern of the non-enrollment of students in the Bioscience program for the Fall 2005 semester.

#### “Curtailment” reduces a part of a program---it’s not the same as closure

Tatro 15 – Wendy K. Tatro, Director and Asst. General Counsel, Union Electric Company d/b/a Ameren Missouri, “REPLY BRIEF OF AMERENMISSOURI”, 4-10, https://www.efis.psc.mo.gov/mpsc/commoncomponents/viewdocument.asp?DocId=935923768

Noranda does describe some options if it should encounter problems. In its brief, Noranda quotes from its SEC filings on this issue.345 Notably, these filings never say “close,” let alone “will close.” They do, however, use the term “curtailment.”346 Webster’s defines “curtail” as “to make less by or as if by cutting off or away some part,” as in “curtail the power of the executive branch.”347 Thus, Noranda discusses reducing its operations, but not closure. In these same filings, Noranda also uses the terms “restructuring,” “bankruptcy,” and “divest.”348 Thus, while Noranda argues to this Commission that closure “will” occur, the fine print in Noranda’s SEC filings list every option but closure. Outside of illogical and factually unsupported threats, Noranda presents nothing that suggests the smelter’s mandatory closure.

#### “Curtail” does not mean “eliminate”

Simons 94 – J. Simons, Judge of the Municipal Court for the Mt. Diablo Judicial District, “NOTIDES v. WESTINGHOUSE CREDIT CORPORATION”, 40 Cal. App. 4th 148; 37 Cal. Rptr. 2d 585; 1994 Cal. App. LEXIS 1321, 12-12, Lexis

4 Appellant suggests that Jenkins knew that the problem would be handled by curtailing new deals, not simply being selective. In his deposition he stated that "the step of curtailing new business is a logical one to take." Appellant seems to misunderstand the word "curtail" to mean "eliminate." Even if Jenkins made the same error, he said that this decision to curtail was not made until the Fall of 1990, several months after the hiring and shortly before Notides was informed of the decision.

#### “Curtail” means to reduce but not totally eliminate surveillance

Williams 00 – Cary J. Williams, Arbitrator, American Federation of Government Employees, Local 1145 and Department of Justice, Federal Bureau of Prisons, United States Penitentiary, Atlanta, GA, cyberFEDS® Case Report, 10-4, http://www.cpl33.info/files/USP\_Atlanta\_-\_Annual\_Leave\_during\_ART.pdf

The Agency relies on the language of Article 19, Section 1.2. for its right to "curtail" scheduled annual leave during training. The record is clear that the Agency has limited or curtailed leave during ART in the past, and has the right to do so in the future. But there is a difference in curtailing leave during ART and totally eliminating it. There was no testimony regarding the intent of the parties in including the term "curtail" in Section 1.2., but Websters New Twentieth Century Dictionary (2nd Ed) defines the term as, "to cut short, reduce, shorten, lessen, diminish, decrease or abbreviate". The import of the term "curtail" in the Agreement based on these definitions is to cut back the number of leave slots, but there is no proof the parties intended to give the Agency the right to totally eliminate leave slots in the absence of clear proof of an emergency or other unusual situation. The same dictionary on the other hand defines "eliminate" as, "to take out, get rid of, reject or ornit". From a comparison of the two terms there is clearly a difference in curtailing and eliminating annual leave. I disagree with the Agency's contention that curtailing leave can also mean allowing zero leave slots. If the parties had intended such a result they would have simply stated the Agency could terminate or eliminate annual leave during training and/or other causes. This language would leave no doubt the Agency had the right to implement the policy it put in place for January I through March 25, 2000. That language, however, is not in the Agreement, and the term "curtail" does not allow the Agency to totally eliminate all scheduled annual leave during the year.

## 2AC – SURVEILLANCE – CRIME

### 2AC

#### We meet – we curtail the surveillance of criminals

#### Counterinterpretation - “Surveillance” is more than observation of criminals

Marx 5 – Gary T. Marx, Professor Emeritus at the Massachusetts Institute of Technology, “Surveillance and Society”, Encyclopedia of Social Theoryhttp://web.mit.edu/gtmarx/www/surandsoc.html

Traditional Surveillance An organized crime figure is sentenced to prison based on telephone wiretaps. A member of a protest group is discovered to be a police informer. These are instances of traditional surveillance --defined by the dictionary as, “close observation, especially of a suspected person”. Yet surveillance goes far beyond its’ popular association with crime and national security. To varying degrees it is a property of any social system --from two friends to a workplace to government. Consider for example a supervisor monitoring an employee’s productivity; a doctor assessing the health of a patient; a parent observing his child at play in the park; or the driver of a speeding car asked to show her driver’s license. Each of these also involves surveillance. Information boundaries and contests are found in all societies and beyond that in all living systems. Humans are curious and also seek to protect their informational borders. To survive, individuals and groups engage in, and guard against, surveillance. Seeking information about others (whether within, or beyond one’s group) is characteristic of all societies. However the form, content and rules of surveillance vary considerably --from relying on informers, to intercepting smoke signals, to taking satellite photographs. In the 15th century religious surveillance was a powerful and dominant form. This involved the search for heretics, devils and witches, as well as the more routine policing of religious consciousness, rituals and rules (e.g., adultery and wedlock). Religious organizations also kept basic records of births, marriages, baptisms and deaths. In the 16th century, with the appearance and growth of the embryonic nation-state, which had both new needs and a developing capacity to gather and use information, political surveillance became increasingly important relative to religious surveillance. Over the next several centuries there was a gradual move to a “policed” society in which agents of the state and the economy came to exercise control over ever-wider social, geographical and temporal areas. Forms such as an expanded census, police and other registries, identity documents and inspections appeared which blurred the line between direct political surveillance and a neutral (even in some ways) more benign, governance or administration. Such forms were used for taxation, conscription, law enforcement, border control (both immigration and emigration), and later to determine citizenship, eligibility for democratic participation and in social planning. In the 19th and 20th centuries with the growth of the factory system, national and international economies, bureaucracy and the regulated and welfare states, the content of surveillance expanded yet again to the collection of detailed personal information in order to enhance productivity and commerce, to protect public health, to determine conformity with an ever-increasing number of laws and regulations and to determine eligibility for various welfare and intervention programs such as Social Security and the protection of children. Government uses in turn have been supplemented (and on any quantitative scale likely overtaken) by contemporary private sector uses of surveillance at work, in the market place and in medical, banking and insurance settings. The contemporary commercial state with its’ emphasis on consumption is inconceivable without the massive collection of personal data. A credentialed state, bureaucratically organized around the certification of identity, experience and competence is dependent on the collection of personal information. Reliance on surveillance technologies for authenticating identity has increased as remote non face-to-face interactions across distances and interactions with strangers have increased. Modern urban society contrasts markedly with the small town or rural community where face-to-face interaction with those personally known was more common. When individuals and organizations don’t know the reputation of, or can’t be sure with whom they are dealing, there is a turn to surveillance technology to increase authenticity and accountability. The microchip and computer are of course central to surveillance developments and in turn reflect broader social forces set in motion with industrialization. The increased availability of personal information is a tiny strand in the constant expansion in knowledge witnessed in the last two centuries, and of the centrality of information to the workings of contemporary society. The New Surveillance The traditional forms of surveillance noted in the opening paragraph contrast in important ways with what can be called the new surveillance, a form that became increasingly prominent toward the end of the 20th century. The new social surveillance can be defined as, "scrutiny through the use of technical means to extract or create personal or group data, whether from individuals or contexts". Examples include: video cameras; computer matching, profiling and data mining; work, computer and electronic location monitoring; DNA analysis; drug tests; brain scans for lie detection; various self-administered tests and thermal and other forms of imaging to reveal what is behind walls and enclosures.

