# \*\*\*Definitions\*\*\*

# Resolved

### Resolved is Law

#### Resolved means to express by formal vote

Webster’s 98

(Webster’s Revised Unabridged Dictionary, dictionary.com)

Resolved**:¶** 5. To express, as an opinion or determination, by resolution and vote; to declare or decide by a formal vote; -- followed by a clause; as, the house resolved (or, it was resolved by the house) that no money should be apropriated (or, to appropriate no money).

#### ‘Resolved’ denotes a proposal to be enacted by law

Words and Phrases 64

(Permanent Edition)

Definition of the word “resolve,” given by Webster is “to express an opinion or determination by resolution or vote; as ‘it was resolved by the legislature;” It is of similar force to the word “enact,” which is defined by Bouvier as meaning “to establish by law”.

### Resolved – for CPs – Firm / specific

#### Firm decision

AHD 6

(American Heritage Dictionary, http://dictionary.reference.com/browse/resolved)

Resolve TRANSITIVE VERB:1. To make a firm decision about. 2. To cause (a person) to reach a decision. See synonyms at decide. 3. To decide or express by formal vote.

#### Specific course of action

AHD 6

(American Heritage Dictionary, http://dictionary.reference.com/browse/resolved)

INTRANSITIVE VERB:1. To reach a decision or make a determination: resolve on a course of action. 2. To become separated or reduced to constituents. 3. Music To undergo resolution.

#### Resolved means determined and firm in intent

Random House 6

(Unabridged Dictionary, http://dictionary.reference.com/browse/resolve)

re·solved Audio Help /rɪˈzɒlvd/ Pronunciation Key - Show Spelled Pronunciation[ri-zolvd] –adjective firm in purpose or intent; determined.

### Resolved – for CPs – Immediate

#### Resolved implies immediacy and definiteness

Random House 6

(Unabridged Dictionary, http://dictionary.reference.com/browse/resolve)

re·solve Description: thinsp [Audio Help](http://dictionary.reference.com/help/audio.html)   /rɪˈzɒlv/ Pronunciation Key - Show Spelled Pronunciation[ri-zolv] Pronunciation Key - Show IPA Pronunciation verb, -solved, -solv·ing, noun

–verb (used with object)

to come to a definite or earnest decision about; determine (to do something): I have resolved that I shall live to the full.

### Aff Competition

#### “Resolved” doesn’t require certainty

Webster’s 9 – Merriam Webster 2009

(http://www.merriam-webster.com/dictionary/resolved)

# Main Entry: 1re·solve # Pronunciation: \ri-ˈzälv, -ˈzȯlv also -ˈzäv or -ˈzȯv\ # Function: verb # Inflected Form(s): re·solved; re·solv·ing 1 : to become separated into component parts; also : to become reduced by dissolving or analysis 2 : to form a resolution : determine 3 : consult, deliberate

#### Or immediacy

PTE 9 – Online Plain Text English Dictionary 2009

(http://www.onelook.com/?other=web1913&w=Resolve)

Resolve: “To form a purpose; to make a decision; especially, to determine after reflection; as, to resolve on a better course of life.”

# The

### Specific

#### “The” is used to denote a specific entity

American Heritage 2k   
(Fourth Edition, http://dictionary.reference.com/browse/the)

the1     P    (th before a vowel; th before a consonant)

def.art.

Used before singular or plural nouns and noun phrases that denote particular, specified persons or things: the baby; the dress I wore. Used before a noun, and generally stressed, to emphasize one of a group or type as the most outstanding or prominent: considered Lake Shore Drive to be the neighborhood to live in these days. Used to indicate uniqueness: the Prince of Wales; the moon. Used before nouns that designate natural phenomena or points of the compass: the weather; a wind from the south. Used as the equivalent of a possessive adjective before names of some parts of the body: grab him by the neck; an infection of the hand. Used before a noun specifying a field of endeavor: the law; the film industry; the stage. Used before a proper name, as of a monument or ship: the Alamo; the Titanic. Used before the plural form of a numeral denoting a specific decade of a century or of a life span: rural life in the Thirties.

### All Parts

#### “The” indicates reference to a noun as a whole

Webster’s 5

(Merriam Webster’s Online Dictionary, http://www.m-w.com/cgi-bin/dictionary)

The

4 -- used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole <the elite>

# USFG

### Central government in DC

#### “Federal Government” means the United States government

Black’s Law 99

(Dictionary, Seventh Edition, p.703)

The U.S. government—also termed national government

#### National government, not states or localities

Black’s Law 99

(Dictionary, Seventh Edition, p.703)

A national government that exercises some degree of control over smaller political units that have surrendered some degree of power in exchange for the right to participate in national political matters.

#### Government of the USA

Ballentine's 95

(Legal Dictionary and Thesaurus, p. 245)

the government of the United States of America

#### Not states

OED 89

(Oxford English Dictionary, 2ed. XIX, p. 795)

b. Of or pertaining to the political unity so constituted, as distinguished from the separate states composing it.

### 3 Branches

#### The U.S. government is 3 branches

Black’s Law Dictionary 90

(6th Edition, p. 695)

In the United States, government consists of the executive, legislative, and judicial branches in addition to administrative agencies. In a broader sense, includes the federal government and all its agencies and bureaus, state and county governments, and city and township governments.

#### The United States federal government constitutes of the executive, legislative, and judicial branch

Wordnet Princeton 7

http://poets.notredame.ac.jp/cgi-bin/wn?cmd=wn&word=federal\_government

federal government -- (a government with strong central powers) United States government, United States, U.S. government, US Government, U.S. -- (the executive and legislative and judicial branches of the federal government of the United States) HAS INSTANCE=> Capital, Washington -- (the federal government of the United States)

### Includes Agencies

#### Includes agencies

Words & Phrases 4

(Cumulative Supplementary Pamphlet, v. 16A, p. 42)

N.D.Ga. 1986. Action against the Postal Service, although an independent establishment of the executive branch of the federal government, is an action against the “Federal Government” for purposes of rule that plaintiff in action against government has right to jury trial only where right is one of terms of government’s consent to be sued; declining to follow Algernon Blair Industrial Contractors, Inc. v. Tennessee Valley Authority, 552 F.Supp. 972 (M.D.Ala.). 39 U.S.C.A. 201; U.S.C.A. Const.Amend. 7.—Griffin v. U.S. Postal Service, 635 F.Supp. 190.—Jury 12(1.2).

### AT: Federal Government is all 3 branches

#### Federal Government could be any actor within the government

US Code 8

(47 USCS § 224, Lexis)

(a) Definitions. As used in this section:

(1) The term "utility" means any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.

(2) The term "Federal Government" means the Government of the United States or any agency or instrumentality thereof.

# Should

### Immediate / Certain

#### “Should” means “must” and requires immediate legal effect

Summers 94

(Justice – Oklahoma Supreme Court, “Kelsey v. Dollarsaver Food Warehouse of Durant”, 1994 OK 123, 11-8, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13)

4 The legal question to be resolved by the court is whether the word "should"[13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287" \l "marker3fn13) in the May 18 order connotes futurity or may be deemed a ruling in praesenti.[14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287" \l "marker3fn14) The answer to this query is not to be divined from rules of grammar;[15](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287" \l "marker3fn15) it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.[16](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287" \l "marker3fn16)

[CONTINUES – TO FOOTNOTE]

[13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn13) "*Should*" not only is used as a "present indicative" synonymous with *ought* but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as more than merely indicating preference or desirability. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an *obligation* *and to be more than advisory*); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, [802 P.2d 813](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=802&box2=P.2D&box3=813) (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an *obligation* to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony"). [14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn14) In praesenti means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is presently or immediately effective, as opposed to something that will or would become effective in the future *[in futurol*]. See Van Wyck v. Knevals, [106 U.S. 360](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=106&box2=U.S.&box3=360), 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

#### Should implies obligation

American Heritage Dictionary 9

(theFreeDictionary.com, “Should,” http://www.thefreedictionary.com/should)

should (shd)

aux.v. Past tense of shall

1. Used to express obligation or duty: You should send her a note.

#### “should” expresses duty, obligation, or necessity

Webster’s 61

(Webster’s Third New International Dictionary 1961 p. 2104)

Used in auxiliary function to express duty, obligation, necessity, propriety, or expediency

### Certainty

#### “Should” is mandatory, certain and leaves no room for discretion

Nieto 9 – Judge Henry Nieto

(Colorado Court of Appeals, 8-20-2009 People v. Munoz, 240 P.3d 311 (Colo. Ct. App. 2009))

"Should" is "used . . . to express duty, obligation, propriety, or expediency." Webster's Third New International Dictionary 2104 (2002). Courts [\*\*15] interpreting the word in various contexts have drawn conflicting conclusions, although the weight of authority appears to favor interpreting "should" in an imperative, obligatory sense. HN7A number of courts, confronted with the question of whether using the word "should" in jury instructions conforms with the Fifth and Sixth Amendment protections governing the reasonable doubt standard, have upheld instructions using the word. In the courts of other states in which a defendant has argued that the word "should" in the reasonable doubt instruction does not sufficiently inform the jury that it is bound to find the defendant not guilty if insufficient proof is submitted at trial, the courts have squarely rejected the argument. They reasoned that the word "conveys a sense of duty and obligation and could not be misunderstood by a jury." See State v. McCloud, 257 Kan. 1, 891 P.2d 324, 335 (Kan. 1995); see also Tyson v. State, 217 Ga. App. 428, 457 S.E.2d 690, 691-92 (Ga. Ct. App. 1995) (finding argument that "should" is directional but not instructional to be without merit); Commonwealth v. Hammond, 350 Pa. Super. 477, 504 A.2d 940, 941-42 (Pa. Super. Ct. 1986). Notably, courts interpreting the word "should" in other types of jury instructions [\*\*16] have also found that the word conveys to the jury a sense of duty or obligation and not discretion. In Little v. State, 261 Ark. 859, 554 S.W.2d 312, 324 (Ark. 1977), the Arkansas Supreme Court interpreted the word "should" in an instruction on circumstantial evidence as synonymous with the word "must" and rejected the defendant's argument that the jury may have been misled by the court's use of the word in the instruction. Similarly, the Missouri Supreme Court rejected a defendant's argument that the court erred by not using the word "should" in an instruction on witness credibility which used the word "must" because the two words have the same meaning. State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958). [\*318] In applying a child support statute, the Arizona Court of Appeals concluded that a legislature's or commission's use of the word "should" is meant to convey duty or obligation. McNutt v. McNutt, 203 Ariz. 28, 49 P.3d 300, 306 (Ariz. Ct. App. 2002) (finding a statute stating that child support expenditures "should" be allocated for the purpose of parents' federal tax exemption to be mandatory).

#### “Should” means must – its mandatory

Foresi 32

(Remo Foresi v. Hudson Coal Co., Superior Court of Pennsylvania, 106 Pa. Super. 307; 161 A. 910; 1932 Pa. Super. LEXIS 239, Lexis)

As regards the mandatory character of the rule, the word 'should' is not only an auxiliary verb, it is also the preterite of the verb, 'shall' and has for one of its meanings as defined in the Century Dictionary: "Obliged or compelled (to); would have (to); must; ought (to); used with an infinitive (without to) to express obligation, necessity or duty in connection with some act yet to be carried out." We think it clear that it is in that sense that the word 'should' is used in this rule, not merely advisory. When the judge in charging the jury tells them that, unless they find from all the evidence, beyond a reasonable doubt, that the defendant is guilty of the offense charged, they should acquit, the word 'should' is not used in an advisory sense but has the force or meaning of 'must', or 'ought to' and carries [\*\*\*8] with it the sense of [\*313] obligation and duty equivalent to compulsion. A natural sense of sympathy for a few unfortunate claimants who have been injured while doing something in direct violation of law must not be so indulged as to fritter away, or nullify, provisions which have been enacted to safeguard and protect the welfare of thousands who are engaged in the hazardous occupation of mining.

#### Should means must

Words & Phrases 6

(Permanent Edition 39, p. 369)

C.D.Cal. 2005. “Should,” as used in the Social Security Administration’s ruling stating that an ALJ should call on the services of a medical advisor when onset must be inferred, means “must.”—Herrera v. Barnhart, 379 F.Supp.2d 1103.—Social S 142.5.

# Substantially

### Without Material Qualification

#### Substantially is without material qualification

Black’s Law 91

[p. 1024]

Substantially - means essentially; without material qualification.

#### Substantially is an adverb – refers to the manner not the quantity

Watson 2

JAMES L. WATSON, SENIOR JUDGE 2002 UNITED STATES COURT OF INTERNATIONAL TRADE GENESCO INC., :Plaintiff, :v.Court No. 92-02-00084 UNITED STATES , <http://www.cit.uscourts.gov/slip_op/Slip_op00/00-57.pdf>.

The term “substantially” is used as an adverb preceding a verb, the term means “in a substantial manner: so as to be substantial.” Webster’s Third New International Dictionary of the English Language Unabridged

(1968).

### Numbers – Laundry List

#### It can be 1%

Lee 94

Thomas, September, 72 N.C.L. Rev. 1633, lexis

The Fourth Circuit easily concluded that the city had entered contracts with its employees upon enacting the Ordinance of Estimates, 31 and that the salary reductions constituted an impairment of these contracts. 32 Second, the court determined that the nearly one-percent pay reduction was substantial 33 because the level of compensation was a contractual inducement upon which the plaintiffs had especially relied. 34

#### Substantially means at least 10%

McKelvie 99

Justice, United States District Court for the District of Delaware, 90 F. Supp. 2d 461; 1999 U.S. Dist. LEXIS 21802

Claim 1 of the '092 patent and claim 1 of the '948 patent contain the phrase "a die of substantially uniform cross-section." KXI contends the term "substantially" means "at least a 10% change in size." KXI contends that as applied to the claim, the phrase "substantially uniform cross-section" means "the die should not change in diameter by more than 10%." Culligan contends the phrase "substantially uniform cross-section" in the '092 and '948 patents means the internal cross-section of the die must vary less than about 0.010 inch along the length of the die.

#### 30%

Business Day 3

“Stock exchange reels as rand rules roost” 12/4/03. Lexis.

After the close on Tuesday, Impala warned that its results for the half-year ending on December 31 this year are set to be substantially lower than the previous comparative period. According to the JSE's listings requirements, "substantially" means a change of more than 30%.

#### 50%

The Herald 2

“Parties unite in opposition to white paper on Lords reform” 1/11/02. Lexis.

Chris Smith, the former culture secretary, said: "Quite simply, the government haven't got it right," he said. The new chamber should be substantially elected. "In my book substantially means at least 50% - 20% will not do."

#### **95%**

Inbau 99

Fred, Summer, 89 J. Crim. L. & Criminology 1293, lexis

The court accepted the opinion of Florida Rock's expert, noting that the decline in fair market value from $ 10,500 to $ 500 per acre constituted a "substantial reduction in value." 81 Yet the court also observed that this ninety-five percent reduction "in and of itself is not a sufficient basis for concluding that a taking has occurred." 82 The court then stated it also must inquire into "the owner's opportunity to recoup its investment" 83 to determine whether compensation was required. 84 It observed that Florida Rock had purchased the property for mining purposes and that the property owner could recoup its investment only by engaging in this activity. 85 The regulation thus resulted in a substantial impact on Florida Rock's investment. 86 The court concluded that a taking had occurred, 87 and the Government appealed for a second time to the Court of Appeals for the Federal Circuit.

