Framing Resolutional Conflict | Strategy Overview

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Resolved: In democratic elections, the public's right to know ought to be valued above a candidate's right to privacy.

Hello, and welcome to the fourth and final core article for the 2020-2021 NCFCA Lincold-Douglas resolution! As you can see from the title, this piece is a **strategy overview that’s primarily focused on analyzing and framing this resolution’s conflict**. Resolutional conflict (also called clash) refers to the way that the two sides of the resolution engage with, confront, limit, and hinder each other, and to what degree each side is compatible or incompatible with the other. All LD strategy, to a greater or lesser extent, depends on the framework that defines and establishes the resolutional conflict, which means that a good strategic understanding of this resolution requires a solid foundation of knowledge about this resolution’s clash.

This article is designed to help you acquire that solid foundation, which is why we’ll start by becoming acquainted with general concepts and gradually narrow our focus down to pinpoint specific strategies that you can use throughout this year of competition. Part I is the most general of this article’s three sections, and it serves as an introduction to the concept and importance of resolutional clash in Lincoln-Douglas debate. In Part II, we’ll begin to narrow our focus by applying the general LD concepts of Part I to this year’s resolution. Part III is where the rubber meets the road, where we’ll use the information in Parts I and II to build actual strategies that you can incorporate into your case-writing process and carry with you into your debate rounds this year. Let’s get started!

## PART I: Introduction to Resolutional Clash

### Why We Need Resolutional Conflict

All Lincoln-Douglas Value Debate resolutions must contain resolutional conflict. Why? Because LD resolutions ask us to evaluate two separate and important concepts and reach a conclusion about which one ought to be valued above the other. If those two separate and important concepts didn’t conflict with one another, it would be impossible to decide which one is more valuable. Let’s use a very simple LD value-type resolution as an example: “Resolved: In matters of candy choices, Snickers ought to be valued above Milky Ways.” That’s a hard choice to begin with, but it’s an impossible choice unless there’s some conflict between the two sides of that resolution. If I could buy and eat an unlimited amount of candy, it wouldn’t matter if I valued Snickers above Milky Ways, and it would be impossible for someone else to determine which one I valued more, because I would never have to choose between the two. In the real world, I have a limited candy budget and a limited stomach capacity, so every time I eat a Snickers I’m forgoing the opportunity to eat a Milky Way (and vice versa). Those limitations create clash, which allows me to compare the number of times I choose each type of candy, and thus determine which one I value more. In the same way, we can’t decide whether to value the public’s right to know over a candidate’s right to privacy (or vice versa) unless there are situations where we have to choose between the sides. If there are situations where valuing one side forces us to value the other side less, then we have the necessary tools to begin to evaluate which side we ought to value above the other.

### The Strategic Importance

Not only is resolutional clash an essential component at the very heart of LD debate, it’s also a vital part of any good LD strategy. In Lincoln-Douglas debate, effectively framing the resolution’s conflict could best be compared to tilting an entire soccer field to give your team the advantage of high ground. A good clash framework provides a solid foundation for the rest of your strategy, gives you the necessary structure to undermine your opponent’s tactics, and helps you stay in control of the round. A weak clash framework makes your arguments vulnerable, gives your opponent additional opportunities, and decreases your odds of winning the round. That’s why a solid understanding of resolutional clash is so crucial. So, let’s start building that solid understanding. In this resolution, as with most LD resolutions, the majority of our clash analysis stems from our definitions, and this resolution has a key definition that deserves a bit of extra attention.