#### Standards –

#### Limits - they overlimit and restrict core aff ground – not every aff should have to curtail crime surveillance

#### Ground- the neg still gets access to core ground because we do curtail surveillance on the federal level

#### Education – focusing on crime precludes a breadth of topic research.

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### Additional Definitions

#### “Surveillance” is gathering data---it doesn’t require preventive intent

Rule 12 – James B. Rule, Distinguished Affiliated Scholar at the Center for the Study of Law and Society at the University of California, Berkeley, Routledge Handbook of Surveillance Studies, Ed. Lyon, Ball, and Iaggerty, p. 64-65

For many people, the term “surveillance” conjures up images of the systematic tracking of individuals’ lives by distant and powerful agencies. These pop-up cartoon images are not entirely misleading. To be sure, surveillance takes many different forms. But since the middle of the twentieth century, the monitoring of ordinary people’s affairs by large institutions has grown precipitously. Such direct intakes of detailed information on literally millions of people at a time—and their use by organizations to shape their dealings with the people concerned—represent one of the most far-reaching social changes of the last 50 years. These strictly *bureaucratic* forms of surveillance, and their tensions with values of privacy, are the subject of this chapter.

Surveillance

Surveillance is a ubiquitous ingredient of social life. In virtually every enduring social relationship, parties note the actions of others and seek to influence future actions in light of information thus collected. This holds as much for intimate dyads—mutually preoccupied lovers, for example, or mothers and infants—as for relations among sovereign states. Surveillance and concomitant processes of social control are as basic to the life of neighborhoods, churches, industries and professions as they are to relations between government or corporate organizations and individuals.

But whereas the ability of communities, families, and local associations to track the affairs of individuals has widely declined in the world's "advanced" societies, institutional surveillance has lately made vast strides. Throughout the world's prosperous liberal societies, people have come to expect their dealings with all sorts of large organizations to be mediated by their "records." These records are ongoing products of past interactions between institutions and individuals—and of active and resourceful efforts by the institutions to gather data on individuals. The result is that all sorts of corporate and state performances that individuals expect—from allocation of consumer credit and social security benefits to the control of crime and terrorism—turn on one or another form of institutional surveillance. Perhaps needless to say. the outcomes of such surveillance make vast differences in what Max Weber would have called the "life chances" of the people involved.

No twenty-first-century society, save perhaps the very poorest, is altogether without such large-scale collection, processing and use of data on individuals' lives. Indeed, we might arguably regard the extent of penetration of large-scale institutions into the details of people's lives as one measure of modernity (if not post-modernity). The feet that these activities are so consequential—for the institutions, and for the individuals concerned—makes anxiety and opposition over their repercussions on privacy values inevitable.

Despite the slightly foreboding associations of the term, surveillance need not be unfriendly in its effects on the individuals subjected to it. In the intensive care ward at the hospital, most patients probably do not resent the intrusive and constant surveillance directed at them. Seekers of social security benefits or credit accounts will normally be quick to call attention to their recorded eligibility for these things—in effect demanding performances based on surveillance. Indeed, it is a measure of the pervasiveness of surveillance in our world that we reflexively appeal to our "records" in seeking action from large institutions.

But even relatively benevolent forms of surveillance require some tough-minded measures of institutional enforcement vis-a-m individuals who seek services. Allocating social security payments to those who deserve them—as judged by the letter of the law—inevitably means hoi allocating such benefits to other would-be claimants. Providing medical benefits, either through government or private insurance, means distinguishing between those entitled to the benefits and others. When the good things of life are passed around, unless everyone is held to be equally entitled, the logic of surveillance demands distinctions between the deserving, and others. Ami this in turn sets m motion requirements for positive identification, close record-keeping, precise recording of each individual case history, and so on (see also Webster, this volume).

#### “Surveillance” includes routine data collection---they exclude the majority of contemporary activity and over-focus on dramatic manifestations

Ball 3 – Kirstie Ball, Professor of Organization at The Open University, and Frank Webster, Professor of Sociology at City University, London, The Intensification of Surveillance: Crime, Terrorism and Warfare in the Information Age, p. 1-2

Surveillance involves the observation, recording and categorization of information about people, processes and institutions. It calls for the collection of information, its storage, examination and - as a rule - its transmission. It is a distinguishing feature of modernity, though until the 1980s the centrality of surveillance to the making of our world had been underestimated in social analysis. Over the years surveillance has become increasingly systematic and embedded in everyday life, particularly as state (and, latterly, supra-state) agencies and corporations have strengthened and consolidated their positions. More and more we are surveilled in quite routine activities, as we make telephone calls, pay by debit card, walk into a store and into the path of security cameras, or enter a library through electronic turnstiles. It is important that this routine character of much surveillance is registered, since commentators so often focus exclusively on the dramatic manifestations of surveillance such as communications interceptions and spy satellites in pursuit of putative and deadly enemies.

In recent decades, aided by innovations in information and communications technologies (ICTs), surveillance has expanded and deepened its reach enormously. Indeed, it is now conducted at unprecedented intensive and extensive levels while it is vastly more organized and technology-based than hitherto. Surveillance is a matter of such routine that generally it escapes our notice - who, for instance, reflects much on the traces they leave on the supermarkets' checkout, and who worries about the tracking their credit card transactions allow? Most of the time we do not even bother to notice the surveillance made possible by the generation of what has been called transactional information (Burnham, 1983) - the records we create incidentally in everyday activities such as using the telephone, logging on to the Internet, or signing a debit card bill. Furthermore, different sorts of surveillance are increasingly melded such that records collected for one purpose may be accessed and analysed for quite another: the golf club's membership list may be an attractive database for the insurance agent, address lists of subscribers to particular magazines may be especially revealing when combined with other information on consumer preferences. Such personal data are now routinely abstracted from individuals through economic transactions, and our interaction with communications networks, and the data are circulated, as data flows, between various databases via 'information superhighways'. Categorizations of these data according to lifestyle, shopping habits, viewing habits and travel preferences are made in what has been termed the 'phenetic fix' (Phillips & Curry, 2002; Lyon, 2002b), which then informs how the economic risk associated with these categories of people is managed. More generally, the globe is increasingly engulfed in media which report, expose and inflect issues from around the world, these surveillance activities having important yet paradoxical consequences on actions and our states of mind. Visibility has become a social, economic and political issue, and an indelible feature of advanced societies (Lyon, 2002b; Haggerty & Ericson, 2000).

#### Broad interpretations of “surveillance” are key to advance discussion of the topic beyond a limited fixation on overt monitoring---that’s critical to capture the essence of modern, bureaucratic information gathering

Ericson 6 – Richard V. Ericson, Principal of Green College, University of British Columbia, and Kevin D. Haggerty, Doctoral Candidate in sociology at the University of British Columbia, The New Politics of Surveillance and Visibility

p. 3-4

Surveillance involves the collection and analysis of information about populations in order to govern their activities. This broad definition advances discussion about surveillance beyond the usual fixation on cameras and undercover operatives. While spies and cameras are important, they are only two manifestations of a much larger phenomenon.

The terrorist attacks of September 11, 2001 (hereafter 9/11) now inevitably shape any discussion of surveillance (Lyon 2003). While those events intensified anti-terrorist monitoring regimes, surveillance against terrorism is only one use of monitoring systems. Surveillance is now a general tool used to accomplish any number of institutional goals. The proliferation of surveillance in myriad contexts of everyday life suggests the need to examine the political consequences of such developments.

Rather than seek a single factor that is driving the expansion of surveillance, or detail one overriding political implication of such developments, the volume is concerned with demonstrating both the multiplicity of influences on surveillance and the complexity of the political implications of these developments. Contributors to this volume are concerned with the broad social remit of surveillance - as a tool of governance in military conflict, health, commerce, security and entertainment - and the new political responses it engenders.