### Qualitative

#### Substantial means “of considerable amount” --- not some contrived percentage

Prost 4 - Judge – United States Court of Appeals for the Federal Circuit

(“Committee For Fairly Traded Venezuelan Cement v. United States”, 6-18, http://www.ll.georgetown.edu/federal/judicial/fed/opinions/04opinions/04-1016.html)

The URAA and the SAA neither amend nor refine the language of § 1677(4)(C).  In fact, they merely suggest, without disqualifying other alternatives, a “clearly higher/substantial proportion” approach.  Indeed, the SAA specifically mentions that no “precise mathematical formula” or “‘benchmark’ proportion” is to be used for a dumping concentration analysis.  SAA at 860 (citations omitted); see also Venez. Cement, 279 F. Supp. 2d at 1329-30.  Furthermore, as the Court of International Trade noted, the SAA emphasizes that the Commission retains the discretion to determine concentration of imports on a “case-by-case basis.”  SAA at 860.  Finally, the definition of the word “substantial” undercuts the CFTVC’s argument.  The word “substantial” generally means “considerable in amount, value or worth.”  Webster’s Third New International Dictionary 2280 (1993).  It does not imply a specific number or cut-off.  What may be substantial in one situation may not be in another situation.  The very breadth of the term “substantial” undercuts the CFTVC’s argument that Congress spoke clearly in establishing a standard for the Commission’s regional antidumping and countervailing duty analyses.  It therefore supports the conclusion that the Commission is owed deference in its interpretation of “substantial proportion.”  The Commission clearly embarked on its analysis having been given considerable leeway to interpret a particularly broad term.

#### Federal courts agree – substantially shouldn't be defined precisely to a numerical value

Curtin 3 - United States Circuit Judge of the Western District of New York

(Gateway Equip. Corp. v. United States, 247 F. Supp. 2d 299, Lexis)

While the court agrees that the meanings of limitation and impairment refer to restriction and reduction, it **does not agree** with the uncited definition of "substantial" as an order of magnitude equivalent to 80 or 90 percent. *Random House Unabridged Dictionary* 1897 (2d ed. 1993) defines "substantial" as "of ample or considerable amount quantity, size," a much less precise definition than offered by the government. It is clear that the CB-4000 can and does transport its load over the public highway in the course of traveling to a job [\*\*33]  site. The question is whether that transportation function is substantially limited by its special design in the type of material it can haul, and whether there are other factors that substantially limit/ impair its use for over-the-road distance hauling.

# Curtail

## \*Curtail = Restriction

### 1nc Restriction Shell

#### Interpretation – curtail requires a restriction

Oxford Advanced Learner’s Dictionary – no date

http://www.oxforddictionaries.com/us/definition/american\_english/curtail

Reduce in extent or quantity; impose a restriction on

#### Violation – the plan is executive discretion, not a restriction

Nybo 2 – JD @ U Chicago

(Christopher, “Dialing M for Murder: Assessing the Interstate Commerce Requirement for Federal Murder-for-Hire,” 2001 U Chi Legal F 579, Lexis)

Proponents of a broad interpretation of § 1958's jurisdictional requirement also argue that, while the subcommittee did not intend "that all or even most such offenses should become matters of Federal responsibility," 152 it may have intended that any limits on jurisdiction be established through federal prosecutorial discretion rather than by judicial restriction of the statute's jurisdictional scope. 153 The Senate report notes that the subcommittee wanted federal jurisdiction to "be asserted selectively based on [600] such factors as the type of defendants reasonably believed to be involved and the relative ability of the federal and state authorities to investigate and prosecute." 154 The use of the phrase "asserted selectively" suggests that the Senate subcommittee acknowledged the potentially broad jurisdictional scope of § 1958 but preferred that prosecutors exercise discretion in choosing which cases to pursue. 155 Rather than pursuing all such cases, federal prosecutors are encouraged to use "cooperation and coordination" with state officials and only use § 1958 in "appropriate cases." 156

#### Reasons to prefer –

#### Limits—forcing a restriction limits the possible mechanisms for the topic away from executive action which shrinks the size of the topic

#### Ground – maintaining Congress and the courts as the actor ensures disad links and non-secret actions

#### Topicality is a voting issue for competitive equity.

### 2nc Restriction Extensions

#### Curtailment means a limit

Gibbons 99 – PhD in Statistics

(Jean, “Selecting and Ordering Populations: A New Statistical Methodology,” p 178)

In general, curtailment is defined with respect to any rule as terminating the drawing of observations at a number smaller than n as soon as the final decision is determined; here n is the maximum number of observations that one is allowed to take. Thus curtailment is an “early stopping rule” and it yields a saving in the number of observations taken. Therefore we now discuss curtailment with respect to our sampling rule of looking for the cell with the highest frequency in n observations; we wish lo evaluate the amount of saving that may result for various values of k and n.

### 2nc Restriction Extensions – Third Party

#### Curtailment has to take away from a third party—can’t be self-imposed

8th Circuit Court of Appeals 10

(Public Water Supply Dist. No. 3 v. City of Leb., 605 F.3d 511, Lexis)

HN9 7 U.S.C.S. § 1926(b) provides that a rural district's service shall not be curtailed or limited. In this context, the verbs "curtail" and "limit" connote something being taken from the current holder, rather than something being retained by the holder to the exclusion of another. "Curtail" is defined as shorten in extent or amount; abridge; "limit" is defined as set bounds to; restrict. The available cases and fragments of legislative history all seem to have in mind curtailment resulting from substitution of some third party as a water-supplier for the rural district. Shepardize - Narrow by this Headnote

## \*Curtail =/= Eliminate

### 1nc Not Abolish Shell

#### Interpretation – curtail cannot abolish

Supreme Court of Connecticut 85

(IN RE JUVENILE APPEAL (85-AB), Lexis)

1. In an attempt to suggest that the statutory right to a private hearing under General Statutes § 46b-122 is not really nullified by their opinion, the majority points to General Statutes § 46b-124. While recognizing, as they must, that their position does result in publicity, they nevertheless argue that § 46b-124 by prohibiting disclosure of records and proceedings in juvenile matters does "curtail the additional publicity that a public trial would generate." Two points should be made to counter this "justification." First, as one court said: "[I]n common parlance, or in law composition, the word `curtail' has no such meaning as `abolish.'" State v. Edwards, 207 La. 506, 511, 21 So.2d 624 (1945). Rather, it means "`to cut off the end, or any part, of; hence to shorten; abridge; diminish; lessen; reduce.'" Id. Second, the statutory right to a private hearing in § 46b-122 does not talk at all in terms of relativity, of something is to be diminished, lessened or reduced. It confers a right that is not to be diluted, let alone nullified.

#### Violation – the affirmative plan abolishes a domestic surveillance program

#### It’s a voting issues because it unlimits the topic by including abolition as a mechanism and it’s extra topical which allows the affirmative to get out of disad and kritik links while giving them extra solvency

### 2nc Not Abolish Extensions

#### It’s a reduction, not an abolition

Supreme Court of Louisiana 45

(State v. Edwards, 207 La. 506, Lexis)

Police Jury of Concordia Parish, La., Ordinance No. 202 (April 14, 1943) provided that three open seasons for the hunting of squirrels were curtailed, but the ordinance did not specify how much the state open hunting seasons were to be curtailed. La. Gen. Stat. § 2947 (1926) provided that the annual open season for hunting squirrels was from October 1st to January 15, and defendant was convicted of killing squirrels on October 1, 1944. The ordinance was purportedly enacted to exercise the discretion given to parish authorities to curtail the hunting season by La. Gen. Stat. § 2939 (1926), but defendant claimed that the ordinance was invalid because it was meaningless. The court annulled defendant's conviction, finding that the ordinance was meaningless because the time frame in which hunting was to be curtailed was not specified. The state's argument that the parish abolished all hunting for the three seasons was rejected because the Ordinance's use of the term "curtailed" indicated that there was a reduction of the hunting season and not its abolishment. Also the court had jurisdiction to review the conviction because its jurisdiction extended to ordinances that imposed penalties.∂ Outcome∂ The court annulled the conviction and sentence that had been imposed on defendant, and it ordered that the prosecution of defendant be dismissed.∂ Hide sectionLexisNexis® Headnotes∂ Civil Procedure > ... > Jurisdiction > Jurisdictional Sources > Constitutional Sources∂ Civil Procedure > Appeals > Appellate Jurisdiction > State Court Review∂ Constitutional Law > ... > Jurisdiction > Subject Matter Jurisdiction > Amount in Controversy∂ Criminal Law & Procedure > Appeals > General Overview∂ HN1 The Supreme Court of Louisiana has jurisdiction of the question of constitutionality or legality of an ordinance under La. Const. art. VII, § 10, which states that it shall have appellate jurisdiction in all cases where the legality, or constitutionality of any fine, forfeiture, or penalty imposed by a parish, municipal corporation, board, or subdivision of the State shall be in contest, whatever may be the amount thereof. Shepardize - Narrow by this Headnote∂ Environmental Law > Natural Resources & Public Lands > Topic Summary ReportFish & Wildlife Protection∂ HN2 La. Gen. Stat. § 2947 (1926 ) provides that the annual open season for hunting squirrels is from October 1st to January 15th; and, according to La. Gen. Stat. § 2925 (1926), the term "open season" includes the first and the last of the two days mentioned. Shepardize - Narrow by this Headnote∂ Counsel: A. B. Parker, of Jena, and C. T. Munholland and Theus, Grisham, Davis & Leigh, all of Monroe (W. T. McCain and J. W. Ethridge, both of Colfax, of counsel), for defendant-appellant.∂ Fred S. LeBlanc, Atty. Gen., M. E. Culligan, Asst. Atty. Gen., and Jesse C. McGee, Dist. Atty., of Harrisonburg (Jos. M. Reeves, of Vidalia, of counsel), for plaintiff-appellee. ∂ Judges: O'Niell, Chief Justice. ∂ Opinion by: O'NIELL ∂ Opinion∂ [507] The appellant was convicted of killing squirrels out of season, in violation of a parish ordinance, and was sentenced to pay a fine of $ 25 and the costs of court or be imprisoned in the parish jail for 30 days.∂ In a motion to quash the bill of information, and again in a motion for a new trial and a motion in arrest of judgment, the defendant pleaded that the parish ordinance [508] was unconstitutional, for several reasons which we find it unnecessary to consider. He pleaded also that in any event the ordinance was illegal because it was so worded as to have no meaning or effect. The motions were overruled.∂ HN1 This court has jurisdiction of the question of constitutionality or legality of the ordinance, under the provision in Section 10 of Article VII of the Constitution that the Supreme Court shall have appellate jurisdiction in all cases "where the legality, or constitutionality of any fine, forfeiture, or penalty imposed by a parish, municipal corporation, board, or subdivision of the State shall be in contest, whatever may be the amount thereof."∂ The charge in the bill of information, stated specifically, is that on the 1st day of October, 1944, the defendant "did unlawfully hunt and take six squirrels during the closed season, contrary to the provisions of Ordinance 202 of the Police Jury of Concordia Parish". Under the state law the 1st day of October was within the open season for hunting squirrels. HN2 In Section 1 of Article III of Act 273 of 1926, being Section 2947 of Dart's General Statutes, the annual open season for hunting squirrels is from October 1st to January 15th; and, according to Section 1 of Article I of the act, being Section 2925 of Dart's General Statutes, the term "open season" includes the first and the last of the two days mentioned. Hence the defendant is not accused of violating the state law.∂ The ordinance purports to "curtail" the open season for hunting squirrels, or deer [509] or bear, as fixed by the state law, but does not give the extent of the curtailment, or indicate whether it shall be cut off from the beginning or from the end of the open season, from October 1st to January 15th. The first section of the ordinance, adopted on April 14, 1943, reads as follows: "Section 1. Be it ordained by the Police Jury of the Parish of Concordia, State of Louisiana, in lawful session convened, that the open seasons for the hunting and taking of wild deer, bear and squirrels within the boundaries of the Parish of Concordia, State of Louisiana, are hereby curtailed for the open seasons of 1943-1944, the open seasons of 1944-1945, and the open seasons of 1945-1946, it being apparent that a curtailment of the open seasons so that such game life may restock themselves by natural breeding is necessary, and written consent having been given by the Conservation Commissioner of the State of Louisiana to the Police Jury of the Parish of Concordia, to adopt this ordinance."∂ The second section of the ordinance imposes the penalty, -- a fine not less than $ 25 or more than $ 100, or imprisonment for a period not exceeding 60 days, or both the fine and imprisonment; the third section repeals all ordinances in conflict with Ordinance No. 202; and the fourth or last section provides that Ordinance No. 202 shall become effective after promulgation in the official journal of the parish, once a week for four consecutive weeks. Such promulgation is required by the third paragraph of Section 15 of Article I of Act 273 of 1926, Section 2939 of Dart's General [510] Statutes. Ordinance No. 202 was adopted under authority of that section of the statute, which section reads as follows:∂ "Section 15. The Police Jury of any parish may apply to the Conservation Commissioner for the right to adopt an ordinance to curtail the open season in such parish, or any part thereof, when it becomes apparent that the game bird and game quadruped life are in need of a curtailment of the open seasons so that such game life may restock themselves by natural breeding.∂ "Upon receipt of such application and if conditions indicate the need of adding protection for any game bird or game quadruped or all of them, the Commissioner may give written consent to the police jury of the parish to adopt, in their discretion, an ordinance to curtail the open season, but for not more than three consecutive years, which curtailment shall apply to everyone, including the residents of such parish.∂ "Such curtailment shall become effective only after notice of the adoption of such ordinance shall have been promulgated by the police jury, in the official parish journal, once a week for four consecutive weeks prior to the regular annual open seasons for hunting. Annual special parish close seasons on the game birds and game quadrupeds shall commence on the legal date of the open seasons in each year."∂ The argument for the prosecution is that the ordinance abolished the three open seasons, namely, the open season from October 1, 1943, to January 15, [511] 1944, and the open season from October 1, 1944, to January 15, 1945, and the open season from October 1, 1945, to January 15, 1946; and that, in that way, the ordinance suspended altogether the right to hunt wild deer, bear or squirrels for the period of three years. The ordinance does not read that way, or convey any such meaning. According to Webster's New International Dictionary, 2 Ed., unabridged, the word "curtail" means "to cut off the end, or any part, of; hence to shorten; abridge; diminish; lessen; reduce." The word "abolish" or the word "suspend" is not given in the dictionaries as one of the definitions of the word "curtail". In fact, in common parlance, or in law composition, the word "curtail" has no such meaning as "abolish". The ordinance declares that the three open seasons which are thereby declared curtailed are the open season of 1943-1944, -- meaning from October 1, 1943, to January 15, 1944; and the open season 1944-1945, -- meaning from October 1, 1944, to January 15, 1945; and the open season 1945-1946, -- meaning from October 1, 1945, to January 15, 1946. To declare that these three open seasons, 1943-1944, 1944-1945, and 1945-1946, "are hereby curtailed", without indicating how, or the extent to which, they are "curtailed", means nothing.

#### Must leave some surveillance in place

Baker 7 - author of Capitalism's Achilles Heel: Dirty Money and How to Renew the Free-Market System

“Proceedings of the Standing Senate Committee on Foreign Affairs and International Trade,” http://www.parl.gc.ca/Content/SEN/Committee/391/fore/15evb-e.htm?comm\_id=8&Language=E&Parl=39&Ses=1

Mr. Baker: I agree with the point that you were making about the World Bank. Many people in the World Bank are extremely dedicated to curtailing poverty in developing countries. Some others are looking for the next opportunity in the private sector and may be less aggressive in fighting corruption and money laundering; perhaps less aggressive in taking on the kinds of problems we are talking about here. You are correct when you talk about oil revenues going out into foreign banks. They do not go to other African banks, but come frequently through the structure I talked about, the illicit financial structure, but ultimately into Western economies. Part of what fascinates me is that it is almost entirely a permanent outward transfer; very little turns around and goes back in at a later date to developing countries. The little bit that turns around and goes back almost always goes back as foreign direct investment, FDI; that is to say it has gone abroad, has acquired a foreign nationality as a company, investment fund or trust account, and it comes as FDI with the intention of going abroad again as dividends, interest on principal payments on loans or as transfer pricing disguised in inter-company transactions. You used the words "make it impossible"; I use the word "curtail." I am interested in curtailing the outflow of illicit money, not trying to stop it entirely. Curtailing it is a matter of political will; stopping it is draconian. I am not certain I favour that.