## PART II: This Resolution’s Clash

### Privacy and the Two-Part Test

If you’ll think back to the resolutional overview, Part V of that piece dealt with the right to privacy, the two-part test, and Supreme Court Justice John Harlan’s description of that test. Because this concept is so foundational, it’s worth a bit of deeper analysis. Justice Harlan wrote that a person has a right to privacy if:

“…first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as "reasonable." Thus, a man's home is, for most purposes, a place where he expects privacy, but objects, activities, or statements that he exposes to the "plain view" of outsiders are not "protected," because no intention to keep them to himself has been exhibited. On the other hand, conversations in the open would not be protected against being overheard, for the expectation of privacy under the circumstances would be unreasonable.”[[1]](#footnote-2)

In other words, I have a right to privacy when two criteria are met: I have personally expect privacy, and my personal expectation is reasonable. If both those criteria are met, I’m said to have a “reasonable expectation of privacy” (“reasonable” fulfilling the second criterion and “expectation” fulfilling the first criterion), and therefore a right to privacy. If there is a situation where either of those two criteria are not met, then I don’t have a right to privacy, in that particular situation. For example, if you and I were having a conversation in my home (a place where our expectations of privacy would be reasonable) but we knew that someone else was listening in, we wouldn’t have any right to privacy in that situation. Why? Because even though we could reasonably expect my home to be a private place (meeting the second criteria of the two-part test), we don’t actually expect the conversation to be private, because we knew that someone was listening, so that situation fails the first part of the two-part test. On the other hand, if you and I were having a conversation in the middle of a crowded room, and we both expected the conversation to be private (thus passing the first test), that situation would fail the second test, because our expectations were completely unfounded, meaning that we wouldn’t have a right to privacy in that scenario. Only when both criteria of the two-part test are passed – when we expect privacy and our expectation is reasonable – is our conversation shrouded in the right to privacy.

The two-part test originated as a method of determining whether the government needs to obtain a warrant (or a subpoena, or any kind of court order) to obtain information about someone. If the government has a good enough reason to obtain information about you despite your reasonable expectation of privacy, then the warrant overrides the second part of the two-part test – making your expectation of privacy unreasonable – based on the probable cause that you’re hiding something that you shouldn’t be hiding. If you don’t have a reasonable expectation of privacy, however, the government doesn’t need to obtain a warrant, because accessing the information they want to access doesn’t violate your privacy. The warrant process is very similar to what happens when Freedom of Information Act requests (also called “FOIA requests,” and which we briefly discussed in the resolutional overview) are contested in court. In both cases, the court has to decide if privacy rights or national security concerns exist, and if those rights or concerns outweigh the public’s need to access and know information.

### The Implication

When boiled down, all this information leads to a pretty simple conclusion: Under U.S. law, common sense, and most commonly accepted democratic norms, privacy exists as a right only when we have a reasonable expectation of privacy. This is important to understand because privacy can’t be violated when it doesn’t exist. In situations where I don’t (or a candidate doesn’t) have a reasonable expectation of privacy, it’s literally impossible to violate my (or the candidate’s) right to privacy.

It is possible, however, to argue that situations like that don’t demonstrate resolutional conflict. If a candidates’ privacy isn’t being violated, then it would seem that the candidate’s privacy is being valued at the normal level. That leads us to a really interesting chain of reasoning. Imagine a scenario where the public has access to all the information about a candidate that it has a right to know, thus fully valuing the public’s right to know. But, imagine that the candidate lacked a reasonable expectation of privacy regarding that information. In that case, it would mean that the candidate’s privacy isn’t being violated by the public’s access to his information. If his privacy isn’t being violated, then it can be argued that the public’s right to know (which is, admittedly, being valued) isn’t being valued above the candidate’s right to privacy. Since the wording of the resolution clearly states that we have to value one side above the other, this situation doesn’t demonstrate the two sides of the resolution coming into conflict. Because the candidate doesn’t have a reasonable expectation of privacy regarding that information, his right to keep that information private doesn’t exist, so his right to privacy is not violated by the public’s access to that information, so the public’s right to know isn’t infringing on the candidate’s right to privacy, so the two sides of the resolution aren’t in conflict.