#### “Surveillance” doesn’t require intent

Bowers 3 – Jeremy Bowers, Master's Degree in Computer Science from Michigan State University, “Traditional Privacy Broken Down”, 8-24, http://www.jerf.org/iri/blogbook/communication\_ethics/privacy

I define "surveillance" as "collecting information about people". I deliberately leave out any considerations of "intent". When you accidentally look into your neighbor's window and happen to see them, for the purposes of this essay, that's "surveillance", even though I'd never use the term that way normally. I'd like a more neutral term but I can't think of one that doesn't introduce its own distortions.

#### “Surveillance” is more than visual observation

UK 9 – UK House of Lords, “Surveillance: Citizens and the State – CHAPTER 2: Overview of Surveillance and Data Collection”, http://www.publications.parliament.uk/pa/ld200809/ldselect/ldconst/18/1804.htm

Part One—Key definitions

BACKGROUND

18. The term "surveillance" is used in different ways. A literal definition of surveillance as "watching over" indicates monitoring the behaviour of persons, objects, or systems. However surveillance is not only a visual process which involves looking at people and things. Surveillance can be undertaken in a wide range of ways involving a variety of technologies. The instruments of surveillance include closed-circuit television (CCTV), the interception of telecommunications ("wiretapping"), covert activities by human agents, heat-seeking and other sensing devices, body scans, technology for tracking movement, and many others.

#### Close observation

Oxford 15 – Oxford Advanced Learner's Dictionary, “surveillance”, http://www.oxforddictionaries.com/us/definition/american\_english/surveillance

Definition of surveillance in English:

noun

Close observation, especially of a suspected spy or criminal:

he found himself put under surveillance by military intelligence

#### Many types of info collection are “surveillance

O'Connor 11 – Dr. Thomas Riley Kennedy O'Connor, Assoc Prof, Criminal Justice/Homeland Security Director, Institute for Global Security Studies Austin Peay State University, “INFORMANTS, SURVEILLANCE, AND UNDERCOVER OPERATIONS”, 9-27, http://www.drtomoconnor.com/3220/3220lect02c.htm

SURVEILLANCE

Surveillance is the clandestine collection and analysis of information about persons or organizations, or put another way, methods of watching or listening without being detected. Most surveillance has physical and electronic aspects, and is preceded by reconnaissance, and not infrequently, by surreptitious entry (to plant a monitoring device). Surveillance can be a valuable and essential tool in combating a wide range of sophisticated criminal activities, including such offenses as kidnapping, gambling, narcotics, prostitution, and terrorism. There are many different types of surveillance. Peterson and Zamir (2000), for example, list seventeen types: audio, infra/ultra-sound, sonar, radio, radar, infrared, visual, aerial, ultraviolent, x-ray, chemical and biological, biometrics, animals, genetic, magnetic, cryptologic, and computers. A shorter list would include four general types of surveillance: visual; audio, moving, and contact. Here is an outline of the four types from that shorter list:

#### Data collection is a primary form of “surveillance”

Verri 14 – Gabriela Jahn Verri, Federal University of Rio Grande do Sul, “GOVERNMENT AND CORPORATIVE INTERNET SURVEILLANCE”, World Summit on the Information Society Forum, http://www.ufrgs.br/ufrgsmun/2014/files/WSI1.pdf

David Lyon describes governmental and corporative surveillance as the “focused, systematic, and routine attention to personal details for purposes of influence, management, protection, or direction” (Lyon 2007, 14). The most common form this practice takes in the context of information and communication technologies (hereinafter ICT) is still so-called data surveillance, which implies the collection and retention of information about an “identifiable individual”, often from multiple sources3, which help recognize multiple activities and establish a pattern of behavior in both the virtual and material realms (Stanley & Steinhardt 2003, 3). Although less common and fairly recent, institutional Internet surveillance may also acquire the shape of media surveillance, done by means of – recognized or ignored – image (still or video) and sound hoarding through a subject’s personal apparatus such as private webcams and microphones, as well as screen-recording (RWB 2013, 9-33; Stanley & Steinhardt 2003, 2-4)4.

#### “Surveillance” is more than observation of criminals

Marx 5 – Gary T. Marx, Professor Emeritus at the Massachusetts Institute of Technology, “Surveillance and Society”, Encyclopedia of Social Theoryhttp://web.mit.edu/gtmarx/www/surandsoc.html

Traditional Surveillance

An organized crime figure is sentenced to prison based on telephone wiretaps. A member of a protest group is discovered to be a police informer. These are instances of traditional surveillance --defined by the dictionary as, “close observation, especially of a suspected person”.

Yet surveillance goes far beyond its’ popular association with crime and national security. To varying degrees it is a property of any social system --from two friends to a workplace to government. Consider for example a supervisor monitoring an employee’s productivity; a doctor assessing the health of a patient; a parent observing his child at play in the park; or the driver of a speeding car asked to show her driver’s license. Each of these also involves surveillance.

Information boundaries and contests are found in all societies and beyond that in all living systems. Humans are curious and also seek to protect their informational borders. To survive, individuals and groups engage in, and guard against, surveillance. Seeking information about others (whether within, or beyond one’s group) is characteristic of all societies. However the form, content and rules of surveillance vary considerably --from relying on informers, to intercepting smoke signals, to taking satellite photographs.

In the 15th century religious surveillance was a powerful and dominant form. This involved the search for heretics, devils and witches, as well as the more routine policing of religious consciousness, rituals and rules (e.g., adultery and wedlock). Religious organizations also kept basic records of births, marriages, baptisms and deaths.

In the 16th century, with the appearance and growth of the embryonic nation-state, which had both new needs and a developing capacity to gather and use information, political surveillance became increasingly important relative to religious surveillance. Over the next several centuries there was a gradual move to a “policed” society in which agents of the state and the economy came to exercise control over ever-wider social, geographical and temporal areas. Forms such as an expanded census, police and other registries, identity documents and inspections appeared which blurred the line between direct political surveillance and a neutral (even in some ways) more benign, governance or administration. Such forms were used for taxation, conscription, law enforcement, border control (both immigration and emigration), and later to determine citizenship, eligibility for democratic participation and in social planning. In the 19th and 20th centuries with the growth of the factory system, national and international economies, bureaucracy and the regulated and welfare states, the content of surveillance expanded yet again to the collection of detailed personal information in order to enhance productivity and commerce, to protect public health, to determine conformity with an ever-increasing number of laws and regulations and to determine eligibility for various welfare and intervention programs such as Social Security and the protection of children. Government uses in turn have been supplemented (and on any quantitative scale likely overtaken) by contemporary private sector uses of surveillance at work, in the market place and in medical, banking and insurance settings. The contemporary commercial state with its’ emphasis on consumption is inconceivable without the massive collection of personal data. A credentialed state, bureaucratically organized around the certification of identity, experience and competence is dependent on the collection of personal information. Reliance on surveillance technologies for authenticating identity has increased as remote non face-to-face interactions across distances and interactions with strangers have increased. Modern urban society contrasts markedly with the small town or rural community where face-to-face interaction with those personally known was more common. When individuals and organizations don’t know the reputation of, or can’t be sure with whom they are dealing, there is a turn to surveillance technology to increase authenticity and accountability.

The microchip and computer are of course central to surveillance developments and in turn reflect broader social forces set in motion with industrialization. The increased availability of personal information is a tiny strand in the constant expansion in knowledge witnessed in the last two centuries, and of the centrality of information to the workings of contemporary society.

The New Surveillance

The traditional forms of surveillance noted in the opening paragraph contrast in important ways with what can be called the new surveillance, a form that became increasingly prominent toward the end of the 20th century. The new social surveillance can be defined as, "scrutiny through the use of technical means to extract or create personal or group data, whether from individuals or contexts". Examples include: video cameras; computer matching, profiling and data mining; work, computer and electronic location monitoring; DNA analysis; drug tests; brain scans for lie detection; various self-administered tests and thermal and other forms of imaging to reveal what is behind walls and enclosures.