### Aff – Includes Elimination

#### Curtailment includes complete elimination

FASB 85

(Financial Accounting Standards Board, EMPLOYERS' ACCOUNTING FOR SETTLEMENTS AND CURTAILMENTS OF DEFINED BENEFIT PENSION PLANS AND FOR TERMINATION BENEFITS (ISSUED 12/85))

Statement 87 continues the past practice of delaying the recognition in net periodic pension cost of (a) gains and losses from experience different from that assumed, (b) the effects of changes in assumptions, and (c) the cost of retroactive plan amendments. However, this Statement requires immediate recognition of certain previously unrecognized amounts when certain transactions or events occur. It prescribes the method for determining the amount to be recognized in earnings when a pension obligation is settled or a plan is curtailed. Settlement is defined as an irrevocable action that relieves the employer (or the plan) of primary responsibility for an obligation and eliminates significant risks related to the obligation and the assets used to effect the settlement. A curtailment is defined as a significant reduction in, or an elimination of, defined benefit accruals for present employees' future services.

#### Curtail can eliminate in full

Dembling 78 – General Counsel, General Accounting Office

Paul, “OVERSIGHT HEARING ON THE IMPOUNDMENT CONTROL ACT OF 1974” HEARING BEFORE THE TASK FORCE ON BUDGET PROCESS OF THE COMMITTEE ON THE BUDGET HOUSE OF REPRESENTATIVES NINETY-FIFTH CONGRESS SECOND SESSION JUNE 29, 1978, Hein Online

(3) "Curtail" means to discontinue, in whole or in part, the execution of a program, resulting in the application of less budget authority in furtherance of the program than provided by law.

#### Elimination of part curtails the whole

Chase 49– US Circuit Court judge

COMMISSION OF DEPARTMENT OF PUBLIC UTILITIES OF COMMONWEALTH OF MASSACHUSETTS v. NEW YORK, N.H. & H.R. CO. No. 40, Docket 21392 UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT 178 F.2d 559; 1949 U.S. App. LEXIS 3864 November 10, 1949, Argued December 13, 1949, Decided, lexis

In reaching their differing conclusion, my brethren rely upon the circumstance that on a few occasions during this long reorganization the Commission or our court has spoken of a 'curtailment [\*\*32] of service' or of discontinuing passenger service 'in whole or in part.' Neither by themselves nor in their contexts do these offhand characterizations or references appear to me to support the inference sought to be drawn from them. Indeed several are only statements of contentions or arguments presented and without further significance. True, the word 'curtailment' has occasionally been used; but it must be recalled that in the total picture of Old Colony service, complete abandonment of passenger trains is only a 'curtailment,' since freight trains are still to run. Thus it is that discontinuing passenger travel must be authorized by the I.C.C. under the bankruptcy power, rather than under its normal power over abandonment, since it constitutes only a partial abandonment. Moreover, no stress can properly be put on the Commission's statement early in the proceedings that the public was 'alive to the danger that service may be discontinued, in whole or in part.' 244 I.C.C. 239, 264. For this was soon after the time that the New Haven had been seeking a curtailment of Old Colony passenger service, rather than a discontinuance, in the form of its abortive attempt to [\*\*33] close 88 passenger stations. The Commonwealth, various towns, and commuters groups had just finished fighting to prevent any curtailment of service, and were as aware of that as a danger as they were of discontinuance as a danger. See Rood, Protecting the User Interest in Railroad Reorganization, 7 Law & Contemp.Prob. 495, 1940. It is a fact that as early as 1939 the New Haven trustees had tried to discontinue passenger service on the Boston Group of Old Colony lines, and the efforts of the reorganization judge were required to induce them to hold off on this move while a satisfactory compromise was sought. Id. at 502.

## \*Curtail = Reduction

### 1nc Curtail = Reduction

#### Interpretation—curtail means to reduce in quantity

Oxford Dictionaries 15

“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

#### Violation—the affirmative does not mandate a reduction in domestic surveillance

#### Reasons to prefer—

#### Limits—our interpretation limits the affirmative’s mechanism to a direct reduction of domestic surveillance versus mechanisms that merely impose restrictions on surveillance

#### Ground—reductions in domestic surveillance are key to core disadvantage ground like the terrorism disad

#### Voting issue for competitive equity

### 2nc Definition Ext.

#### Curtail means to reduce

MacMillan Dictionary 15

‘curtail’, <http://www.macmillandictionary.com/dictionary/american/curtail>

curtail VERB [TRANSITIVE] FORMAL to reduce or limit something, especially something good

### 2nc Violation Ext.

#### Regulation moots the curtailment—curtailment requires a net reduction from the status quo

Howell 14- US District Court Judge

Beryl, HUMANE SOCIETY OF THE UNITED STATES, et al., Plaintiffs, v. SALLY JEWELL, Secretary of the Interior, et al.,1 Defendants, v. STATE OF WISCONSIN, et al. Intervenor-Defendants. 1 Pursuant to Federal Rule of Civil Procedure 25(d), Sally Jewell, Secretary of the Interior, is automatically substituted for her predecessor in office. Civil Action No. 13-186 (BAH) UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA 2014 U.S. Dist. LEXIS 175846 December 19, 2014, Decided December 19, 2014, Filed

Moreover, by defining "significant portion of a species' range" in the final rule as referring only to a species' "current range," the FWS explicitly contradicts the conclusions by courts finding that "range" must include the "historical range" and the ESA's legislative history. LEG. HIST. at 742 (H. Rep. 95-1625, from Committee on Merchant Marine and Fisheries, regarding ESAA) ("The term 'range' [in the ESA] is used in the general sense, and refers to the historical range of the species."); Defenders of Wildlife, 258 F.3d at 1145. It also renders meaningless the word "curtailment" in 16 U.S.C. § 1533(a)(1)(A), since it is impossible [\*162] to determine the "present . . . curtailment of [a species'] habitat or range" without knowing what the species' historical range was prior to being curtailed.

### 2nc Secure Data Act Violation

#### Secure Data Act does not mandate a reduction in surveillance

Newman 14 – staff writer at Slate

Lily Hay, Senator Proposes Bill to Prohibit Government-Mandated Backdoors in Smartphones, 12/5/14, http://www.slate.com/blogs/future\_tense/2014/12/05/senator\_wyden\_proposes\_secure\_data\_act\_to\_keep\_government\_agencies\_from.html

Bills aimed at curtailing surveillance have failed to pass in the Senate this month (also most of the time), and the Secure Data Act will probably face the same uphill battle. As Ars Technica points out, an amendment similar to the Secure Data Act passed the House in June, but never became a bill. It's worth noting, though, that the Secure Data Act doesn't actually prohibit backdoors—it just prohibits agencies from mandating them. There are a lot of other types of pressure government groups could still use to influence the creation of backdoors, even if they couldn't flat-out demand them.

# Its

## \*Its = Possessive

### 1NC Its = Possessive

#### Interpretation: Its is possessive and denotes ownership

Appellate Court of Illinois 80

“Hulett v. Central Illinois Light Co.,” 83 Ill. App. 3d 195, Lexis

The plaintiff responded to the motion for summary judgment to the effect that as to who owned or controlled the wires is immaterial, since CILCO was required to maintain and inspect all electric supply lines carrying its electricity and had failed to do so. In support of this contention the plaintiff relies upon Illinois Commerce Commission General Order 160 -- Revised, and effective as of June 1, 1963, which provides as follows: "9. General Maintenance Requirements. Each public utility operating a system of power or communication lines shall maintain *its* [italics in original] system of lines in such condition as will enable it to furnish safe, adequate and dependable service. Power and communication lines and their associated equipment shall comply with the provisions of this General Order when placed in service, and shall thereafter by systematically inspected, and when necessary, be subjected to tests to determine their fitness for the service required of them, and for conditions of safety. Any defects revealed by such inspections and tests which could cause or create an unsafe condition, shall be promptly corrected. If such corrections are not immediately undertaken, a record of the condition found shall be made in the proper plant office of the utility. Defective lines or their associated equipment shall be placed in good operating condition, or otherwise effectively disconnected or removed." (Emphasis added.) The purport of the trial judge's order is to this court clear in that a question of law is presented, namely, whether or not the Commerce Commission General Order 160 places a duty upon CILCO to maintain, repair and inspect the electrical lines in question, even though they are not and never have been owned or controlled by the power company. We note, however, that the plaintiff attempts to challenge the sufficiency of the Volk affidavit which denies ownership or control of the lines by CILCO. It is the plaintiff's argument that the affidavit referred to records as to premises located at 821 Tremont Township, Tremont, Illinois, and that the described premises have not been established as the place where the plaintiff was injured. We find no merit in this contention since it is [198] patently clear from the record that there was no concern on the part of the trial court or the parties to this action concerning the Volk affidavit or where the plaintiff was injured. It should be noted that the plaintiff did not file a counteraffidavit and consequently admitted that CILCO did not own or control the electrical line. (See Carruthers v. B. C. Christopher & Co. (1974), 57 Ill. 2d 376, 313 N.E.2d 457.) To raise on appeal the question of ownership appears to be an effort on the part of the plaintiff to obfuscate the true issue, to-wit, the meaning and effect of General Order 160. We have set forth the pertinent provisions of the order and attention should be directed to the word its located in the first paragraph and which we have emphasized. The word its as used is a pronoun and is being used in its possessive form. By the use of the word it is clear that each public utility system shall maintain the power lines which it owns.

#### Violation: The affirmative curtails surveillance by private companies

#### Reasons to Prefer:

#### Limits – their interpretation massively explodes the topic – it allows affirmatives to defend local surveillance techniques from local police forces or private entitites – creates an unreasonable research burden for the negative and makes debate impossible

1. Ground – defending nonfederal surveillance allows them to spike out of links to core generics like the terrorism da and politics

#### Topicality is a voter for fairness and education

### Possessive

#### It’s singular and possessive

Updegrave 91 – analyst @ MONEY Magazine for 20+ years

Walter, “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 means controlled and possessed by

Harrold 11 – Esq., brief to the Supreme Court of Indiana

Dennis, “HAIRE v. PARKER, 2011 IN S. Ct. Briefs LEXIS 350,” Lexis

However, simply stating that Haspin Acres is released cannot afford enough protection because - under Indiana's law of agency or various theories of derivative liability - Haspin Acres would nevertheless face significant liability exposure for the negligent acts of its agents and affiliates. Under the doctrine of respondeat superior, a principal is liable for the negligent acts of his agent. See Comer-Marquardt v. A-l Glassworks, LLC, 806 N.E.2d 883, 887 (Ind. Ct. App. 2004). This explains the use of the language: "its officers, trustees, employees and agents, meet [15] officials, promoters, sponsors, motorcycle riders, mechanics and pit crew." (App. 26) Haspin Acres included this list of possible agents and affiliates to further reduce liability exposure. This list of categories is controlled by the possessive "its", referring to Haspin Acres. Thus, each category is subject to the same possessive. Therefore, the entities released are Haspin Acres and "its officers", "its .. . trustees", "its .. . employees and agents", "its .. . riders", etc. (App. 26) The effect of the possessive "its" controls the entire list, including "riders". The express provision states "its . . . riders," not all riders.

### Its = Associated With

#### Its means associated with

Dictionary.com 9

Collins English Dictionary, <http://dictionary.reference.com/browse/its?s=t>

its (ɪts) — determiner a. of, belonging to, or associated in some way with it: its left rear wheel b. ( as pronoun ): each town claims its is the best

# Domestic Surveillance

## \*General Definitions

### Broad Definition

#### Domestic surveillance involves collection of information from communications

IMUNC 14 – Human Rights Council

Human Rights Council Study Guide, 2014, 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.

### Legislative

#### Domestic surveillance activities are only topical if defended by the Omnibus Crime Control and Safe Streets Act or the Foreign Intelligence Surveillance Act

ACLU – no date

FACT SHEET: LEGAL CLAIMS IN ACLU V. NATIONAL SECURITY AGENCY, https://www.aclu.org/fact-sheet-legal-claims-aclu-v-national-security-agency

The ACLU also charges that the program violates the constitutional principle of separation of powers, because it was authorized by President Bush in excess of his Executive authority and contrary to limits imposed by Congress. In response to widespread domestic surveillance abuses committed by the Executive Branch and exposed in the 1960s and 1970s, Congress enacted legislation that provides the exclusive means by which electronic surveillance and the interception of domestic wire, oral and electronic communications may be conducted. Congress enacted two statutes which impose strict limits on domestic surveillance, including prior judicial approval -- Title III of the Omnibus Crime Control and Safe Streets Act of 1968 and the Foreign Intelligence Surveillance Act (FISA), passed in 1978.

### Includes Spying

#### Domestic Surveillance involves wiretapping, spying, and organizational infiltration

Torin Monahan, Associate Professor of Human and Organizational Development and Medicine at Vanderbilt University and member of the International Surveillance Studies Network, 2011 “The Future of Security? Surveillance Operations at Homeland Security Fusion Centers” Social Justice Vol. 37, Nos. 2–3 (2010–2011)

The U.S. “war on terror” has fueled remarkable developments in state¶ surveillance. In the aftermath of the terrorist attacks of September 11, 2001,¶ the country witnessed a rise in domestic spying programs, including warrantless¶ wiretaps of the communications of citizens, investigations into the borrowing¶ habits of library patrons, infiltration of peace-activist groups by government agents,¶ and the establishment of tip hotlines to encourage people to report suspicious¶ others (Monahan, 2010). Rather than interpret these and similar developments as¶ originating with the “war on terror,” scholars in the field of surveillance studies¶ have correctly noted that the events of September 11 provided an impetus for a¶ surge in many preexisting, but perhaps dormant, forms of state surveillance (Wood,¶ Konvitz, and Ball, 2003).

### Includes Data Collection

#### Domestic surveillance involves mass data collection of United States citizens

McGreal 7 – Professor of Law, Southern Illinois University School of Law

Paul, Counteracting Ambition: Applying Corporate Compliance and Ethics to the Separation of Powers Concerns with Domestic Surveillance, SMU Law Review, Fall, 2007, Lexis

Third, modern domestic surveillance, even in aid of foreign intelligence, entails the collection and storage of massive amounts of private data concerning United States citizens. Citizens rightly fear that such data could be either misused or improperly disclosed, raising issues of individual liberty that (at times) may be unpopular. Separation of powers suggests that the federal judiciary ought to be involved in checking Congress and the President in this area. And Whalen v. Roe n157 further suggests that one such check ought to be judicial review to determine [\*1600] whether the President and Congress have implemented adequate safeguards to prevent misuse or improper disclosure of private information.

### Includes Drones

#### Domestic surveillance includes drones—examining drone policy is crucial to topic education

Ghoshray 13 – President, Institute of Interdisciplinary Studies

Dr. Saby, Domestic Surveillance Via Drones: Looking Through the Lens of the Fourth Amendment, Northern Illinois University Law Review, Spring 2013, Lexis

Almost as old as modern civilization, social contract theory originated from Plato and Socrates. Nurtured in the modern era by Hobbs, n80 Rousseau, n81 and Hume, n82 the social contract theory posits that an individual in a society surrenders some of her freedoms and submits to the authority of a supervisory entity in exchange for the protection of such individual's remaining rights. Implicit in this paradigm is a core belief of individual consent. This idea of individual consent as a prerequisite of fundamental liberty has been further solidified in the contemporary era by legal scholar Randy Barnett. n83 Yet, the digital explosion and the ease of technology has created a dystopian nightmare where the related supervisory entities, like the government and law enforcement agencies, may be rejecting this idea of social contract theory. Through implicit rejection of social contract, the supervisory entities are gradually depriving individuals some of their rights, such as the right to privacy within their own confines. This emerging phenomenon must be evaluated for its full implications within the context of domestic surveillance via drones. In a futuristic scenario where a domestic drone may be buzzing over a community, either searching for a fleeing criminal or guarding against crime from being committed, the tracking and storing mechanism would automatically record private moments and personal affairs for which the individuals have not provided consent. Social contract theory prohibits such law enforcement intrusion on private space of individuals. If we were to balance the rights relinquished against the rights being preserved, it would be revealed that no significant preservation takes [\*598] place. Yet, a significant portion of individual rights is being put in jeopardy, if not in peril. Tracking of an individual via drones or recording an individual's private moments give rise to other concerns. In yet another reversal for implications of privacy, when such recordings take place, the surveillance and data storing may erroneously create illegitimate proxies for an individual profile based on imprecise or incomplete vignettes of life evolving within a fleeting temporal sequence. Law has yet to respond to this imprecise and flawed subjective assessment based on intrusive privacy violations, unbridled data mining, and tracking that unmanned aerial vehicles might be engaged in.