### The Problem: The Rarity of Reasonable Expectations

 If we require privacy to be violated (as a consequence of valuing the public’s right to know) in order for the two sides of the resolution to conflict, and we require privacy to exist in order for it to be violated, and we require there to be a reasonable expectation of privacy in order for privacy to exist, then we have a bit of a problem. We need the two sides of the resolution to conflict, but that conflict depends on a chain of conditions that starts with a reasonable expectation of privacy, and finding areas where candidates have reasonable expectations of privacy can be difficult. Most of the time, candidates voluntarily release information to the public, and it could be argued that willingly releasing information removes a candidate’s expectation of privacy with regards to that information. In many other cases, candidate disclosure laws require certain information to be released to the public, whether the candidate expects that information to be private or not, so it could be argued that any expectations of privacy regarding this type of information are unreasonable. Further, any candidate can avoid complying with disclosure laws simply by ceasing to be a candidate and becoming a private citizen once again. When viewed in that light, it would seem that even when disclosure is “legally mandated,” a candidate’s adherence to the mandate is optional, so when he chooses to abide by the mandate, he is voluntarily forfeiting his expectation of privacy. Using the two-part test would lead us to conclude that there isn’t any resolutional conflict in these types of situations, because the candidates’ right to privacy doesn’t exist and thus cannot be violated.

## PART III: Clash Strategies

This section takes the foundational knowledge that we acquired in Parts I and II and puts it to good use. In this section, we’ll develop some specific strategies to analyze and frame the resolution’s conflict and integrate that framework into an overall case strategy. Those frameworks are going to help us solve the problem that we discussed at the end of Part II, regarding the resolution’s clash (or the lack thereof, to be more exact). We’ll start on the Negative side by discussing a Resolutional Critique strategy, which handles the clash problem by arguing that there is no clash at all. Next, we’ll outline a strategy that can be used on either side of the resolution, which addresses the clash problem by reframing how we think about the resolution’s conflict. Finally, we’ll conclude by outlining an Affirmative strategy that frames the clash in a way that directly affirms the resolution.

### No Conflict: A Resolutional Critique

A Resolutional Critique (also called a Resolutional Kritik or Rez K) is a strategy exclusively used on the Negative side, and it argues that the resolution is inherently flawed in some way, and that inherent flaw means that we can’t or shouldn’t affirm the resolution. This Rez K argues that the two sides of the resolution never conflict, so it’s impossible to value one side over the other, so we cannot affirm the resolution.

In terms of this strategy’s structure, you’ll first need to establish that resolutional clash is a necessary part of determining which side of the resolution ought to be valued above the other. About 99% of Affirmative debaters will either include this concept in their case as a Resolutional Analysis (Rez A) point, or will quickly agree to the concept in cross-examination. But, very occasionally, you’ll come across an opponent who insists that we can affirm or negate the resolution without conflict between the sides. If you happen to come across one of these opponents, fall back on the simple logic in the first section of Part I, where we discussed why LD debate requires resolutional conflict.

Second, you’ll need to lay out the conditions that would create conflict in the resolution if they were fulfilled. Under this particular resolution and this particular Rez K, you’ll want the two-part test to be the framework that outlines that condition. This part of the strategy is a bit harder than the first step, but it’s equally important. If the judge doesn’t accept the two-part privacy test as the framework for the clash condition, then the final step is a moot point. You’ll need to establish that if valuing the public’s right to know ever infringes upon a candidate’s privacy (in a situation where the candidate has a reasonable expectation of privacy), then the condition is met and there is clash. By the same token, if valuing a candidate’s right to privacy (when the candidate has a reasonable expectation of privacy), ever prevents the public from learning information that it has a right to know, then the condition is met and there is clash.

The third, final, and hardest part of this strategy is proving that neither of those conditions are ever met. You’ll need to persuade the judge that valuing the public’s right to know never infringes on a candidate’s privacy, and that valuing a candidate’s privacy never limits the public’s right to know. The supporting arguments for this step are the same ones that we discussed in the “Problem” section in Part 1: either the candidate voluntarily released the information and thus forfeited his expectation of privacy, the courts ruled that the candidate’s expectation was unreasonable, or the candidate chose to abide by a legal disclosure mandate in order to continue seeking office, thus forfeiting his expectation of privacy. This is the crux of the whole strategy. The judge may accept your analysis about the need for conflict, and grant that the clash is determined by the two-part test, but if there’s even one instance where the two-part test leads to conflict, the Critique falls apart. So, be careful, alert, and prepared.