#### Their interpretation is outdated

Odoemelam 15 – Chika Ebere Odoemelam, Ph.D. in Media Studies from the University of Malaya, Visiting Research Postgraduate Scholar at Lehigh University, “Adapting to Surveillance and Privacy Issues in the Era of Technological and Social Networking”, International Journal of Social Science and Humanity, 5(6), June, p. 573

The concise Oxford Dictionary defines surveillance as “close observation”, especially of a suspected person”. From the above definition, one can deduce that surveillance is supposed to apply to “a suspected person”. But the big question is , is that the case in our today's world? Electronic surveillance has become a common phenomenon especially in the developed world as a way of monitoring the activities of every member of the society irrespective of whether or not they are a suspect. Again, in our present day world filled with all kinds of modern technology, surveillance could be carried out from afar instead of only from “close observation”, as the dictionary meaning suggests. Satellite images and remote monitoring of communications via highpowered infra-red technologies can be used for long distance surveillance activities. Thus, governments and big corporations have made surveillance part of everyday life, in that it includes, but is not limited to, hidden cameras in an ATM machines, data bases of all employees in a particular company, scanners that picks mobile phone communications, computer programs that monitor keystrokes, or key words and video cameras that parents can use, to monitor, their children at a day care centre.

## 2AC – SURVEILLANCE – MONITORING

### 2AC

#### We meet – we curtail the surveillance of intelligence

#### Counter interp - “Surveillance” is close observation---it can be done in a number of forms, be mass or individual, and overt or covert

Senker 11 – Cath Senker, Non-Fiction Writer who Specialises in Writing About Modern History, Global Issues and World Religions, Privacy and Surveillance, p. 6

Surveillance

The Oxford English Dictionary defines surveillance as "close observation, especially of a suspected person." Methods of observation include watching, listening, filming, recording, tracking, listing people and entering their details onto databases. The different types of surveillance carried out include mass surveillance of large groups of people as well as targeted observation of specific individuals. Surveillance may be carried out openly, for example, using closed-circuit television (CCTV) cameras in public places, or covertly; using undercover agents.

#### Standards –

#### Limits - they overlimit and restrict core aff ground – not every aff should have to curtail intelligence surveillance

#### Ground- the neg still gets access to core ground because we do curtail surveillance on the federal level

#### Prefer reasonability- Competing interps leads to over limiting which is infinitely regressive and leads to a race to the bottom which precludes the education we would get from actually debating about the aff.

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#### “Surveillance” is more than visual observation

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Part One—Key definitions

BACKGROUND

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#### Close observation

Oxford 15 – Oxford Advanced Learner's Dictionary, “surveillance”, http://www.oxforddictionaries.com/us/definition/american\_english/surveillance

Definition of surveillance in English:

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#### Many types of info collection are “surveillance

O'Connor 11 – Dr. Thomas Riley Kennedy O'Connor, Assoc Prof, Criminal Justice/Homeland Security Director, Institute for Global Security Studies Austin Peay State University, “INFORMANTS, SURVEILLANCE, AND UNDERCOVER OPERATIONS”, 9-27, http://www.drtomoconnor.com/3220/3220lect02c.htm

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## 2AC – DOMESTIC

### 2AC

#### 1. We meet – our plantext indicates that we only curtail the surveillance of UNITED STATES PERSONS

#### 2. Counter interpretation - Either *wholly* or *one-end* communications are “domestic”

Dickerson 15 – Julie Dickerson, JD Candidate at Harvard Law School, “Meaningful Transparency: The Missing Numbers the NSA and FISC Should Reveal”, Harvard Law School National Security Journal, 2-17, http://harvardnsj.org/2015/02/meaningful-transparency-the-missing-numbers-the-nsa-and-fisc-should-reveal/

There are two types of domestic communications: wholly domestic (sent to and from a U.S. citizen) and one-end domestic (communications to, from, or concerning a U.S. citizen). Upstream acquisitions inadvertently sweep in tens of thousands, up to 56,000 wholly domestic communications (0.248% of all communications collected under § 702 upstream authorities). However, the number of one-end domestic communications remains unknown. The multiple categories – all Internet communications, communications collected under § 702, communications collected under the § 702 upstream program, and wholly domestic or one-end communications – combined with the mix of percentages and absolute numbers of both total data traffic and total communications can be difficult to keep straight. A simple chart placing the 56,000 wholly domestic communications (small black box below), in its greater context of all communications collected under the § 702 upstream program (the white box below) and all internet communications (big black box below), would demonstrates the NSA’s low margin of error.

#### 3. Standards-

#### A. Ground- provide the best disad ground because we are the heart of the topic – make them prove an in round loss of ground

#### B. Education- we provide the most relevant and recent education that allows us to prepare for real world policy making

#### C. Their interp over-limits- because they literally don’t allow any of the affs at the camp - we access the core issues of the topic

#### D. Prefer reasonability- if the aff provides a reasonable counter definition vote aff and let’s stick to the substance. Competing interps leads to over limiting which is infinitely regressive and precludes any education we get from debate.

### Additional Definitions

#### Clear distinctions between foreign and domestic surveillance are impossible because of modern communication networks

Lee 13 – Timothy B. Lee, Senior Editor at Vox, “The NSA Is Trying To Have It Both Ways On Its Domestic Spying Programs”, Washington Post, 12-22, http://www.washingtonpost.com/blogs/the-switch/wp/2013/12/22/the-nsa-is-trying-to-have-it-both-ways-on-its-domestic-spying-programs/

Traditionally, domestic surveillance powers were held by law enforcement agencies, not the NSA. And the existence of the spying powers were not secret. Everyone knows that the FBI and local police departments have the power to compel telecommunications companies to disclose their customers' communications. But first they must get a warrant, supported by probable cause, from a judge. That oversight gives Americans confidence that domestic surveillance powers won't be abused.

Things are very different when the U.S. government spies on people overseas. Obviously, U.S. intelligence agencies don't generally have the power to compel foreign telecommunications companies to cooperate with surveillance efforts. So instead of a formal legal process, they traditionally have used covert means—bribing insiders, installing bugs, tapping undersea cables, hacking into foreign networks—to intercept foreign communications. For these methods to work, the government must keep secret not only the specific surveillance targets, but the fact that the surveillance program exists at all. If the program's existence is revealed, the foreign government is likely to shut it down.

That secrecy meant that American foreign intelligence-gathering operations have not had the checks and balances that applied to domestic law enforcement surveillance. But Americans were protected by the rule that American foreign intelligence agencies were only supposed to operate overseas.

But now the Internet has made a hash of the tidy distinction between foreign and domestic surveillance. Today, citizens of France, Brazil and Nigeria routinely use Facebook, Gmail, and other American online services to communicate. Americans make calls with Skype. And much Internet traffic between two foreign countries often passes through the United States.

#### “Domestic” means relating to one’s country

Webster’s 15 – Merriam-Webster's Online Dictionary, 11th Edition, “domestic”, http://www.merriam-webster.com/dictionary/domestic

a : living near or about human habitations

b : tame, domesticated <the domestic cat>

2 : of, relating to, or originating within a country and especially one's own country <domestic politics> <domestic wines>

# IMPACTS

### Education

#### Topic education—domestic surveillance affects everyone—has important consequences for individual freedom and to democratic institutions. This is what we should be debating right now.

Heymann 15 [Philip B. Heymann, James Barr Ames Professor of Law, Harvard Law School. Professor Heymann served as Deputy Attorney General in the first Clinton Administration. "An Essay on Domestic Surveillance," Lawfare Research Paper Series, Vol. 3, No. 2, May 10, 2015]

The presence of fear, even unreasonable fear, has important effects on the confident and free social and political life on which democracy depends. Fear of discovery alone could easily affect with whom I associate, for example, or what use I make of psychiatrists or drugs. The fear is far deeper and more lasting if a warrant from a judge is not required. Internal agency processes are not an adequate substitute. The deep suspicions that are valuable in an agency charged with preventing terrorism or preventing crime have a dark side; they will infect its judgment of when there is a genuine need to see the required information. Important consequences turn on the citizens’ trust that data the government has acquired will not be used without there being a “real” need for its use. Much of the population would not trust any such assurance by the NSA or the FBI alone.