#### Drones are reconnaissance and monitoring, which is surveillance by definition.

Leachtenauer 1 – Defense Consultant

(John, “Surveillance and Reconnaissance Imaging Systems,” p. 1)

Surveillance and reconnaissance (S&R) systems are defined here as remote sensing imaging systems used to acquire military, economic, and political intelligence information. Classically, reconnaissance is defined as the act of reconnoitcring or making a preliminary inspection. In the military sense, it involves determining the lay of the land and the disposition of enemy forces. Economically, it may be a survey to detect oil-bearing strata. Any imaging system that can acquire imagery of relatively large ground areas can be used for reconnaissance. Surveillance is defined as maintaining close observation of a group or location. Frequent imaging of enemy forces is the classic application. Monitoring crop vigor or civil unrest can also be considered surveillance. The implication here is the need for frequent or even continuous coverage. In a practical sense, most S&R systems can perform both reconnais-sance and surveillance by virtue of the ability to trade ofT resolution and area of coverage. The Predator unmanned aerial vehicle (UAV), for example, flies a video system with both a long focal length lens for high resolution surveil-lance and a short focal length lens for lower resolution reconnaissance. The LANDSAT multispectral satellite is used for both reconnaissance and sur-veillance applications, the only difference being the number of images ac-quired of the same ground area.

### Includes Phone Surveillance

#### Domestic surveillance includes phone taps

Small 8 – United States Air Force Academy

Matthew, His Eyes are Watching You: Domestic Surveillance, Civil Liberties and Executive Power during Times of National Crisis, 2008, http://cspc.nonprofitsoapbox.com/storage/documents/Fellows2008/Small.pdf

Having explored the inordinate amount of power granted to two of America’s greatest presidents during periods of time when threats from within the United States threatened to rip the fragile fabric of democracy, focus now shifts to the volatile 20th century. New national threats required the use of old surveillance techniques combined with new technology. The ability of the US government to tap into phone conversations opened a whole new realm of domestic surveillance. Simultaneously, it struck a fear into American citizens. Now, one could use telephone conversations, which people held to be as private as a one-on-one chat inside one’s own home, to intrude into a person’s private life or convict a person of a crime. Out of this fear arose the need to assert the right to privacy. The debate over wiretapping then linked directly to the conception of the right to privacy.

### Includes Warrants

#### Domestic surveillance includes activities that require a warrant

Lee 13 – Washington Post

Timothy, The NSA is trying to have it both ways on its domestic spying programs, 12/22/13, 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.

### Includes Law Enforcement Investigation

#### Surveillance refers to any method of investigation carried out by law enforcement officials

Simmons 13 – Professor of Law, Moritz College of Law at The Ohio State University

Ric, PRIVACY, SECURITY, AND HUMAN DIGNITY IN THE DIGITAL AGE: ENDING THE ZERO-SUM GAME: HOW TO INCREASE THE PRODUCTIVITY OF THE FOURTH AMENDMENT, Harvard Journal of Law & Public Policy, Spring 2013, Lexis

n13 Throughout this Article I will use the word "surveillance" to cover any method of investigation carried out by law enforcement officials, from accessing a Department of Motor Vehicles database to wiretapping a telephone to strip-searching a suspect. This rather awkward terminology is required because the term "search" has a very particular meaning in Fourth Amendment jurisprudence as a method of surveillance that implicates the Fourth Amendment to the degree that it requires probable cause or a warrant. See Katz v. United States, 389 U.S. 347, 350-53 (1967).

### Includes Persons

#### Systematic observation of persons

Wang 11 – PhD, Vice President for Information Services and Chief Information Officer for the RF

Hao, “Protecting Privacy in China,” p. 27

Surveillance is defined as the systematic investigation or monitoring of the actions or communications of one or more persons. Traditionally, surveillance has been undertaken by physical means, such as guarding prisons. In recent decades, it has been enhanced through image amplification devices such as high-resolution satel¬lite cameras.6"1 Most of them are readily available in China today. However, some of them are also privacy invasive. They render current Chinese legal protections seriously inadequate. These devices may include: (I) microphones or listening devices that can be concealed; (2) miniature tape recorders; (3) hidden cameras such as cell phone cameras; (4) hidden monitors that operated by remote control; (5) infrared devices enabling photographs to be taken at night; (6) miniature transmitters; and so on.

#### RIPA definition proves---it’s about persons

Martellozzo 12 – PhD, Criminologist, specialises in sex offenders' use of the internet and online child safety

Elena, “Online Child Sexual Abuse,” Google Book

During online undercover operation, the use of surveillance is common practice. Surveillance is defined in section 48(2) of the RIPA and includes: a monitoring, observing or listening to persons, their movements, their conversations or their other activities or communications b recording anything monitored, observed or listened to in the course of the surveillance and c surveillance by or with the assistance of a surveillance device. There are two types of surveillance: directed and intrusive surveillance. Directed surveillance is defined in section 26(2) of the RIPA. It requires a directed surveillance authority if: • it comprises covert observation or monitoring by whatever means • it is for the purpose of a specific investigation or specific operation • it will or is likely to obtain private information about any person, not just the subject of the operation (this is I lie key element that engages also with Article 8ofthef.CHR)but • it docs not include observations conducted in an immediate response to spontaneous events. The last point refers to a scenario where on patrol, police officers notice someone acting suspiciously near a house. Because this is an immediate event or circumstance, authority for surveillance is not required (Harficld and liarficld 2005: :M). Therefore, directed surveillance includes instances where the police or other authorised public authorities follow an individual in the public, monitor and record their movements (The Crown Prosecution Service 07/07/08). Intrusive surveillance is defined in section 26 (http://www.bishop-accountability .org/reports,''2004\_02\_27\_JohnJay/LitReview/l\_3\_|J\_TheoriesAnd.pdf) of the RIPA and it comprises: • covert surveillance • carried out in any residential premises or In any private vehicle and which involves • the presence of an individual on the premises or in the vehicle or • the use of a surveillance device.

## \*Domestic Surveillance = Nonpublic

### 1NC Nonpublic/United States

#### Interpretation: Domestic surveillance means the acquisition of nonpublic information regarding United States persons—most limiting and contextual interpretation

Small 8 – United States Air Force Academy

Matthew, His Eyes are Watching You: Domestic Surveillance, Civil Liberties and Executive Power during Times of National Crisis, 2008, 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.

#### Violation: The Affirmative curtails surveillance of public data like social media

#### Reasons to Prefer:

#### limits - the aff explodes and makes the neg research burden unmanageable

Walby 5 – PhD, Associate Professor, University of Winnipeg, Department of Criminal Justice

Kevin, “Institutional Ethnography and Surveillance Studies: An Outline for Inquiry,” Surveillance & Society 3(2/3): 158-172

The emerging transdisciplinary field of surveillance studies suffers from an overabundance of speculative theorizing and a dearth of rigorous empirical research. Of course, many monographs, articles, and reports tangentially related to the study of surveillance are based on social scientific practice, and many of the classic works that constitute surveillance studies itself are not purely speculative but engage through research with the social world they investigate (see, for instance, Rule, 1973; Braverman, 1974; Marx, 1988). Researching surveillance involves “watching” and needs to be accompanied by an ethics of honesty, sympathy and respect as it regards researchers and their respondents. Still, there is no overarching method in this area of study. Nor should there be only one overarching method. When we use the word “surveillance” we often forget how amazingly diverse the forms, linkages, and processes captured by the word are. That surveillance is a signifier referring to face-to-face supervision, camera monitoring, TV watching, paparazzi stalking, GPS tailing, cardiac telemonitoring, the tracking of commercial/internet transactions, the tracing of tagged plants and animals, etc., points to an impossible and always receding signified. Nevertheless, we need to refer to these processes, and at present time surveillance is the term. We also need ways of inquiring into these processes. The search is on for the methods of inquiry needed to give surveillance studies continuity and legitimacy in the sport de combat of social science.

#### Topicality is a voter for fairness and education

## \*Domestic Surveillance = Within US Borders

### 1nc Within Borders

#### Interpretation – domestic surveillance occurs within the United States borders

Avilez et al 14 **-** Ethics, History, and Public Policy Senior Capstone Project at Carnegie Mellon University

Marie, “Security and Social Dimensions of City Surveillance Policy” 12/10, <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

#### Violation – the affirmative curtails surveillance outside of the United States borders

#### Reasons to prefer

#### Limits – allowing foreign surveillance explodes the limits of the topic to include other countries

#### Ground – disad links are based off of data collection within the United States

#### Voting issue for competitive equity

### 2nc Within Extensions

#### Domestic surveillance means within the United States

Pegarkov 6 – editor

Daniel, *National Security Issues*, 2006, p. 156-7

Title III does not define “international or foreign communications” or “domestic.” It is unclear under the language of this section whether communications that originate outside the United States but are received within U.S. territory, or vice versa, were intended to be treated as foreign, international or domestic. Recourse to the plain meaning of the words provides some illumination. *Webster’s New Collegiate Dictionary* (1977), in pertinent part, defines “international” to mean “affective or involving two or more nations” or “of or relating to one whose activities extend across national boundaries.” Therefore, “international communications” might be viewed as referring to communications which extend across national boundaries or which involve two or more nations. “Foreign” is defined therein, in pertinent part, as “situated outside a place or country; *esp* situated outside one’s own country.” Thus, “foreign communications” might be interpreted as referring to communications taking place wholly outside the United States. “Domestic” is defined, in pertinent part, in *Webster’s* to mean “of, relating to, or carried on within and esp. one’s own country.” Therefore, “domestic communications” may be defined as communications carried on within the United States.

#### Domestic means within the United States—that excludes foreign or international

Oxford Dictionaries – no date

http://www.oxforddictionaries.com/us/definition/american\_english/domestic

Existing or occurring inside a particular country; not foreign or international

#### It’s within the US’s geographic territory

Sladick 12 **–** blogger for the Tenth Amendment Center

Kelly, “Battlefield USA: The Drones are Coming” <http://blog.tenthamendmentcenter.com/2012/12/battlefield-usa-the-drones-are-coming/>

In a US leaked document, “Airforce Instruction 14-104”, on domestic surveillance is permitted on US citizens. It defines domestic surveillance as, “any imagery collected by satellite (national or commercial) and airborne platforms that cover the land areas of the 50 United States, the District of Columbia, and the territories and possessions of the US, to a 12 nautical mile seaward limit of these land areas.” In the leaked document, legal uses include: natural disasters, force protection, counter-terrorism, security vulnerabilities, environmental studies, navigation, and exercises.

#### Domestic means the contiguous United States

FSSI 13 - Federal Strategic Sourcing Initiative

GSA Federal Strategic Sourcing Initiative (FSSI) Wireless, Blanket Purchase Agreement (BPA), http://www.gsa.gov/portal/mediaId/172035/fileName/FSSIWirelessRFQAmendment0011.action

2 Performance Work Statement All capabilities shall be offered unless specified “as available” in which case the capability must be offered only if the Contractor offers it commercially. The Contractor shall not propose additional service plans beyond those specified in Tables 3-1 (Voice Service Plans), 3-2 (Data Add-On Service Plans), and 3-3 (Data Only Service Plans). 2.1 Wireless Service and Network Coverage Area The Contractor shall provide domestic wireless voice and data service to areas that are populated by more than 90% of the United States population. Domestic is defined as the contiguous United States, Alaska, Hawaii, Puerto Rico, and the US Virgin Islands. The Contractor shall also provide international coverage areas as commercially available; as a minimum, it shall include Canada, China, France, Germany, Netherlands, Israel, Japan, Mexico, and the United Kingdom. For both domestic and international coverage, the Contractor shall specify geographies covered and type of services available (voice, data and technology (LTE, etc)).

### Aff – Within the United States/Includes Foreign

#### Domestic refers to activity within the United States, but can involve foreign intelligence information

Truehart 2 – J.D., Boston University School of Law, 2002

Carrie, CASE COMMENT: UNITED STATES v. BIN LADEN AND THE FOREIGN INTELLIGENCE EXCEPTION TO THE WARRANT REQUIREMENT FOR SEARCHES OF "UNITED STATES PERSONS" ABROAD, Boston University Law Review, April 2002, 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.

#### It can target the agent of a foreign power

Donohue 15- Professor of Law, Georgetown University Law Center

Laura, “SECTION 702 AND THE COLLECTION OF INTERNATIONAL TELEPHONE AND INTERNET CONTENT” 38 Harv. J.L. & Pub. Pol'y 117, Winter, lexis

C. The Protect America Act Four months after McConnell's proposal, Congress passed the Protect America Act (PAA), easing restrictions on the surveillance of foreigners where one (or both) parties were located overseas. n53 In doing so, it removed such communications from FISA's definition of "electronic surveillance," narrowing the term to include only domestic communications. The attendant restrictions, such as those related to probable cause that the target be a foreign power or an agent thereof, or likely to use the facilities to be placed under surveillance, or specifications related to the facility in question, dropped away.

### Aff – AT Limits

#### All electronic data is stored outside the United States—they would make every aff untopical because there’s no clear line

Tracy 15

Sam, “NSA WHISTLEBLOWER JOHN TYE EXPLAINS EXECUTIVE ORDER 12333” 3/18, <http://warrantless.org/2015/03/tye-12333/>

It’s been widely reported that the NSA, under the constitutionally suspect authority of Section 215 of the PATRIOT Act, collects all Americans’ phone metadata. Congress has not yet passed any reforms to this law, but there have been many proposals for changes and the national debate is still raging. Yet Americans’ data is also being collected under a different program that’s entirely hidden from public oversight, and that was authorized under the Reagan-era Executive Order 12333.

That’s the topic of a TEDx-Charlottesville talk by whistleblower John Napier Tye, entitled “Why I spoke out against the NSA.” Tye objected to NSA surveillance while working in the US State Department. He explains that EO 12333 governs data collected overseas, as opposed to domestic surveillance which is authorized by statute. However, because Americans’ emails and other communications are stored in servers all over the globe, the distinction between domestic and international surveillance is much less salient than when the order was originally given by President Reagan in 1981.

#### Geography is a bad interp and outdated

Sanchez 14 **-** Senior Fellow at the Cato Institute

Julian, “Snowden: Year One” 6/5, <http://www.cato-unbound.org/2014/06/05/julian-sanchez/snowden-year-one>

The second basic fact is that modern communications networks obliterate many of the assumptions about the importance of geography that had long structured surveillance law. A “domestic” Internet communication between a user in Manhattan and a server in Palo Alto might, at midday in the United States, be routed through nocturnal Asia’s less congested pipes, or to a mirror in Ireland, while a “foreign” e-mail service operated from Egypt may be hosted in San Antonio. “What we really need to do is all the bad guys need to be on this section of the Internet,” former NSA director Keith Alexander likes to joke. “And they only operate over here. All good people operate over here. All bad guys over here.” It’s never been quite that easy—but General Alexander’s dream scenario used to be closer to the truth. State adversaries communicated primarily over dedicated circuits that could be intercepted wholesale without much worry about bumping into innocent Americans, whereas a communication entering the United States could generally be presumed to be with someone in the United States. The traditional division of intelligence powers by physical geography—particularized warrants on this side of the border, an interception free-for-all on the other—no longer tracks the reality of global information flows.

## \*Domestic Surveillance = US Citizens

### 1nc United States Persons

#### Interpretation – the aff can only be about surveillance against United States persons

Small 8 – United States Air Force Academy

Matthew, His Eyes are Watching You: Domestic Surveillance, Civil Liberties and Executive Power during Times of National Crisis, 2008, 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.

#### Violation – the affirmative deals with surveillance of foreign nationals

#### It’s a voting issue because they explode the limits of the topic by allowing affirmatives dealing with immigration and counter-intelligence

### 2nc United States Persons Extensions

#### Domestic surveillance only involves United States persons – it’s court defined and distinct

McCarthy 6– former assistant U.S. attorney for the Southern District of New York.

Andrew, “It’s Not “Domestic Spying”; It’s Foreign Intelligence Collection” National Review, 5/15, Read more at: <http://www.nationalreview.com/corner/122556/its-not-domestic-spying-its-foreign-intelligence-collection-andrew-c-mccarthy>

Eggen also continues the mainstream media’s propagandistic use of the term “domestic surveillance [or 'spying'] program.” In actuality, the electronic surveillance that the NSA is doing — i.e., eavesdropping on content of conversations — is not “domestic.” A call is not considered “domestic” just because one party to it happens to be inside the U.S., just as an investigation is not “domestic” just because some of the subjects of interest happen to reside inside our country. Mohammed Atta was an agent of a foreign power, al Qaeda. Surveilling him — had we done it — would not have been “domestic spying.” The calls NSA eavesdrops on are “international,” not “domestic.” If that were not plain enough on its face, the Supreme Court made it explicit in the Keith case (1972). There, even though it held that judicial warrants were required for wiretapping purely domestic terror organizations, the Court excluded investigations of threats posed by foreign organizations and their agents operating both within and without the U.S. That is, the Court understood what most Americans understand but what the media, civil libertarians and many members of Congress refuse to acknowledge: if we are investigating the activities of agents of foreign powers inside the United States, that is not DOMESTIC surveillance. It is FOREIGN counter-intelligence. That, in part, is why the statute regulating wiretaps on foreign powers operating within the U.S. — the one the media has suddenly decided it loves after bad-mouthing it for years as a rubber-stamp — is called the FOREIGN Intelligence Surveillance Act (FISA). The United States has never needed court permission to conduct wiretapping outside U.S. territory; the wiretapping it does inside U.S. territory for national security purposes is FOREIGN INTELLIGENCE COLLECTION, not “domestic surveillance.”

#### Domestic is only US citizens

Powell 72 – US Supreme Court Justice

UNITED STATES v. UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN ET AL. (PLAMONDON ET AL., REAL PARTIES IN INTEREST) No. 70-153 SUPREME COURT OF THE UNITED STATES 407 U.S. 297; 92 S. Ct. 2125; 32 L. Ed. 2d 752; 1972 U.S. LEXIS 38

8 Section 2511 (3) refers to "the constitutional power of the President" in two types of situations: (i) where necessary to protect against attack, other hostile acts or intelligence activities of a "foreign power"; or (ii) where necessary to protect against the overthrow of the Government or other clear and present danger to the structure or existence of the Government. Although both of the specified situations are sometimes referred to as "national security" threats, the term "national security" is used only in the first sentence of § 2511 (3) with respect to the activities of foreign powers. This case involves only the second sentence of § 2511 (3), with the threat emanating -- according to the Attorney General's affidavit -- from "domestic organizations." Although we attempt no precise definition, we use the term "domestic organization" in this opinion to mean a group or organization (whether formally or informally constituted) composed of citizens of the United States and which has no significant connection with a foreign power, its agents or agencies. No doubt there are cases where it will be difficult to distinguish between "domestic" and "foreign" unlawful activities directed against the Government of the United States where there is collaboration in varying degrees between domestic groups or organizations and agents or agencies of foreign powers. But this is not such a case.

### 2nc No FISA

#### FISA courts are only foreign

Berman 14 - Visiting Assistant Professor of Law, Brooklyn Law School

Emily Berman, Regulating Domestic Intelligence Collection, 71 Wash. & Lee L. Rev. 3, <http://scholarlycommons.law.wlu.edu/wlulr/vol71/iss1/5>

Another barrier to enlisting the FISC in intelligence collection governance is that the intelligence-collection activities governed by the Guidelines extend beyond the scope of the FISC’s jurisdiction. The FISC oversees electronic foreign intelligence surveillance and physical searches of premises connected with foreign powers.322 It has no role in overseeing purely domestic surveillance of Americans absent probable cause that those Americans are agents of a foreign power.323 The content of the Guidelines and the activities they regulate—such as physical surveillance of Americans, infiltration of religious or political groups, the use of informants, requests for internet history— rarely fall within the FISC’s jurisdiction. Individuals who wish to challenge FBI activity—if they can establish standing—do not have access to the FISC.324 Thus, it is unclear what role the FISC could play in reviewing many activities in which the FBI engages.

### Aff – Yes FISA

#### Surveillance authorized by FISA is domestic surveillance—contextual evidence proves

Wagner 9 - J.D., expected May 2010, The George Washington University Law School

Mike, Warrantless Wiretapping, Retroactive Immunity, and the Fifth Amendment, George Washington Law Review, November, 2009, lexis

Subject to certain narrowly defined exceptions, n20 electronic government surveillance on U.S. soil is prohibited unless the FISC first determines that there is probable cause to believe that the target is an agent of a foreign power and that the place at which the surveillance is directed is being used by a foreign power or its agent. n21 If the government ignores this warrant requirement and engages in electronic domestic surveillance anyway, it will be found to have violated FISA. n22 In such a case, FISA creates a direct private cause of action for anyone "who has been subjected to ... electronic surveillance" in violation of FISA. n23 Interestingly, FISA specifically contemplated the potential civil liability of private telecommunications providers assisting in government surveillance, but the Act made clear that such private carriers would be protected from civil suit only when they assisted the government "in accordance with the terms of a court order, [\*208] statutory authorization, or certification" in writing from the Attorney General. n24

#### FISA constraints are designed to curtail the executive’s ability to conduct domestic surveillance

Bast and Brown 14 - Associate Professor of Legal Studies, Department of Legal Studies, University of Central Florida and an attorney in private practice

Carol and Cynthia, GUILTY BY ASSOCIATION: SMALL-WORLD PROBLEM EMPHASIZES CRITICAL NEED FOR BUSINESS STRATEGIES IN RESPONSE TO THE FOREIGN INTELLIGENCE SURVEILLANCE ACT, 2014, Michigan State Law Review, 2014, lexis

In 1978, when Congress first adopted FISA, its intent was to place significant restrictions on the executive branch's authority to [\*1092] conduct domestic surveillance, not enlarge the powers available to the President. n410 Likewise, when Congress enacted the original NSL statutes, telephone companies and banks served as the contemplated recipients for these limited information requests allowable only in very narrowly defined situations. n411 There is more than a little irony in the fact that both FISA and NSLs began as protective devices to ensure individual privacies and limit government intrusion, and today, both have morphed into something quite different from their predecessors. It is of little surprise that many of the consequences that now threaten American businesses were unimaginable over three decades ago when the government first introduced these tools, and when considered through the "small-world" theory of networking, these consequences have an impact with a magnitude wholly incomprehensible in 1978.

## \*Domestic Surveillance = Covert

### 1nc Covert

#### Interpretation – surveillance must be covert

Baker 5 – MA, CPP, CPO

(Brian, “Surveillance: Concepts and Practices for Fraud, Security and Crime Investigation,” http://www.ifpo.org/wp-content/uploads/2013/08/surveillance.pdf)

Surveillance is defined as covert observations of places and persons for the purpose of obtaining∂ information (Dempsey, 2003). The term covert infers that the operative conducting the∂ surveillance is discreet and secretive. Surveillance that maintains a concealed, hidden, undetected∂ nature clearly has the greatest chance of success because the subject of the surveillance will act∂ or perform naturally. Remaining undetected during covert surveillance work often involves∂ physical fatigue, mental stress, and very challenging situations. Physical discomfort is an∂ unfortunate reality for investigators, which varies from stinging perspiration in summer to hard∂ shivers during the winter.

#### Violation – the aff curtails surveillance that is not covert

#### Reasons to prefer –

#### Limits—allowing the ending of public surveillance explodes the limits of the topic by allowing affirmatives that deal with programs that known surveillance like detention facilities

#### Ground—key to neg ground like terrorism and politics disads

#### Voting issue for competitive equity

### 2nc Covert Extensions

#### Must be covert

IJ 98

(Info Justice, OPERATIONS, SURVEILLANCE AND STAKEOUT PART 1, http://www.infojustice.com/samples/12%20Operations,%20Surveillance%20And%20Stakeout%20Part%201.html)

Surveillance is defined as the systematic observation of persons, places, or things to obtain information. Surveillance is carried out without the knowledge of those under surveillance and is concerned primarily with people.

#### Even the broadest definition doesn’t include information provided with consent

Pounder 9 – PhD, Director, Amberhawk Training and Amberhawk Associates

(Chris, “NINE PRINCIPLES FOR ASSESSING WHETHER PRIVACY IS PROTECTED IN A SURVEILLANCE SOCIETY,” Scholar)

This paper uses the term "surveillance" in its widest sense to include data sharing and the revealing of identity information in the absence of consent of the individual concerned. It argues that the current debate about the nature of a "surveillance society" needs a new structural framework that allows the benefits of surveillance and the risks to individual privacy to be properly balanced.

### 2nc Most Common

#### Surveillance is most often covert

Glancy 12 – Professor of Law, Santa Clara University Law School. B.A. Wellesley College, J.D. Harvard Law School

Dorothy, SYMPOSIUM ARTICLE: PRIVACY IN AUTONOMOUS VEHICLES, Santa Clara Law Review, 2012, Lexis

Surveillance is a relatively modern idea. Even the word, "surveillance," is fairly new to the English language. It was borrowed from the French by the British at the turn of the nineteenth century to refer to looking over an area, usually from a high place, for strategic information about a battlefield or prospective confrontation. n92 Early in the twentieth century, surveillance usually suggested use of technology to enhance human abilities to see over wide distances to collect comprehensive information about an adversary. n93 Since then, [\*1208] the word, "surveillance," has been used in a wide variety of careful-watching contexts from medical surveillance of diseases and immune responses, to physical stakeouts of crime suspects, to mass-scale electronic and network surveillance for gathering intelligence or for seeking evidence of anomalous or criminal behavior. Surveillance is also a psychological technique used to affect human behavior through pervasive monitoring of activities and areas to discourage people from violating rules or laws. Although surveillance most often means covert collection of information, it can also refer to overt watching aimed at modifying the behavior of those watched. An example of overt surveillance is red-light cameras. These devices are often prominently placed as ever-present watchers at intersections so that drivers are deterred from entering intersections while the stoplight is red. n94 One purpose of overt surveillance is to affect the behavior of those being watched, to assure that individual behavior conforms to societal norms. If an autonomous vehicle user were informed that his or her vehicle continuously reports its speed to law enforcement authorities, that user would be more likely to direct the vehicle to conform to the speed limit, rather than exercise personal autonomy in deciding not to conform. n95 Similarly, autonomous vehicles could overtly monitor the behavior of vehicle users so that instances of user activities such as smoking or drinking alcohol are sensed and recorded.

### Aff – Not Covert

#### Surveillance is only covert in the context of foreign surveillance – domestic surveillance is public

By Timothy B. Lee December 22, 2013 The NSA is trying to have it both ways on its domestic spying programs https://www.washingtonpost.com/blogs/the-switch/wp/2013/12/22/the-nsa-is-trying-to-have-it-both-ways-on-its-domestic-spying-programs/

Fleisch's argument suggests that the agency expects the American people to simply trust it to use its vast spying powers responsibly without meaningful public oversight. That's not how domestic surveillance is supposed to work. 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.

# \*\*\*Disadvantages\*\*\*

# Limits DA

### Generic

#### Their interpretation of debate explodes limits. They justify affs that <make fun of their interp, ex. “suggest we live as hermits in the Rockies as a survival mechanism against modernity”>.

#### K2 Fairness - The neg could never predict the massive amount of affirmatives justified.

#### K2 Education

#### a. Limits are k2 a good substantive debate. We need boundaries to determine a predictable starting point in order to use well-researched and thoroughly developed arguments and have clash.

#### Debate is a game and we train by researching. We learn about the debate topic through preparation before tournaments.

### Extra-Topicality

#### Extra-T completely destroys limits -- Their case is outside of the scope of the topic. The neg uses the resolution as a starting point for research and can never prepare for, let alone anticipate, arguments outside of the topic.

# Ground DA

### Generic

#### The neg loses these specific arguments under their interpretation:

### Extra-Topicality

#### Extra-T completely destroys ground – the aff can just no link out of nearly every topic specific disad and kritik, or always outweigh the impacts of the off-case with extra-topical solvency, which is highly abusive.

# \*\*\*Answers\*\*\*

# AT Predictability

#### This is completely arbitrary. They can argue that they’re predictable just because they vaguely involve surveillance of some sort. This doesn’t mean it’s good for debate. This is a reason to defer to competing interpretations – it rids of judge intervention.

#### Our case list proves that our interpretation is predictable.

# AT Reasonability

#### Reasonability is a bad argument –

#### They can’t be reasonable – our DAs prove. If we win any of the offense on this flow, the affirmative can’t be a reasonable extension of the topic.

#### They are just as easily reasonably untopical. Prefer competing interpretations as a means to prevent judge intervention, because what is “reasonably topical” is completely arbitrary.

#### If they win reasonability as a framing argument, then our offense on this flow is reasonably true, thus you vote neg on presumption.

#### An equally divided topic and the ability to anticipate arguments in order to debate well-developed, researched, and thought-out arguments are reasonable requests.

#### Predictable Ground – Under reasonability, more than one interpretation can be topical, and the neg can never anticipate if someone will present a completely new interpretation.

#### Prefer competing interpretations –

#### Education – determining the best interpretation to operate under is at the heart of real-world policymaking, this discussion is essential for effective policy formation, democratic participation and a plethora of occupations

# AT Interp Overlimits

#### Overlimiting is better than unlimiting – overlimiting fosters creativity within limits which allows us to discover nuances in arguments and forces us to use more in-depth thinking, this can only develop more in-topic education, whereas unlimiting undermines any possibility for clash and fairness for the neg.

#### We don’t overlimit, we have a caselist. <insert cases that they can read under your interp> There is a topical version of the aff:

#### Uniqueness: The topic is already huge – limits are needed to make for a good debate.

Walby 5 – PhD, Associate Professor, University of Winnipeg, Department of Criminal Justice

Kevin, “Institutional Ethnography and Surveillance Studies: An Outline for Inquiry,” Surveillance & Society 3(2/3): 158-172

The emerging transdisciplinary field of surveillance studies suffers from an overabundance of speculative theorizing and a dearth of rigorous empirical research. Of course, many monographs, articles, and reports tangentially related to the study of surveillance are based on social scientific practice, and many of the classic works that constitute surveillance studies itself are not purely speculative but engage through research with the social world they investigate (see, for instance, Rule, 1973; Braverman, 1974; Marx, 1988). Researching surveillance involves “watching” and needs to be accompanied by an ethics of honesty, sympathy and respect as it regards researchers and their respondents. Still, there is no overarching method in this area of study. Nor should there be only one overarching method. When we use the word “surveillance” we often forget how amazingly diverse the forms, linkages, and processes captured by the word are. That surveillance is a signifier referring to face-to-face supervision, camera monitoring, TV watching, paparazzi stalking, GPS tailing, cardiac telemonitoring, the tracking of commercial/internet transactions, the tracing of tagged plants and animals, etc., points to an impossible and always receding signified. Nevertheless, we need to refer to these processes, and at present time surveillance is the term. We also need ways of inquiring into these processes. The search is on for the methods of inquiry needed to give surveillance studies continuity and legitimacy in the sport de combat of social science.