Perceptions of government prying do matter. Whether a dramatic growth in the capacity for, and fruits of, government surveillance would be experienced as harmful to individual freedom, civil society and democratic institutions depend on more than how the information would, in fact, be used. Fear also depends on what other potential uses citizens would suspect; the exercise of individual liberty and autonomy additionally depend on what citizens suspect might happen with that information and the precautionary steps – curtailment of entirely lawful activities, for example – citizens might take. Attitudes toward government and one’s freedoms also depend upon a number of broader contextual factors: the extent of the perceived danger sought to be prevented; the current level of suspicion or trust in the government; the history and culture of privacy in the society; and much else. Some few would argue that the loss of privacy might not be a concern at all. After all, most people do not harbor a crime or a scandal that they must hide behind claims to privacy; their lives are too proper for that. But those voices are a small minority; for most people, the value of privacy is to protect the possibility of association and, particularly, intimacy with others, irrespective of whether one has anything to hide in the way of crime or scandal.

One fact is clear. The fear and the prospect of rapidly expanding government surveillance in the United States are plainly there on the near horizon. The children of the Snowden age take it for granted that they are being monitored and they fear the social effects of that monitoring.

### Reasonability/Competing Interps

#### Use reasonability it ensures access to the 1AC and prevents teams from arbitrarily going for T to exclude Affs solidly grounded in lit.

Ryan ‘4

(Andrew B. Ryan, college debater, Wake Forest University, 2004, Reviving Reasonability. The Debaters’ Research Guide, 2004. groups.wfu.edu/debate)

How should the affirmative initiate a discussion about the quality of debate? First, start by defending your own ground. The resolution gives both teams a reasonable expectation of what is topical and affirmatives choose their plan accordingly. The affirmative has a qualified right to their reasonable expectation of the topic: how can affirmatives choose plans if they cannot rely on definitions they have researched that support its topicality? This right isn’t unlimited, however, because the negative is encouraged to debate the affirmative on whether their interpretation of words is supported by grammar, common usage, field context, etc. But, the negative’s right to re-interpret the topic should be limited to consistent and predictable interpretations. Resorting to arbitrary interpretations based on illogical catchphrases unfairly allows the negative to pull the rug out from under the affirmative. Second, affirmatives should talk about what makes a good definition. Are dictionary definitions best? Possibly, as long as you are not dealing with a term of art, such as peacekeeping. What about field context? Shouldn’t a definition of peacekeeping by the head of U.N. Peacekeeping Operations be given more weight than a dictionary definition? Lastly, defining a word in a certain way may be the only way to maintain the grammatical integrity of the resolution. Take the discussion of definitions to another level: move past superficial quantitative discussions of limits and speak directly to the educational benefits and disadvantages of each side’s definition. Third, don’t be afraid to talk about debate’s purpose. It is a competitive game, but one that should always be based on reason and logic. If what a team does enables illogical arguments to determine the outcome of the debate, then regardless of what unlimited topic the affirmative may allow, it is still better to vote affirmative than eschew reason. Reasonability is important because strict adherence to comparing competing interpretations based on offense/defense types of theories allows the negative to the make the perfect the enemy of the good. Fourth, a reasonability paradigm would help affirmatives to redefine the role of the judge. One of the central negative objections to reasonability interpretations is that they encourage judge intervention because the judge is left without a coherent standard to determine which interpretations are best. Affirmatives can flip this argument on the negative, however, by arguing that the offense/defense and competing interpretations paradigm exceeds the jurisdictional role of the judge. Traditionally, negatives argued that jurisdiction was a voting issue because judges could not vote to endorse a non-topical affirmative. The negative age calls for a judge to act as an arbiter of competing interpretations. That exceeds the role of the judge, however, because the negative is no longer demonstrating the affirmative is non-topical; rather they are only demonstrating that an interpretation that excludes the affirmative is comparatively better for debate. Topicality is a gateway issue which is meant to ensure that both sides have adequate ground for debate: if both interpretations provide similar quantity and quality of ground, then judges should dispense with topicality and allow the policy debate to begin.

#### Reject the argument, not the team

Solt ‘2

(Roger E. Solt, Debate Coach at the University of Kentucky, “Theory as a Voting Issue: The Crime of Punishment”, 2002 - Mental Health Policies: Escape from Bedlam?, 2002, http://groups.wfu.edu/debate/MiscSites/

DRGArticles/DRGArtiarticlesIndex.htm)

First, the attempt to achieve favorable time tradeoffs is a ubiquitous practice in current debate. It is behind the practice of making multiple answers to a given argument. It strongly influences the number of positions the negative team will advance in the 1NC. It is behind the decision to start all of the major negative positions in the 1NC. It dictates how many positions will be extended through the block. It generally controls the decision about whether or not the affirmative should “straight turn” one or more disadvantages. Even the employment of punishment arguments is generally based on the desire to secure a favorable time exchange. It seems silly to single out a few particular instances of this universal practices and say that they are voting issues, when the whole of debate is saturated with strategic time considerations. Second, forcing teams to make strategic choices does have educational value. Debaters are forced to judge which their best arguments are and be selective about what they will extend. Third, punishment arguments constitute a self-inflicted coverage injury. It takes time, sometimes considerable time, to argue that a certain approach has distorted your time allocation. If debaters didn’t defend punishment, they would have more time to answer other arguments. Fourth, time skews are often minimal. It is quite common for an issue which occupied literally seconds of the debate to still be tagged as a voting issue. In cases like this, the overall integrity of the round would certainly be maximized by simply rejecting the particular argument rather than the team that made it. Fifth, teams defending a problematic theory almost always invest some time in advancing that position and in extending it. Time spent answering the time skew argument serves to redress the injury. Sixth, there are other means of redress rather than the ballot. If some other issue was radically undercovered due to the alleged time skew, the judge could allow new answers on that issue. Finally, seventh, time skew arguments directed against the affirmative seem especially dubious. The structure of the debate places particular time pressures on the affirmative. The luxury of the negative block should give the negative ample time to answer pretty much whatever the 2AC says. (New 1AR answers do pose a different and more legitimate concern from the standpoint of time allocation issues.)

#### Default to reasonability competing interpretations compromises substantive discussion – 6 warrants

Solt ‘2

(Roger E. Solt, Debate Coach at the University of Kentucky, “Theory as a Voting Issue: The Crime of Punishment”, 2002 - Mental Health Policies: Escape from Bedlam?, 2002, http://groups.wfu.edu/debate/MiscSites/

DRGArticles/DRGArtiarticlesIndex.htm)