# Fairness > Education

#### Prefer fairness over education.

#### Education is inevitable -- we will get that from researching, reading books, watching documentaries, listening to the news, etc.

#### Education isn’t quantifiable – when discussing fairness, we can pinpoint specific argument we couldn’t read, and explain how fairness impacts our ability to debate.

#### Fairness implicates our ability to debate – even if they win that their model of debate is more educational, fairness is a pre-requisite to engage in the first place. Absent this, we’re just two teams shouting out mountains of evidence and authors without any clash or investigated warrants. – This kills topic-specific and in-round education.

#### Small schools – It’s not a matter of quitting debate but whether there’s the opportunity to join and participate in the program. It’s an uphill battle for small schools to get the coaching and funding that is necessary to keep up in this activity. T CAN BREAK THIS CYCLE. This makes prep more manageable by preserving generic strategies at the heart of the topic that we can all learn and engage with. Independent reason to vote neg: a stagnant community is a dead community.

#### Prefer depth over breadth – Being well-versed in subjects central to the topic is crucial to form an effective advocacy in the round which best reflects real world policymaking.

# Education > Fairness

### Base

#### Only the education we get from this round affects how we interact with the real world. However fair this debate is doesn’t matter in the way we interact with the world after the round is over. By installing strict boundaries of what we can say or not say is an attempt to put a restriction on our opportunity for both topic-specific and in-round education that would otherwise teach us quick, critical thinking skills, good decision-making, the ability to create an effective advocacy, presentation skills, all of which could be applied to our everyday lives as students.

### AT Education Inevitable

#### While education may be inevitable from pre-tournament prep, we are only guided by our own pre-conceived notions of what that education should be. Sticking to these notions dooms us to having the same debates over and over again. The debate space is unique to broaden those notions of what can be discussed and prevents educational stagnation, while still allowing for engagement.

### AT Ability to Debate

#### Being introduced to a new topic area in round does not inhibit one’s ability to debate. Rather, this fosters better and faster critical thinking and decision-making skills which is central to real-world policy making and the crafting of effective advocacies. These skills can be applied to our everyday lives as students, as well as impact our future roles as activists, participants in government and democracy, and productive citizens. (List ways they can engage with you or have engaged with you here.)

### AT Small Schools

#### This round will not make small schools quit or inhibit them from joining debate as an activity.

#### We can’t change the rigorous and fast-moving nature of policy debate.

#### (Read this if you are topical, AKA not a K aff.) Small schools use the resolution as a starting point of research, if we prove that we are a central part of the topic discussion then we prove that small schools should be held accountable to research our aff.

#### We still link into core generics: \_\_\_. Small schools can be held accountable to prepping out generics that link to any case.

#### TURN -- Their narrow boundaries further pushes out small schools – big schools with more funding and coaching will always be completely prepped out for generics leaving small school debaters with nothing else to go for.

#### We are an example of the small schools they claim to preserve and protect this debate space for – I have never had a policy coach. Two years ago, our “coach” was the grandma of our IE captain, we needed a glorified babysitter to take place as a “coach” so we could keep our program. There have been multiple instances in which we had to go against debaters with massive amounts of resources, some even qualifying for the TOC. Even now, all we have is a coach whose debate experience is a couple years in college parli (he’s really great, but it’s not like he helps us prep for \_\_\_), and sometimes Rowland Hall graduate Jaden Lessnick pops in and sends a file. Rowland Hall had 3 of their policy-specialized coaches prep us out once, all we had were some scattered varsity members too worried about their own rounds, and we haven’t quit debate yet. Small school participation in the debate program isn’t determined by how “fair” rounds are, but whether they are dedicated to and enjoy the activity.

# Depth > Breadth

### Card

#### Depth outweighs – studies prove education

Arrington, 2009 (Rebecca, UVA Today, “Study Finds That Students Benefit From Depth, Rather Than Breadth, in High School Science Courses” March 4 http://www.virginia.edu/uvatoday/newsRelease.php?id=7912)

A recent study reports that high school students who study fewer science topics, but study them in greater depth, have an advantage in college science classes over their peers who study more topics and spend less time on each. Robert Tai, associate professor at the University of Virginia's Curry School of Education, worked with Marc S. Schwartz of the University of Texas at Arlington and Philip M. Sadler and Gerhard Sonnert of the Harvard-Smithsonian Center for Astrophysics to conduct the study and produce the report. "Depth Versus Breadth: How Content Coverage in High School Courses Relates to Later Success in College Science Coursework" relates the amount of content covered on a particular topic in high school classes with students' performance in college-level science classes. The study will appear in the July 2009 print edition of Science Education and is currently available as an online pre-print from the journal. "As a former high school teacher, I always worried about whether it was better to teach less in greater depth or more with no real depth. This study offers evidence that teaching fewer topics in greater depth is a better way to prepare students for success in college science," Tai said. "These results are based on the performance of thousands of college science students from across the United States." The 8,310 students in the study were enrolled in introductory biology, chemistry or physics in randomly selected four-year colleges and universities. Those who spent one month or more studying one major topic in-depth in high school earned higher grades in college science than their peers who studied more topics in the same period of time. The study revealed that students in courses that focused on mastering a particular topic were impacted twice as much as those in courses that touched on every major topic.

# Breadth > Depth

### Card

#### Breadth first

Colander and McGoldrick 9 (David, Professor of Economics at Middlebury College, and KimMarie, professor of economics in the University of Richmond, Liberal Education, Vol. 95, No. 2 “The Economics Major and Liberal Education,” Spring)

The success or failure of a liberal education, or an undergraduate major, depends far more on how the educational process influences students’ passion for learning than it does on what specifically they learn. A successful liberal education creates a lifelong learner, and classroom instruction is as much a catalyst for education as it is the education itself. Because passion for learning carries over to other fields and areas, the catalyst function of education does not depend on content. Academic departments tend to focus on both the need for depth in the field and the need for specialized training as a component of liberal education. The push for depth over breadth by disciplinary scholars is to be expected. Just as a Shakespeare scholar is unlikely to be passionate about teaching freshman composition, a scholar of classical game theory is unlikely to be passionate about teaching general economic principles within the context of an interdisciplinary consideration of broad themes. Because breadth is not usually associated with research passion by disciplinary specialists, and because a college is a collection of disciplinary specialists, breadth often gets shortchanged; it is interpreted as “superficial.” But in reality, breadth pertains to the nature of the questions asked. It involves asking questions that are unlikely to have definitive answers—“big-think” questions that challenge the foundations of disciplinary analysis. By contrast, depth involves asking smaller questions that can be answered—“little-think” questions that, too often, involve an uncritical acceptance of the assumptions upon which research is built. Questions and areas of study have two dimensions: a research dimension and a teaching dimension. The disciplinary nature of both graduate education and undergraduate college faculties leads to an emphasis on “research questions,” which tend to be narrow and in-depth, and a de-emphasis on “teaching questions,” which tend to involve greater breadth. Economics has its own distinctive set of teaching questions: Is capitalism preferable to socialism? What is the appropriate structure of an economy? Does the market alienate individuals from their true selves? Is consumer sovereignty acceptable? Do statistical significance tests appropriately measure significance? It is worthwhile to teach such “big-think” questions, but because they do not fit the disciplinary research focus of the profession, they tend not to be included in the economics major. This is regrettable, since struggling with “big-think” questions helps provoke a passion for learning in students and, hence, can be a catalyst for deeper student learning. It is similarly worthwhile to expose students to longstanding debates within the field. For example, Marx considered the alienation created by the market to be a central problem of western societies; Hayek argued that the market was necessary to preserve individual freedom; and Alfred Marshall argued that activities determine wants and, thus, wants cannot be considered as primitives in economic analysis. Such debates are highly relevant for students to consider as they study economics within the context of a liberal education. But these kinds of debates are not actively engaged as part of cutting-edge research, which instead tends to focus either on narrow questions that can be resolved through statistical analysis or on highly theoretical questions that exceed the level of undergraduate students.

# \*\*\*2AC T Shells\*\*\*

# Generic

#### We Meet:

#### Counter-Interp:

#### Prefer our Interp:

#### AT Limits: Their interp overlimits – they exclude discussion of cases that are at the heart of the topic, such as \_\_\_. Our interp allows the aff creativity and innovation with their arguments but doesn’t explode limits. This innovation is key to developing better research skills and discovering nuances in arguments that increase topic-specific education.

#### AT Ground: They still have plenty of ground – we still link into core generics, like \_\_\_, and they get Ks like \_\_\_. Make them point our specific in round abuse.

#### Predictability -- ???

#### Reasonability – Our aff is reasonable because it doesn’t explode limits and/or it gives the neg sufficient ground, I did this work above. And even if this word is kind of sketchy, the other words in the resolution check, the neg can easily generate offense through any other word in the resolution.

# AT Substantial = #%

#### We Meet --

#### Counter-interp:

#### Substantial means “of considerable amount” --- not some contrived percentage

Prost 4 - Judge – United States Court of Appeals for the Federal Circuit

(“Committee For Fairly Traded Venezuelan Cement v. United States”, 6-18, http://www.ll.georgetown.edu/federal/judicial/fed/opinions/04opinions/04-1016.html)

The URAA and the SAA neither amend nor refine the language of § 1677(4)(C).  In fact, they merely suggest, without disqualifying other alternatives, a “clearly higher/substantial proportion” approach.  Indeed, the SAA specifically mentions that no “precise mathematical formula” or “‘benchmark’ proportion” is to be used for a dumping concentration analysis.  SAA at 860 (citations omitted); see also Venez. Cement, 279 F. Supp. 2d at 1329-30.  Furthermore, as the Court of International Trade noted, the SAA emphasizes that the Commission retains the discretion to determine concentration of imports on a “case-by-case basis.”  SAA at 860.  Finally, the definition of the word “substantial” undercuts the CFTVC’s argument.  The word “substantial” generally means “considerable in amount, value or worth.”  Webster’s Third New International Dictionary 2280 (1993).  It does not imply a specific number or cut-off.  What may be substantial in one situation may not be in another situation.  The very breadth of the term “substantial” undercuts the CFTVC’s argument that Congress spoke clearly in establishing a standard for the Commission’s regional antidumping and countervailing duty analyses.  It therefore supports the conclusion that the Commission is owed deference in its interpretation of “substantial proportion.”  The Commission clearly embarked on its analysis having been given considerable leeway to interpret a particularly broad term.

#### Federal courts agree – substantially shouldn't be defined precisely to a numerical value

Curtin 3 - United States Circuit Judge of the Western District of New York

(Gateway Equip. Corp. v. United States, 247 F. Supp. 2d 299, Lexis)

While the court agrees that the meanings of limitation and impairment refer to restriction and reduction, it **does not agree** with the uncited definition of "substantial" as an order of magnitude equivalent to 80 or 90 percent. *Random House Unabridged Dictionary* 1897 (2d ed. 1993) defines "substantial" as "of ample or considerable amount quantity, size," a much less precise definition than offered by the government. It is clear that the CB-4000 can and does transport its load over the public highway in the course of traveling to a job [\*\*33]  site. The question is whether that transportation function is substantially limited by its special design in the type of material it can haul, and whether there are other factors that substantially limit/ impair its use for over-the-road distance hauling.

#### Prefer our definition – our definitions are from judges and courts who understand the word its legal context which is critical to debates about policymaking. AT Their Law Definition – Their definition of the word is in the context of a specific case or situation – our Prost 4 card clearly indicate that what is considered substantial differs between cases.

#### AT Limits: Their interp overlimits – they exclude discussion of cases that are at the heart of the topic, such as \_\_\_. Our interp allows the aff creativity and innovation with their arguments but doesn’t explode limits. This innovation is key to developing better research skills and discovering nuances in arguments that increase topic-specific education.

#### AT Ground: They still have plenty of ground – we still link into core generics, like \_\_\_, and they get Ks like \_\_\_.

#### Predictability –

#### Reasonability -- Our aff is reasonable because it doesn’t explode limits and/or it gives the neg sufficient ground, I did this work above. And even if this word is kind of sketchy, the other words in the resolution check, the neg can easily generate offense through any other word in the resolution.

# AT Curtail ≠ Abolishment

#### We Meet: We curtail <name specific program> by abolishing one of its services. OR We curtail the whole of domestic surveillance.

#### Counter-Interp:

#### Curtailment includes complete elimination

FASB 85

(Financial Accounting Standards Board, EMPLOYERS' ACCOUNTING FOR SETTLEMENTS AND CURTAILMENTS OF DEFINED BENEFIT PENSION PLANS AND FOR TERMINATION BENEFITS (ISSUED 12/85))

Statement 87 continues the past practice of delaying the recognition in net periodic pension cost of (a) gains and losses from experience different from that assumed, (b) the effects of changes in assumptions, and (c) the cost of retroactive plan amendments. However, this Statement requires immediate recognition of certain previously unrecognized amounts when certain transactions or events occur. It prescribes the method for determining the amount to be recognized in earnings when a pension obligation is settled or a plan is curtailed. Settlement is defined as an irrevocable action that relieves the employer (or the plan) of primary responsibility for an obligation and eliminates significant risks related to the obligation and the assets used to effect the settlement. A curtailment is defined as a significant reduction in, or an elimination of, defined benefit accruals for present employees' future services.

#### Curtail can eliminate in full

Dembling 78 – General Counsel, Chief Lawyer, General Accounting Office

Paul, “OVERSIGHT HEARING ON THE IMPOUNDMENT CONTROL ACT OF 1974” HEARING BEFORE THE TASK FORCE ON BUDGET PROCESS OF THE COMMITTEE ON THE BUDGET HOUSE OF REPRESENTATIVES NINETY-FIFTH CONGRESS SECOND SESSION JUNE 29, 1978, Hein Online

(3) "Curtail" means to discontinue, in whole or in part, the execution of a program, resulting in the application of less budget authority in furtherance of the program than provided by law.

#### Prefer our Interp: Our evidence comes from a board with an intent to define, and a general counsel that best considers the word in a legal context that is uniquely relevant to policymaking debates.

#### Their interp necessitates that the affirmative has to preserve part of their surveillance tactics, meaning that they can exploit even a 1% preservation by saying that we can never solve because we still have a small portion of that surveillance in place. This gives them infinite ground and is abusive towards the aff – independent reason to vote them down.

#### AT Limits: Their interp overlimits – they exclude discussion of cases that are at the heart of the topic, such as \_\_\_. Our interp allows the aff creativity and innovation with their arguments but doesn’t explode limits. This innovation is key to developing better research skills and discovering nuances in arguments that increase topic-specific education.

#### AT Ground: They still have plenty of ground – we still link into core generics, like \_\_\_, and they get Ks like \_\_\_.

#### Predictability -- ???

#### Reasonability – Our aff is reasonable because it doesn’t explode limits and/or it gives the neg sufficient ground, I did this work above. And even if this word is kind of sketchy, the other words in the resolution check, the neg can easily generate offense through any other word in the resolution.