The first main argument I would make against punishment is that it exaggerates theory. One view of debate is that it is just a game and that theory is as worthwhile to debate as anything else. In contrast is the view that I would defend: that debate has a substantive intellectual content which it is far more worthwhile to learn about than it is to learn about debate theory. Debate teaches us a great deal about current events and principles of policy analysis, about political theory, political philosophy, and practical politics, about medicine and law, ethics and epistemology. It teaches both problem solving and the criticism of underlying assumptions. And it teaches many other things as well. People disagree about which of these areas of inquiry is most important, but any and all of these subjects are of more intrinsic significance than debate theory. I write this as someone who finds debate theory interesting. Nor do I think that we can get along without debate theory. Nor should we. Theory is basically a set of meta-arguments, arguments about arguments and about the standards for argument. We could set these standards by authoritative edict (a rulebook) or by convention. But on many theory questions there is widespread disagreement and hence no dominant convention. And in the absence of a prevailing convention there is unlikely to be an authoritative rulebook which could be adopted or accepted. We have come, over the past quarter of a century, to think that these are things which debaters can and should argue about. And I accept this general outlook. But even if we neither want to nor can entirely avoid theory argument, it should not be a central focus of the activity. Yet this is precisely what punishment argument make it. Rather than the criteria for the evaluation of arguments, theories come to be ends in themselves, the pivotal issues on which the debate centrally turns. This seems misguided. The knowledge gained in debate has many uses in later life, but surely the least useful body of knowledge which debate teaches is debate theory. For those of us who stay in the activity for a long time, it is interesting. We want to sort out in a consistent and satisfying way the principles of our activity. But that still does not make it a very intrinsically important body of knowledge. I think that we sometimes confuse debate theory with argument theory. I am not arguing that argumentation is not a valid and useful field of thought. And argument theory may intersect with what we commonly think of as “debate theory” at a variety of points. But the vast bulk of debate theory, as argued in competitive debate rounds, really just involves what are appropriate conventions for this particular activity—a contest, sponsored by educational institutions, with a certain format and certain conventions. Are conditional counterplans legitimate? Are plan inclusive counterplans legitimate? Are international counterplans legitimate? Should we assume that the “fiat” of the affirmative plan comes immediately or only after a normal implementation process? Must the affirmative specify an agent? These are the staples of debate theory argument. Especially they are the kinds of issues which most invoke punishment claims. And none of them has particular salience outside the framework and format of contest debate. Of course, it is possible to relate some of these arguments to intellectual controversies beyond competitive debate. For example, a focus on international institutions distinguishes liberalism from realism as foreign policy paradigms. But the debate over international fiat does not draw very heavily on this paradigmatic controversy. And our arguments within competitive debate over the propriety of international fiat does next to nothing to illuminate the liberalism/realism debate within international relations. Arguments over debate theory are reminiscent of the debates of the medieval scholastic philosophers. Rather than arguing about how many angels can dance on the head of pin, we argue about how many intrinsicness arguments can dance on the head of a conditional counterplan. To Aquinas and company, the relationship of pins and angels was interesting and meaningful. Questions of fiat and conditionality matter to us. But only within the narrower confines of the academic debate activity. Once you leave debate, these issues won’t matter to you. So if the focus on punishment serves to make these kinds of arguments more central and other, more exportable forms of knowledge more marginal, then punishment does an intellectual disservice to the students debate is intended to teach. My second main argument is that, empirically, punishment arguments produce bad, anti-educational debate. Punishment arguments are almost always made badly. They are simply tag lines, especially at the impact level. (“This is a voting issue for reasons of fairness and education.”) There are two dominant incentives for labeling an objection to a given theory or practice a voting issue. The first is the “cheap shot” motive. The “independent voter” may get lost in the shuffle, and you may come out with an easy win. I doubt that anyone really thinks that this process of learning to “out tech” your opponent is an important part of debate’s educational mission. Second, by labeling an argument a voting issue, debaters hope of secure a favorable time tradeoff. If an argument is a voting issue, it has to be taken more seriously, even if it is not intrinsically of much substantive importance. Again, in this instance, the punishment argument serves as an element in the tactics of time tradeoff. This is part of the debate game, but it is not a very important part of what debate should teach. As extended, punishment arguments again tend to be a series of tag lines. This is generally true in the negative block, and it is almost always true (because of intense time pressures) in the 1AR and 2NR. If the 2AR chooses to go for a punishment argument, s/he may be more articulate and explanatory. But this generally means that a lot of new arguments are being made, or at least being given flesh from the bare skeleton of assertion, and this raises fairness concerns of its own. Of course, some theory debates are better than others. And I can imagine a world in which theory is debated more clearly and coherently than it generally is in the world of contemporary debate. But the experience of a quarter century of theory debates does not encourage me to think that we will enter that Promised Land any time soon. And “better” theory debates would have to occur in a more thorough and time-consuming fashion than those which occur today. And this would exaggerate the problem of diverting time from more substantive intellectual concerns. My third argument is that the punishment of voting on theory is almost always disproportionate. To me this seems almost true by definition. Someone advances a “bad” argument. They lose that argument. It is not a decisive argument in terms of the substantive logic of the debate, be that a policy logic, a discursive logic, or a critical logic. But instead of just losing that argument, with whatever logical, limited impact that may have in the round, the team which advanced the “bad” argument suddenly is supposed to lose the whole debate. In other words, every other issue in the round, all of the policy arguments, all of the critical arguments, all of the discursive arguments become moot. They no longer matter and they need not be resolved because one theory argument has been lost. Beyond my intuitive sense that this is disproportionate, I have two other arguments for why voting on theory is excessive. First, the theories debaters most want to punish are not really that egregious. Punishment claims are most commonly raised against the following practices: conditional counterplans, partially plan inclusive counterplans, permutations against kritiks, extra-topical plan planks, non-specification of agent by the affirmative, and a range of affirmative and negative fiat issues. I personally favor some of these positions, and I oppose others. But I recognize that there are “pretty good” arguments in favor of both sides with regard to all of these issues. In other words, they are all, relatively speaking, “close calls.” Or, to put it still another way, there are thoughtful members of the competitive debate activity for whom each of these practices makes sense and others for which they do not. On none of these issues is there a theoretical consensus. And all have been widely employed without “destroying debate.” This is not to say that these practices are not fair game for argument. They are. But none is so abusive within the context and conventions of debate as we know it that it needs to be an automatic voting issue. Losing the argument ought to be punishment enough. Nor do we need punishment to deal with theories which the consensus of the activity rejects. The difficulty of winning on counterwarrants or alternative justifications or plan/plan has easily been enough to discourage these practices. Second, the debate over a given theory issue is, by the end of the round, generally close. Each team has its list of brief, blippy reasons to prefer one theory stance or another. Typically, the two lists are opposed to each other, via a process of grouping, and without clear, on-point clash. Usually both sides drop one or more arguments made by their opponents. So again, typically speaking, judges can almost always find grounds to resolve a given theory debate either way, and they generally do so based on their own biases. In this situation, it once again seems to be enough that one side is penalized by losing the particular theory position. A slight edge to one team over the other shouldn’t translate into the critical issue in the round. This is especially true when, as is often the case, the particular theory issue at stake has occupied a fairly small percentage of the total time which the debate occupied. My fourth major argument against punishment is that it is intolerant. All judges have biases which they are only partially successful at screening out. And perhaps oddly, judges often seem less able to set aside their theory biases than their biases on substantive issues. As I noted above, judges can generally justify voting either way on a given theory argument in most rounds. At least if both sides are putting up a decent fight, this is the case. If a position is conceded, most judges will behave accordingly, though even here there are exceptions. And sometimes there will be such a clear preponderance of argument that judges are unable to find their way back to their own theory predispositions. But with two reasonably skilled teams, it is generally possible to resolve a given theory issue either way, so most judges, most of the time, end up endorsing the theory position which they prefer. This may be an unfortunate fact about judges, and it certainly applies to some judges more than to others, but it is a real tendency. It is hardly controversial to say that judges have biases. But the problem with punishment, in light of this fact, is that voting on theory empowers those biases. Instead of creating a strategic slant, the bias becomes all-decisive. What we should recognize, I think, is that different people can and do legitimately hold different concepts of what debate should be about. If one side appeals to our theory preferences and the other side does not, it is not unreasonable to expect that the side whose views we embrace will win the debate over a particular issue more often. But it is intolerant to rule the other side completely out of order, to decide the whole debate based on this one issue, just because they have gotten on the wrong side of one of our theoretical predispositions. A fifth problem with punishment is its arbitrariness. Punishment aims at abusive practices. But abuse clearly falls on a continuum. And the line at which sufficient abuse exists to justify a ballot is inevitably arbitrary. Is a ten second time distortion enough to vote on? A ten-minute time distortion? Or where in between? This situation is further complicated by the fact that one never knows just how the team invoking punishment would have allocated its time absent the problematic practice. Claims that they had wonderful arguments which time constraints prevented them from running should be viewed with a good deal of skepticism. Sometimes arbitrary lines must be drawn. But especially when debate’s equivalent of the death penalty is involved, that arbitrariness should occasion concern. My final argument is that punishment snowballs. Once the punishment paradigm is embraced, a likely consequence is what Ross Smith has called “voting issue proliferation.” Anything can be labeled as a voting issue. And, indeed, the use of theory as a voting issue has helped to create a class of debate “cheap shot artists” who systematically employ punishment strategies. Losing on cheap shots is infuriating for debaters and coaches, and it is frustrating for many judges to vote on them. They certainly don’t make debate a more educational activity. And the teams and debaters who rely on them the most are probably the biggest losers in educational terms.