# \*\*\*Prefer X Definition\*\*\*

# Dictionary

## Good

### General

#### Learning from dictionaries is the best way to distinguish meaning and definitions.

Henninger, 44, (George A. Henninger, National Federation of Modern Language Teachers Associations, The Modern Language Journal, “In Defense of Dictionaries and Definitions”, Vol. 28, No. 1 (Jan., 1944), pp. 29-39, JSTOR)

The more than occasional lukewarm appraisals of dictionaries and definitions suggest: (1) that words are not the best single measure of an education, both formal and informal; (2) that most people are satisfied, or should be, with their passive or understanding vocabulary; (3) that meaning, pronunciation and spelling, in that order, are not the most im- portant things about words; (4) that teachers should now accept the answer "I know what it is, but can't explain it"; and (5) that the importance of an extensive active vocabulary (required for outgoing communication and about one-third the size of the passive) is not too well understood and so not properly emphasized. Preliminaries to Precision Certainly everyone at times experiences hesitancy when asked to ex- plain something, but this hesitancy is all too frequently indicative of a simple shortage of information or of a limitation on a few relatively simple principles of lexicography. In order to determine, and on a non-technical level, what these principles are, we need (1) to help our students make a distinction between meaning and definition; (2) to let them learn from a study of dictionaries themselves what ways of giving meanings are used most and least often; and then (3) to help them determine how definitions, and explanations in general, must and must not be expressed.

#### Dictionaries should be held as the highest authorities in defining words and usages.

Perry, 1915 (Frances M. Perry, National Council of Teachers of English, The English Journal, Vol. 4, No. 10 pp. 660-663, “Dictionaries in the Schoolroom”, JSTOR)

But to furnish the correct spelling and pronunciation of words is the humblest office of the dictionary. It should be made the student's constant authority in the settlement of all questions that arise regarding English usage, in the correction of barbarisms, improprieties, and solecisms, while in school, so that he will know how to use it for these purposes through life. If a college Freshman on using "drug" for the past of the verb "drag" is sent to the ctionary to see whether his usage is correct, you need not be surprised if he comes back smiling and reassured, telling you it was right, that he has found the word "drug." He will have to look a second time to discover that it is not the word that he wants. He is then of the opinion that the word he wants is not in the dictionary. Instructed to look for the present tense of the verb, he will tell you that it is there but that the past is not. If he has consulted a small dictionary he is right. But the absence of the parts of the verb has no significance for him. It does not tell him that the past and perfect tenses are, therefore, formed regularly. If he is consulting the Certury Dictionary, he does not see the " pret.," " pp.," " ppr.," or if he does they have no significance for him. Suppose our Freshman is referred to the dictionary for having used "raised" without an object; he looks vaguely through the definitions in the dictionary and the numerous illustrations of its correct use, without noticing the "v.t." or the "trans." Let him be corrected for using "raise" as a noun: he cannot find the help he needs in the dictionary because he does not discriminate closely enough to know the difference between the definition of a verb and a noun, since the general sense of the definitions accords with what he expected to find, and he has not been trained to note the letters used to indicate the part of speech. That the dictionary is not sufficiently recognized as an arbiter in matters of usage is frequently brought to my attention outside the classroom. A librarian in a town of fifteen thousand inhabit- ants sent a note to me to inquire whether " loan " could ever be used correctly as a verb. It was certainly open to me to reply that I am not an accepted authority but that her Century Dictionary is. A young teacher told me that her grammar explained the use of "that" as a demonstrative and as a relative, but that she could find nothing about its construction in such sentences as, "He told me that he was sick," "I think that you should go." It had not occurred to her to refer to a good dictionary, though her school commissioners had supplied her abundantly with these aids to scholarship. Another teacher had been perplexed by a student's asking whether "one's self" or "oneself" were correct. She did not know that the dictionary answered the riddle for her. As questions regarding usage arise with reference to special cases, while grammars provide generalizations to be applied to particular cases, it is often diflicult to find the information desired in a grammar, and to do so sometimes requires knowledge that the investigator either does not possess, or that he is not fully enough in command of, to use to find the information needed without loss of time and with certainty that the rule is applicable to his case. The dictionary, on the other hand, is a compilation of information directly applied to specific cases. If the definition sought is not clear, there is at hand a means of ciarifying it: one definition not understood will send the truly curious student to look for another, that, for another, and so on, until he has a clear understanding of the point about which he was in doubt.

### VS Contextual Defs

#### Dictionary definitions are preferable to contextual definitions, additionally it is important to learn how to distinguish good definitions from bad definitions

Nist and Olejnik, 94, (Sherrie L. Nist and Stephen Olejnik, : International Reading Association, “The Role of Context and Dictionary Definitions on Varying Levels of Word Knowledge”, Reading Research Quarterly, Vol. 30, No. 2 (Apr. - May - Jun., 1995), pp. 172-193, JSTOR)

This study adds another piece to the growing body of vocabulary research and questions the past strong recommendation from researchers that looking up words in a dictionary is the worst way to acquire meaning of un- known words. The primary importance of this study stems from the finding that when presented with adequate dictionary definitions, college subjects performed significantly better than they did when presented with inadequate definitions. This was true regardless of the strength of the context in which the words were imbed- ded. In addition, this study is important because it examined performance when subjects not only were exposed to varying strengths of context and dictionary definitions but also were required to perform at varying levels of vocabulary knowledge. We are not suggesting that college students are better off learning lists of words by looking them up in the dictionary. Rather, our results suggest that given any context, weak or strong, students will learn more words and at a deeper level when they encounter dictionary definitions that are at least adequate and conform to McKeown's (1990, 1993) recommendations. It is also important to note that this piece of re- search taps what older students tend to do when left to their own devices to learn new words. Perhaps if the subjects in this study had received training in how to use context clues, the results would have been different. Perhaps if the words had been verbs or adjectives, rather than nouns, the results would have been different. Or perhaps if the operational definitions of weak and strong context had been similar to those used in past studies, the results would have been different. In light of the findings of the current study, these areas deserve future exploration. In addition, more research needs to focus on the dictionary definition itself, and perhaps on teach- ing students how to distinguish good definitions from poor ones.

### Best for Education

#### The quality of dictionary definitions determines extent of knowledge, competing interpretations has to best internal link to increasing education

Nist and Olejnik, 94, (Sherrie L. Nist and Stephen Olejnik, : International Reading Association, “The Role of Context and Dictionary Definitions on Varying Levels of Word Knowledge”, Reading Research Quarterly, Vol. 30, No. 2 (Apr. - May - Jun., 1995), pp. 172-193, JSTOR)

THE AUTHORS examined the contextual and definitional factors that determine whether and to what extent college students learn un- known words without instruction. The 186 subjects were randomly assigned to four combinations of weak or strong context and ade- quate or inadequate dictionary definitions. Subjects studied 10 nonce nouns for 20 minutes, then took four different tests, tapping varying levels of word knowledge. The results indicated that, first, there was no interaction between the context and dictionary definition vari- ables. Second, in a test for main effects, the only significance found for the context variable was on the dependent measure that asked subjecs to identify examples. Those in the strong context condition performed better than those receiving weak context. The main find- ing of the study focused on the definition variable: For all four tests, those who had the adequate dictionary condition performed better than those who received the inadequate definition, indicating that the quality of the definition appears to determine the extent to which college students are able to learn unknown words.

## Bad

### VS Common Usage

#### Dictionary definitions when used to make a precise argument are often misconstrued and thus change how the word should be used. Common knowledge of the English language should be preferred to the skewed definition they provide

Solan, 93, (Lawrence Solan, professor at Brooklyn Law School law degree and a Ph.D. in linguistics, American Speech, Vol. 68, No. 1 (Spring, 1993), pp. 50-57, JSTOR)

This leads to the second point about our knowledge of words. Not only do concepts become fuzzy at the margins, but the necessary and sufficient conditions for membership in a category denoted by a word are not readily accessible by intuition (see Jackendoff 1983). The best-known example of this phenomenon in the literature is Wittgenstein's discussion of the word game (1953, 31-32). If you were to ask me whether tennis is a game, I would confidently answer that it is. But if you were to ask me what a game is, I would have to answer that I am not really able to answer the question intelligently. Neither do I, for that matter, know how to say what makes a fox a fox, a bed a bed, a tree a tree, and so on. The business of the lexicographer is to try, in a few lines, to do what I just said cannot be done: to describe the necessary and sufficient conditions for membership in a conceptual category based on examples of the word's usage in the past. To the lexicographer, the limitation of space is a very important issue.4 Inevitably, the lexicographer's success will only be partial, even in the best dictionaries. The problems of fuzziness at the margins and inaccessibility of the necessary and sufficient conditions to membership in a conceptual class conspire to set limits on what a lexicographer can accomplish. I do not mean by this to imply anything negative at all about lexicographers or their art. Dictionaries, at least nontechnical ones, appear to be directed toward potential users who come across a word whose meaning or spelling they do not know. No one would look up here in the dictionary to find out whether a Belgian friend traveling to Philadelphia has honored my request when I asked him from my office in New York to Come here. Returning to the Chapman case, the discussion thus far points to a single conclusion: the majority opinion in the Supreme Court has misused the dictionary. There is nothing wrong with the dictionary definition of mix- ture, as far as I can see, so long as we do not pretend that everything that meets the conditions set forth in the definition is a mixture and everything that does not meet these conditions is not a mixture. Rather, the dictionary entry should be seen as a decent two-line approximation of the word's meaning, which is just what the lexicographer intended to accomplish. It does not capture all that we, as native speakers of English, know about the word. Calling the blotter paper impregnated with LSD a mixture seems odd for the same reason that it seems odd to call a pancake soaked with syrup a pancake-syrup mixture; or to call a wet towel a water-cotton mixture; or to call a towel that one has used to dry one's face during a tennis game a cotton-sweat mixture, or later, after the sweat has dried, a cotton-salt mixture. The last two of these examples I would call a wet towel and a dirty towel, respectively. In all of these examples, both substances have kept their character in a chemical sense, but one of the substances seems to have kept too much of its character for us to feel natural using the word mixture. Again, I doubt that any lexicographer would be offended by any of these observations. Sorensen (1991) discusses "precisifying definitions" are definitions that are more precise than the term they purport to define. As Sorensen points out, a definition's failure to be just as imprecise as the word being defined constitutes a distortion of the word's meaning. To take Sorensen's ex- ample, for ordinary usage of the word kitten, 'an immature cat' is a better definition than 'a cat younger than six months' because the latter defini- tion is too precise. Returning to our earlier example, a definition of here that tells us exactly where someone is 'here' (say, within three feet of the speaker) would not accurately capture our sense of what the concept 'here' means, including its vagueness. While we can sometimes stipulate a precise definition of a concept, say, for scientific purposes (e.g., "for purposes of this study on cognitive development in kittens, we define a kitten as a cat younger than six months"), the concept loses its added precision as soon as the context of the stipulation is abandoned, as Sorensen further points out. Fodor et al. (1980) and Fodor (1981) make the point somewhat differently, arguing against the definability of concepts generally but recognizing that the existence of fuzzy cases does not itself impede definition as long as both the term and its definition are equally vague.

# Legal

## Good

### General

#### Prefer our legal definition. This puts the word in a legal context which is uniquely relevant to policymaking debates.

## Bad

### General

#### Legal definitions are put in the context of other cases that have little to no relevance to the subject matter of this debate. Their evidence is from \_\_\_, which has nothing to do with domestic surveillance. Make them be specific about why this piece of evidence is applicable to the topic.

### Specific to Surveillance Policy

#### US surveillance policy is especially messy, it’s easy for the aff to handpick some minor code that’s self-serving yet ostensibly predictable.

### Cards

#### Precise “legal” language is bad. Studies prove it stops communication and undercut education this turns their education and democracy impacts

Danet, 80, (Brenda Danet, author, linguist, researcher, Law & Society Review, Vol. 14, No. 3, Contemporary Issues in Law and Social Science, (Spring, 1980), pp. 445-564, “Language in the Legal Process”, JSTOR)

Critics claim that the professions use language in ways that mystify the public or at least stultify critical thinking. Edelman (1977) sees this phenomenon as endemic in all of the helping professions. As part of his continuing critique of psychiatry, Szasz (1979) has developed the theme that psychotherapy is a dehumanizing form of rhetoric. Critics argue that the language of the professions is both a symbol and a tool of power, creating dependence and ignorance on the part of the public. In Gusfield's (1976, 1980) view, it creates the illusion of authority. Studies of doctor-patient communication have found that patients do not understand medical terminology and ask few questions and that physicians either exaggerate the ignorance of their patients or withhold information from them (McKinlay, 1975; Waitzkin and Stoeckle, 1972; Adler, 1976; Barber, 1980).

#### Legal language is detrimental and impedes the decision making process

Danet, 80, (Brenda Danet, author, linguist, researcher, Law & Society Review, Vol. 14, No. 3, Contemporary Issues in Law and Social Science, (Spring, 1980), pp. 445-564, “Language in the Legal Process”, JSTOR)

Among contemporary lawyers concerned with reform, Zander has diagnosed LE as a serious barrier to lawyer-client communication (1978: 157-58). Lefcourt has called for the transformation of lawyer-client relations by "turning legal jargon into everyday language and encouraging mutual decisionmaking" (1971: 313). In an even more caustic critique, Caplan has allied himself with the iconoclast Illich: The easiest way to create a monopoly is to invent a language and procedure which will be unintelligible to the layman. This illusion of complexity-whose grand finale, like a rabbit out of a hat, is the divination of simplicity-has, in the past, been the art of countless quacks. In many ways, it is also the art of the ancient and noble profession of the law. [1977: 93] Would Frank and Arnold have agreed with Caplan that we should get rid of the trappings of law that create mystification? I believe that their writings, like those of Edelman, can be read two ways, either as a call for reform or as an explanation of why the law must mystify. But what is it about legal language that mystifies? What, indeed, is mystification? How distinct a variety of language is LL? What are its demonstrable consequences?

#### Legal language perpetuates inequity and is meant to deceive the public

Danet, 80, (Brenda Danet, author, linguist, researcher, Law & Society Review, Vol. 14, No. 3, Contemporary Issues in Law and Social Science, (Spring, 1980), pp. 445-564, “Language in the Legal Process”, JSTOR)

Many lay critics have pointed to LE as a source of mystification and deception (e.g., Pei, 1973; Barzun, 1978; Time, 1978). John Erlichman's testimony at the Watergate hearings was replete with features of LE (Danet, 1976a); it may be no coincidence that a high proportion of the conspirators were lawyers. Social scientists interested in the symbolic uses of language have paid special attention to LE. Thus, Edelman writes of the language of legislation: The obvious approach to defining the meaning of legal language is to apply the dictionary meanings of the words, and the layman naturally assumes that this is how the experts do define its meaning. That laymen make this comforting assumption is itself an important fact.... But dictionary meanings are operationally close to irrelevant so far as the function of the statute or treaty in the political process is concerned. For laymen either never see such language or find it incomprehensible; and its authoritative interpreters ... know that it is in fact almost completely ambiguous in meaning. It is precisely its ambiguity that gives lawyers, judges, and administrators a political and social function; for unambiguous rules would, by definition, call neither for interpretation nor for argument as to their meaning.... Operationally, then, the dictionary level of meaning of legal language functions in two ways: it gives the mass of citizens a basis for assuming that there is a mechanical, precise, objective definition of law, and it provides a vocabulary in which organized groups justify their actions to accord with this lay assumption. [1972: 139] Several social scientists have criticized the fact that criminal defendants are often unable to understand what goes on in their trials (e.g., Bankowski and Mungham, 1976: 89; Carlen, 1976: 83). Charrow and Charrow (1976) report that lawyers grossly overestimate the ability of the public to comprehend LL. Norwegian housewives and housemaids could not understand the language of a law designed to protect the latter (Aubert, 1969).