#### Competing interpretations is key to deterring future abuse and rectify in round unfairness.

Solt ‘2

(Roger E. Solt, Debate Coach at the University of Kentucky, “Theory as a Voting Issue: The Crime of Punishment”, 2002 - Mental Health Policies: Escape from Bedlam?, 2002, http://groups.wfu.edu/debate/MiscSites/

DRGArticles/DRGArtiarticlesIndex.htm)

In Sigel 1, there are four major arguments presented in favor of punishment. The first argument was fairness. Certain theories and practices were said to be unfair to opposing debaters. And it is not enough just to reject these practices; they may so skew the round that only voting against the team which employed them can redress competitive equity. The second argument was education. Sigel invoked the view that the judge should serve as an educator. Part of his or her role as an educator is to discourage bad arguments. Unfair theories and tactics may also serve to undercut the educational quality of the debate experience. The third argument was deterrence. Losing debates, Sigel argued, is a powerful inducement for people to change their ways. Debaters are, for the most part, rational animals, and they will respond to strong competitive incentives. Sigel’s fourth rationale for punishment was argument responsibility. Punishment with the ballot makes debaters highly responsible for their arguments. And debate, he claimed, should teach debaters to argue responsibly.

#### **Reasonability collapses into competing interpretations, if we win our interp creates a better topic than theirs should be considered unreasonable.**

Mancuso ‘82

(Steve Manusco, Debater for University of Kentucky, Wake Forest University, 1982, Topicality: In Search of Reason. The Debaters’ Research Guide, groups.wfu.edu/debate)

In recognition of the many possible definitions of a word, the debate community has adopted (original mother and father unknown) the convention that the affirmative definition only needs to be "reasonable." This burden traditionally stands opposed to the notion that the affirmative must have the best definition of a word, or even necessarily a better definition than the negative. While the initial theoretical underpinnings for such a convention are far from clear, it must certainly he justified on the grounds that it promotes the objective of quality debating. Such a convention recognizes that a definition is not right or wrong, but merely acceptable or unacceptable in a given situation. In situations where broad interpretations of a topic are desirable, a broader-than usual definition may be reasonable, and where a narrow interpretation is desirable, narrow definitions may be reasonable. Such a simplified view of reasonability is not justified in the face of the recent uses and abuses of such a convention. The relevant question is: What does it mean to be reasonable? Again, courts and legislators may have their own definitions of "reasonable," but they may not be at all useful for the functioning of the term in debate. To state that a court has been unable to define the word "reasonable" only means that in that particular context it was difficult, not that such a finding should be accepted as proof that we cannot come up with a workable concept of reasonability for our purposes. Of course, someone who has listened to a few debates concerning "reasonability" may find great sympathy with such a court the concept has taken on very diverse forms, to say the least, in its varied uses. On one extreme, teams have argued that as long as they were not "absurd" in defining their terms, they were reasonable, and some teams have argued that because their definition *exists* they are some how reasonable. On the other end of the definitional continuum, some interpretations of reasonability have been very restrictive. Some teams have argued that only the best definition is reasonable--that it shows little reason to accept an inferior definition. Clearly there has been quite a bit of disagreement as to what is entailed by a "reasonable" definition. Some debate critics have responded to this dispute by throwing up their arms and calling for the abandonment of the concept of reasonability as a topicality convention altogether. While it is very easy to respect and have empathy with such sentiment, it seems prudent to attempt a less radical solution by constructing a more useful and practical convention of reasonability without ""piffing" the concept in its entirety. I would suggest two steps in construction of a workable reasonability convention. First, we must agree upon what makes a definition acceptable. Keeping in mind the goal of high quality debating, two criteria necessary for an acceptable definition should be (1) Does it tend toward focusing debates on timely and relevant policy advocacy? and (2) does it allow the negative sufficient ability to be prepared in both analysis and research? A definition which failed to meet either of these goals would not seem to he an acceptable approach to interpretation. Secondly, the actual debate over topicality should center on the question of whether or not the affirmative interpretation actually did meet both of these criteria. In this sense, the "threshold" for when a definition became "reasonable" would be raised well above the currently less rigorous approaches, yet not overly restrict the affirmative initial and presumptive right to define its terms. The burden would be on the affirmative to explain, wren challenged, the implications of its definition, thus reviving the concept of an affirmative burden on topicality, without making the burden prohibitively heavy by making them refute any conceivable negative alternative definition. In an effort to supplement the convention of "reasonability," "standards" of definition have been offered which the affirmative should meet in order to be considered reasonable. These standards could potentially be used to discern whether or not the affirmative approach met the above two criteria.

### Depth/Breadth/Limits

#### Depth outweighs breadth.

Tai et al ‘8

Tai et al 08 [(Robert) Curriculum, Instruction, and Special Education Department, Curry School of Education) “Depth Versus Breadth: How Content Coverage in High School Science Courses Relates to Later Success in College Science Course work” 2008]

The baseline model reveals a direct and compelling outcome: teaching for depth is associated with improvements in later performance. Of course, there is much to consider in evaluating the implications of such an analysis. There are a number of questions about this simple conclusion that naturally emerge. For example, ho w much depth works best? What is the optimal manner to operationalize the impact of depth-based learning? Do specific contexts (such as type of student, teacher, or school) moderate the impact of depth? The answers to these questions certainly suggest that a more nuanced view should be sought. Nonetheless, this analysis appears to indicate that a robust positive association exists between high school science teaching that pro v ides depth in at least one topic and better performances in introductory postsecondary science courses. Our results also clearly suggest that breadth-based learning, as commonly applied in high school classrooms, does not appear to offer students any advantage when they enroll in introductory college science courses, although it may contribute to higher scores on standardized tests. However, the intuitive appeal of broadly surveying a discipline in an introductory high school course cannot be overlooked. There might be benefits to such a pedagogy that become apparent when using measures that we did not explore. The results regarding breadth were less compelling because in only one of the three disciplines were the results significant in our full model. On the other hand, we observed no positive effects at all. As it stands, our findings at least suggest that aiming for breadth in content coverage should be avoided, as we found no evidence to support such an approach.

#### Limits are k2 clash and in depth discussion.

**Hardy 10**

(Aaron T. Hardy, Coach at Whitman College, “CONDITIONALITY, CHEATING COUNTERPLANS, AND CRITIQUES: TOPIC CONSTRUCTION AND THE RISE OF THE “NEGATIVE CASE””, Contemporary Argumentation & Debate, 2010, pg. 44-45, [http://www.cedadebate.org/cad/index.php/CAD/article/view File/271/243](http://www.cedadebate.org/cad/index.php/CAD/article/view%20File/271/243))

First, narrow topics are more likely to encourage substantive clash. One of the primary motivations for negative teams running away from engagement with the specifics of the affirmative is fear of “falling behind” in the necessary research effort. On a topic with 200 topical affirmative plan mechanisms, it is extremely unlikely that all but the most precocious of negative teams will be prepared to debate each one, and much more likely that they will turn instead to as generic of an approach as possible. Despite sentiments from some corners that the topic writing process is already too narrow and specialized, I would submit that the debate community has not yet truly experimented with what a radically narrower topic might entail. Even the smallest topics in recent memory have afforded the affirmative an incredible amount of flexibility, usually as a compromise to the “broad topics good” camp. A quick perusal of any of the archived case lists from the past decade reveals that even the narrowest topics the community has debated have entailed dozens (if not hundreds) of discrete affirmatives. Instead, envision as a potentially hyperbolic example, a topic with truly only to prepare a truly in-depth take on each one. Chosen in concert with the right literature base, perhaps the word “stale” could be replaced with “nuanced,” even if debates superficially resemble each other as the year progresses.

#### Limits means your case needs to be predictable

Kupferberg ‘87

Eric Kupferbreg, University of Kentucky 1987 “Limits - The Essence of Topicality”

<http://groups.wfu.edu/debate/MiscSites/DRGArticles/Kupferberg1987LatAmer.htm>

If one considers the purpose of topicality--to initiate a meaningful discussion with sufficient prior notice and adequate ground for both sides--then the questions of delimitation become the focus of topicality standards. Both 'reasonability' and 'best definition' claim to enhance the debate process--the former by providing adequate ground for affirmative case areas and the latter by preventing an unreasonable run-a-way topic.¶ I am not suggesting that limits should be the only test for topicality. If this were sole criteria, teams could argue that inherently limited topics are superior, hence, negatives win because their definition excludes the affirmative (there's always a competitive incentive to limit the affirmative out of the round). Obviously, limits for limits sake is arbitrary as well as abusive. However, debatable limits are clearly desirable. What are these 'debatable limits'? Here are some relevant questions that if answered carefully might help to create criteria for debatable limits:¶ 1) Are there fair number of cases that would be topical? An interpretation that overlimited the resolution would be as inappropriate as one which unlimited the topic. An entire year of debating a single case or 300 cases would be neither educational or enjoyable. An interpretation that allowed somewhere between 20 and 40 cases might be acceptable to most participants in the activity.¶ 2) Is the interpretation open to innovation? Part of the intrigue of debating the same topic year round is the competitive incentive for affirmatives to seek new slants. A debatable interpretation should allow for new cases--although they would be chosen from a predictable range of areas. A debatable limit should not force an overly static topic.¶ 3) Does the interpretation fit within some scope of the field context? While not suggesting that we should rely on field contextual definitions alone, an interpretation of the topic should bear some resemblance to the topic area. It would be almost axiomatic to suggest that a definition of 'agricultural' last year should lend itself to cases that are relevant to real world agricultural issues.¶ 4) Does the interpretation allow for some degree of prior notice? A debatable limit is one where a large number of topical cases are to be anticipated by the general debate community. This is not to imply that surprise 'squirrels' should be prohibited, only that definitions should encompass what a large portion of the debate circuit is running.

#### Limits destroy creative thinking – innovation results from breaking rules and challenging dominate modes of thought.

Clark 07

[(Brian, CEO and founder of Coppyblogger Media) “Do You Recognize These 10 Mental Blocks to Creative Thinking?”, Coppyblogger, 9/18/07]

Whether you’re trying to solve a tough problem, start a business, get attention for that business or write an interesting article, creative thinking is crucial. The process boils down to changing your perspective and seeing things differently than you currently do. People like to call this “thinking outside of the box,” which is the wrong way to look at it. Just like Neo needed to understand that “[there is no spoon](http://www.donnarose.com/Spoon.html)” in the film *The Matrix*, you need to realize “there is no box” to step outside of. You create your own imaginary boxes simply by living life and accepting certain things as “real” when they are just as illusory as the beliefs of a paranoid delusional. The difference is, enough people agree that certain man-made concepts are “real,” so you’re viewed as “normal.” This is good for society overall, but it’s that sort of unquestioning consensus that inhibits your natural creative abilities. So, rather than looking for ways to *inspire* creativity, you should just realize the truth. You’re already capable of creative thinking at all times, but you have to strip away the imaginary mental blocks (or boxes) that you’ve picked up along the way to wherever you are today. I like to keep this list of 10 common ways we suppress our natural creative abilities nearby when I get stuck. It helps me realize that the barriers to a good idea are truly all in my head. 1. Trying to Find the “Right” Answer One of the worst aspects of formal education is the focus on the correct answer to a particular question or problem. While this approach helps us function in society, it hurts creative thinking because real-life issues are ambiguous. There’s often more than one “correct” answer, and the second one you come up with might be better than the first. Many of the following mental blocks can be turned around to reveal ways to find more than one answer to any given problem. Try reframing the issue in several different ways in order to prompt different answers, and embrace answering inherently ambiguous questions in several different ways. 2. Logical Thinking Not only is real life ambiguous, it’s often illogical to the point of madness. While critical thinking skills based on logic are one of our main strengths in evaluating the feasibility of a creative idea, it’s often the enemy of truly innovative thoughts in the first place. One of the best ways to escape the constraints of your own logical mind is to think [metaphorically](http://www.copyblogger.com/become-a-master-of-metaphor-and-multiply-your-blogging-effectiveness/). One of the reasons why metaphors work so well in communications is that we accept them as true without thinking about it. When you realize that “truth” is often symbolic, you’ll often find that you are actually free to come up with alternatives. 3. Following Rules One way to view creative thinking is to look at it as a destructive force. You’re tearing away the often arbitrary rules that others have set for you, and asking either “why” or “why not” whenever confronted with the way “everyone” does things. This is easier said than done, since people will often defend the rules they follow even in the face of evidence that the rule doesn’t work. People love to celebrate rebels like Richard Branson, but few seem brave enough to emulate him. Quit worshipping rule breakers and start breaking some rules. 4. Being Practical Like logic, practicality is hugely important when it comes to execution, but often stifles innovative ideas before they can properly blossom. Don’t allow [the editor](http://www.copyblogger.com/copywriting-curse/) into the same room with your inner artist. Try not to evaluate the actual feasibility of an approach until you’ve allowed it to exist on its own for a bit. Spend time asking “what if” as often as possible, and simply allow your imagination to go where it wants. You might just find yourself discovering a crazy idea that’s so insanely practical that no one’s thought of it before. 5. Play is Not Work Allowing your mind to be at play is perhaps the most effective way to stimulate creative thinking, and yet many people disassociate play from work. These days, the people who can come up with great ideas and solutions are the most economically rewarded, while worker bees are often employed for the benefit of the creative thinkers. You’ve heard the expression “work hard and play hard.” All you have to realize is that they’re the same thing to a creative thinker. 6. That’s Not My Job In an era of hyper-specialization, it’s those who happily explore completely unrelated areas of life and knowledge who best see that everything is related. This goes back to what ad man [Carl Ally](http://www.copyblogger.com/how-to-write-remarkably-creative-content/) said about creative persons—they want to be *know-it-alls*. Sure, you’ve got to know the specialized stuff in your field, but if you view yourself as an explorer rather than a highly-specialized cog in the machine, you’ll run circles around the technical master in the success department. 7. Being a “Serious” Person Most of what keeps us civilized boils down to conformity, consistency, shared values, and yes, thinking about things the same way everyone else does. There’s nothing wrong with that necessarily, but if you can mentally accept that it’s actually nothing more than groupthink that helps a society function, you can then give yourself permission to turn everything that’s accepted upside down and shake out the illusions. Leaders from Egyptian pharaohs to Chinese emperors and European royalty have consulted with *fools*, or court jesters, when faced with tough problems. The persona of the fool allowed the truth to be told, without the usual ramifications that might come with speaking blasphemy or challenging ingrained social conventions. Give yourself permission to be a fool and see things for what they really are. 8. Avoiding Ambiguity We rationally realize that most every situation is ambiguous to some degree. And although dividing complex situations into black and white boxes can lead to disaster, we still do it. It’s an innate characteristic of human psychology to desire certainty, but it’s the creative thinker who rejects the false comfort of clarity when it’s not really appropriate. Ambiguity is your friend if you’re looking to innovate. The fact that most people are uncomfortable exploring uncertainty gives you an advantage, as long as you can embrace ambiguity rather than run from it.