#### Our interpretation is more accessible and will lead to better more understandable policies that work to break down the current social standards in law and policy

Danet, 80, (Brenda Danet, author, linguist, researcher, Law & Society Review, Vol. 14, No. 3, Contemporary Issues in Law and Social Science, (Spring, 1980), pp. 445-564, “Language in the Legal Process”, JSTOR)

The problem of linguistic reform must be related to larger issues of delegalization and deformalization now being debated both by students of law and society and by the public. The current trend toward reform of LE is just one expression of the strong pressure for delegalization, deformalization, and deprofessionalization prevalent in contemporary Western legal systems (Abel, 1979a). Paradoxically, the trend toward legalization, including the use of law to define and guarantee rights for minority groups, has led to the creation of legal institutions with which these groups cannot cope. Reform of LE is not a rejection of legality but an attempt to make it more accessible to the layperson. The linguistic reformers are not claiming that we should do away with legal forms, but only that we should make them better.22

# Common Usage

## Good

### General

#### Communication is the most important test for correctness, language and grammar are fluid as long as we communicated clear ideas that are reasonable there is no reason to reject our interpretation

Pooley, 45, (Robert C. Pooley, “Communication and Usage”, The English Journal, Vol. 34, No. 1 (Jan., 1945), pp. 16-19, JSTOR)

This overemphasis on language for its own sake is nowhere more clearly seen than in the common attitudes toward usage and in the teaching of correctness. Indeed, the primary force behind nearly all efforts to correct and "purify" the English language has been the distrust of change, the desire to conserve and perpetuate what is considered the tradition. The relationship of meaning to form as the relative clarity of two al- ternate forms rarely enters discussions of usage. Yet our language is not a static medium, nor can it be made static. Words change, grammatical forms change, and there are styles in syntax which vary from decade to decade. The teaching of English and correct usage must never lose sight of the fluid nature of language. Decisions in usage must be reached in terms of the efficiency of com- munication rather than in terms of pre- serving what has been or "improving" the language by appeals to logic, reason, etymology, or any other factor not con- sistent with communication. The common attitude toward English usage and correctness is that some forms of English are "right" and some forms are "wrong." Such decisions are made in the absolute and are applied indiscrimi- nately to all linguistic situations. From this practice arises a number of absurdi- ties. Actually any English is "right" which enables the speaker or writer to communicate clearly, efficiently, and accurately what he wants to say. The usage decisions affecting his employment of language for any specific purpose must be arrived at in the light of the communi- cation itself and its purposes and not from any external, arbitrary standards. Thus the factors governing communica- tion in each specific instance set the standards of correctness for that com- munication; usage conceived of in this light is relative rather than positive, fluid rather than static, psychological rather than logical. In teaching usage, the emphasis will have to turn from the indoctrination of absolute rules to the development of sensitivity to and ap- preciation of the factors governing com- munication.

#### Words only need to be interpreted if their common meaning is unclear, linguistic scientists agree

Edgerton, 38, (Franklin Edgerton, American Philosophical Society, Proceedings of the American Philosophical Society, Vol. 79, No. 4 (Nov. 15, 1938), pp. 705-714, <http://www.jstor.org/stable/984947>)

We often hear it said, on the ground of a word's etymology (real or supposed), that that word "really means," or else "ought to mean," something different from its commonly understood meaning. Some fifteen hundred years ago, Hindu scholars of the school called Mimdm.sd, whose business it was to interpret the ancient Vedic texts, laid down a clear distinction between interpretation based on analysis or etymology (yoga), and interpretation based on conventionally established usage (ri7dhi). They taught that "rfidhi is always stronger than yoga"; that is, one must always interpret a word in accordance with its conventional meaning (we should add, "in the appropriate period and dialect"), when that can be determined. Only when we don't know how the word is or was actually used (that is, chiefly in dealing with obscure historic records), should we depend on etymology for interpretation; and then only with clear realization that we are leaning on a weak staff. This Hindu doctrine is not only sound, but valuable for our day. It is recognized by most linguistic scientists, but those who lack training in that science often err by ignoring it. Even some linguists have not always kept it in mind.

### VS Legal Language

#### Studies prove the use of legal language impedes communication and plain English should be preferred

Charrow and Charrow, 79, ( Robert P. Charrow and Veda R. Charrow, Columbia Law Review, Vol. 79, No. 7 (Nov., 1979), pp. 1306-1374, JSTOR)

There has been a growing concern in recent years regarding the in- ability of lay persons to understand legal language.' This concern has generated a movement to rewrite legal documents in "plain English." At both the federal and state levels, laws have been enacted and regulations issued, requiring that automobile insurance policies, warranties, and other legal instruments be written in language that is clear and understandable to the average person.2 Many of these efforts have been greeted with loud praise and with confidence that rewriting will alleviate all comprehension problems. But there are major issues that have not been addressed.3 For one thing, although it is assumed that all "legalese" is incomprehensible, there is no real data, aside from anecdotes, to support this asumption or to eluci- date the exact nature of the problem. There is no empirical evidence of the extent to which legal language is not understood, nor is there any data re- garding those segments of the population-aside from lawyers and bureau- crats-that may not have problems comprehending legalese.4 As for the rewriting of legalese into "plain English," there are no criteria for determining what constitutes "plain English," and no empirically determined rules for rewriting. Instead, there has been a reliance on such makeshift or invalid devices as readability formulas,5 frequency dictionaries and "commonsense"-although not necessarily accurate-grammatical rules of thumb. Moreover, while the questions of what is "plain English" and what is "clear and understandable" will undoubtedly stimulate a flurry of litigation, the courts, at this time, appear to be ill-prepared to grapple with such questions. They lack the linguistic expertise and the necessary em- pirical tools to make sound determinations concerning clarity or compre- hensibility.6 This Article presents the results of the first empirical, objective linguistic study of the comprehensibility of one type of legal language-standard jury instructions. We have not merely attempted here to demonstrate that jury instructions are inadequately understood; we have also attempted to isolate those linguistic features typical of this brand of legalese-aspects of legal grammar, semantics, vocabulary, and discourse structure-that cause the comprehension problems. We have then used this knowledge to rewrite jury instructions in a systematic fashion, and have empirically verified that such rewriting can yield positive results. Most importantly, we have formulated an empirical psycholinguistic methodology that can be used by courts, legislatures, regulatory agencies, and the private sector to determine whether or not a document is compre- hensible to the intended audience. The proposed methodology, when prop- erly applied, can provide insight into the linguistic reasons underlying specific comprehension problems.

### K2 Precision and Predictability

#### Ordinary meaning key to precision and predictability

Pregerson 2006 (Harry, US Judge for the Court of Appeals for the Ninth Circuit, ARMANDO NAVARRO-LOPEZ, Petitioner, v. ALBERTO R. GONZALES, Attorney General, Respondent. No. 04-70345 UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT 503 F.3d 1063; 2007 U.S. App. LEXIS 22312, 11/19, lexis)

Expanding these categories beyond recognition at the expense of depriving common words like "felony" and "violence" of their ordinary meaning does a disservice to the law. In order for judges to apply laws and for citizens to obey them, words must have meanings that are consistent and predictable. Precision in language is necessary not only for effective communication, but also for a well-functioning legal system. As guardians of the rule of law, we should be careful not to contribute to the deterioration of the English language, with the loss of respect for the law that inevitably results.

## Bad

### General

#### Production debates need to focus on precise, field-specific phrasing—ordinary meaning is insufficient

Brown, judge – Court of Appeals for the Fifth Circuit, ‘59

(John R., “CONTINENTAL OIL COMPANY, Petitioner, v. FEDERAL POWER COMMISSION,” Dissenting Opinion, 266 F.2d 208; 1959 U.S. App. LEXIS 5196; 10 Oil & Gas Rep. 601)

Indeed, I do not think that my cautious Brothers would have undertaken this excursion had they not first have found (or assumed) a basis for considering production in its ordinary, common usage. For clearly, what the Court says does not follow if the term is used in the sense of the oil and gas field. For example, the Court states, 'In the ordinary language of purchase and sale of a product where it is in deliverable form the stream of gas is, in a sense, 'produced' at the latest after it has passed through the first master valve. \* \* \*.' Again, it states, 'but this does not change the fact that in the ordinary sense of the terms production of the gas has been completed at or just above the surface of the ground where it is physically deliverable but then is shut in until delivery commences.'To support this approach, the Court frankly states that 'our duty here is not to determine what is generally understood in the industry, in the resolution of other relationships, is meant by 'production." It is, rather, the Court goes on to say 'to determine what Congress meant by the term.' Reading § 1(b) as though it contained only the first part of the sentence and disregarding [\*\*35] altogether the exclusionary phrases at its end, the Court then proceeds to find that the sole Congressional purpose was 'to regulate these interstate sales.' This causes the Court then to reject the industry context and adopt a construction of 'production' which 'is in line with ordinary non-technical usage' so that it will 'effectuate and not \* \* \* frustrate the purpose of the law.'.' The abundant legislative history canvassed by the many Supreme Court cases But Congress was not legislating in an atmosphere of 'ordinary non-technical usage reveals an articulate awareness of the complexities of this whole business. The object of § 1(b) was clearly to define the purpose to regulate [\*220] transportation and sale and companies engaged in such transportation or sale. This was done against the background fully known to Congress that at one end of the process was the production of the natural gas, that at the other end was the consumer, and in between were those who transported and distributed it. As pointed out in Part I above, the Court has been emphatic in ascribing an intention to Congress to exclude those matters which relate to the local production activities [\*\*36] traditionally reserved to states for their exclusive control.We are told that § 1(b) exclusion is a provision '\* \* \* that \* \* \* precludes the Commission from and control over the activity of producing or gathering natural gas. \* \* \*.' Colorado Interstate Gas Co. v. FPC, 1945, 324 U.S. 581, 603, 65 S.Ct. 829, 839, 89 L.Ed. 1206. Two years later this was reiterated in Interstate Natural Gas Company v. FPC, 1947, 331 U.S. 682, 690, 67 S.Ct. 1482, 1487, 91 L.Ed. 1742. 'Clearly, among the powers thus reserved to the States is the power to regulate the physical production and gathering of natural gas in the interests of conservation or of any other consideration of legitimate local concern. It was the intention of Congress to give the States full freedom in these matters.'Within another two years this was reemphasized in FPC v. Panhandle Eastern Pipe Line Co., 1949, 337 U.S. 498, 509-13, 69 S.Ct. 1251, 1258, 93 L.Ed. 1499. 'To accept these arguments springing from power to allow interstate service, fix rates and control abandonment would establish wide control by the Federal Power Commission over the production and gathering [\*\*37] of gas. It would invite expansion of power into other phases of the forbidden area. It would be an assumption of powers specifically denied the Commission by the words of the Act as explained in the report and on the floor of both Houses of Congress. The legislative history of this Act is replete with evidence of the care taken by Congress to keep the power over the production and gathering of gas within the states.'How Congress expected to preserve the absolute freedom of the States in matters concerning production unless that term was used in the context of that industry is nowhere made clear by my Brothers. If Congress were to adhere to its purpose, carefully to regulate some but not all of the natural gas moving of dedicated to move in interstate commerce, it was required to prescribe the boundary limits of each in terms of the business and industry to be regulated. That is the usual, not the extraordinary, principle of statutory construction long ago set forth in Unwin v. Hanson, (1891) 2 Q.B. 115, 119, approved in O'Hara v. Luckenback Steamship Co., 1926, 269 U.S. 364, 370-371, 46 S.Ct. 157, 160, 70 L.Ed. 313:'If the act is one [\*\*38] passed with reference to a particular trade, business, or transaction, and words are used which everybody conversant with that trade, business, or transaction, knows and understands to have a particular meaning in it, then the words are to be construed as having that **particular meaning**, though it may differ from the common or ordinary meaning of the words. 'And see 50 Am.Jur., Statutes § 277 (1944).What is 'production of natural gas' is to be determined in the light of the actual substantive conditions and engineering-business requirements of that great field of scientific mechanical activity. Such activity is not to be assayed by Judges who, learned in the law, have naught but the limited technical experience and cumulative knowledge of the ordinary person.Judged by the standards of the industry, not only by what was said and uncontradicted, but by what was done on a large scale in this very field, the Commission could only find that all of Continental's facilities were essential to and a part of the production of gas. [\*221] IV.The Court's action and opinion is portentous. It is so precisely because it is based on an erroneous assumption and an equally [\*\*39] erroneous construction. It assumes that we are fact finders to supplant or supplement the expert agency. It finds the capacity to cope with this problem by relieving it of all technical complexities and casting it in the mold of the ordinary meaning of production.The Court finds 'that in the ordinary sense of the term production of the gas has been completed at or just above the surface of the ground where it is physically deliverable \* \* \*.' (emphasis in the original) Tying this in to the point of delivery (at the very extreme end of Continental's 4-inch master value and at the very beginning of El Paso's swage), the Court has necessarily adopted the approach of the Commission that facilities for the sale of natural gas subject to the jurisdiction of the Commission are those 'serving to contain the gas at the point of delivery.' That it means to champion this construction is likewise established by the Court's unqualified approval, both here and in Sun Oil Company v. FPC, 5 Cir., 1959, 266 F.2d 222, of J. M. Huber Corp. v. FPC, 3 Cir., 1956, 236 F.2d 550, 556 and Saturn Oil & Gas Co. v. FPC, 10 Cir., 1957, 250 F.2d 61, 69, [\*\*40] the latter of which states: 'To us it is clear that facilities necessary to effect a sale of gas in interstate commerce are facilities used in interstate commerce and are within the jurisdiction of the Commission. This would seem to be the plain intent of section 7(c). The Third Circuit has so held in J. M. Huber Corp. v. Federal Power Commission, 3 Cir., 236 F.2d 550, 556.'The vice of this rationale is compounded by the Court's interpretation of 'production' or 'production facilities' **in terms of ordinary non-industry connotation**. But even without this, if the test is to be stated in terms of that piece of equipment which is needed to effectuate the sale or contain the gas at the point of sale delivery, then there is in fact no physical limitation. In those terms the master valve (whether upper or lower, or both) does not alone contain the gas. The master valves are ineffective without the continuation of the leakproof surface casing, the production casing or many other parts of the well, all of which operate simultaneously and indispensably to bring and hold the gas under effective control.That is critical since § 7(c) requires certification [\*\*41] of facilities which are to be constructed or extended. And once a little intrusion is made into the forbidden 1(b) area of production, it is only logical to expect (and justify) application of the full reach of this concept. It stops in a given well where, but only where, the particular piece of equipment may be said to directly assist in the containment of the gas at delivery point. Worse, it means that by the force of § 7(c), the drilling and equipping of a new well could only be done by express approval of the Commission.We and all others have now firmly held that on the commencement of the first jurisdictional sale, the Commission's power attaches at least to the sale. The Court by our present opinion holds that simultaneously power attaches to some piece of gas well equipment. If the jurisdictional sale setting all of this Federal control in motion is in the common form of a long-term dedication-of-reserves- contract by which the mineral owner undertakes to develop a field and deliver all production to the long line pipe line purchaser, the result will be that the drilling of additional wells may not be done except on Commission terms and approval. In such [\*\*42] a situation the 'new' well would, of course, be the means by which to effectuate the sale of the gas. Since this would constitute 'the construction or extension of any facilities' for the sale of natural gas subject to the jurisdiction of the Commission, and would result in the acquisition and operation of 'such facilities or extensions thereof,' it would, as § 7(c) demands, positively require that the Commission issue a certificate of public [\*222] convenience and necessity 'authorizing such acts or operation.'Combining this opinion and Sun Oil, this day decided, this Court binds a gas well owner to produce gas for as long as the Commission prescribes. Neither the length of the contract nor the production-nature of the facility by which the 'service' (sale) is performed are an effective limitation. Until nature shuts off the gas the Commission is the perpetual regulator from whose power the Commission's own brief says, '\* \* \* there is no \* \* \* hiding place.'Congress did not mean to invest its creature with these scriptural powers (Psalms 139:7, 8). Section 1(b) draws the line at production.

# \*\*\*Extra-T\*\*\*

# \*\*\*FX T\*\*\*

### General

### Iker says:

#### At best they’re effectually topical and that’s a voter. T becomes a question of solvency, they can spike out of every link in the 2AC by reading a different solvency advocate. Makes being neg impossible. Doesn’t increase links, I can’t call you a murderer just because you own a gun.

#### T is a question of the fiated action of the plan, allowing FX T means essentially no topic at all.