When deciding whether to use this strategy, there are some additional considerations to keep in mind. You must be capable of convince the judge that a Rez K is a legitimate argumentative strategy, and make sure that your judge understands what’s going on. Some experienced judges may be familiar with Critiques, but may also be biased against them. Less experienced judges may be totally open to a Rez K, but might become confused by such an outside-the-box strategy. In general, it’s wise to avoid running a Kritik with relatively inexperienced judges (whether parents or community judges), and experienced judges who are LD traditionalists. If someone’s judging philosophy places an emphasis on “good clean debate” or “a good value clash,” then it’s probably best that you save your Rez K for another round. On the other hand, experienced parent judges and alumni judges are often quite accepting of this strategy. Towards the end of the competitive year, after judging so many rounds at so many tournaments, parent judges can get tired of hearing the same debate over and over, and a unique strategy can seem like a breath of fresh air. Alumni judges often enjoy the “wow factor” and complexity of creative argumentation, and are usually the most receptive to a Rez K. Just bear in mind that experienced parent judges and alumni know how to analyze arguments and are unlikely to let details slip by them, so make sure to prove your assumptions and make your logic watertight.

### Conflict Through Changing Expectations

This strategy is versatile enough that it can be used for either side, which creates some strategic advantages and disadvantages. On the plus side, it’s a more intuitive approach, which makes it easier and faster to explain to the judge. It’s also more balanced, increasing the likelihood that your opponent will agree to your clash analysis. Both of those results allow you to spend less speech time on foundational framing arguments and more time on the persuasive and thesis-oriented arguments. On the other hand, the balance of this strategy does limit how much you can frame the round in your favor. It’s safer strategy, because it reduces the risk that your opponent contests your analysis, persuades the judge to accept their analysis, and thereby undercuts the entire foundation of your case. But, that safety costs you the opportunity to persuade the judge to accept a less balanced framework that’s tipped more towards your side. Food for thought.

This strategy requires a different sequence of analysis than the one we used to support the Rez K. This strategy doesn’t make the clash dependent on rights violations, it makes the clash dependent on the location of the boundary line between the public’s right to know and a candidate’s right to privacy. That boundary line, in turn, is derived from (guess what…) the two-part privacy test! However, that test is used very differently. Let’s see how this strategy works.

The first step in this strategy is just like the first step in the Rez K: establish that there must be conflict in the resolution. If you’re running this strategy on Affirmative, it’s probably wise to make it a point of Resolutional Analysis. If you’re running this strategy on Negative and the Aff doesn’t mention the necessity of conflict, use CX and/or your own Res A point to make sure that your bases are covered.

The second step is where we shake things up. We’re no longer using the “if there’s no reasonable expectation, there is no right to privacy, so privacy can’t be violated, so the sides can’t conflict” mindset. Instead, we’re focused on how the difference of opinion (between Aff and Neg) regarding a candidate’s reasonable expectation of privacy demonstrates the clash between the resolution’s two sides. Before we get into how those opinions are different, it’s important to note that a person’s reasonable expectation of privacy does decrease when that person becomes a candidate. To phrase it more technically, the number of situations in which a candidate has a reasonable expectation of privacy is lower than the number of situations in which an ordinary citizen has a reasonable expectation of privacy. Why? Because a candidate must abide by the relevant disclosure laws, and often forfeits his expectation of privacy in the pursuit of winning the election.

Now, here’s where we get into the difference of opinion that gives us resolutional clash. Affirmative debaters using this strategy will argue that a candidate’s lowered expectation of privacy is a good thing, that it demonstrates how the public’s right to know ought to be valued higher than a candidate’s right to privacy, and perhaps even that candidates ought to have a reasonable expectation of privacy in even fewer situations. Negative debaters using this strategy will argue that a candidate’s lowered expectation of privacy is a bad thing, that it demonstrates how valuing the public’s right to know above a candidate’s right to privacy tramples on and reduces individual freedom, and perhaps even that candidates should be entitled to a reasonable expectation of privacy in more situations. Instead of interpreting candidates’ lack of reasonable expectation as evidence that the two sides of the resolution don’t conflict, this strategy uses that very same lack of reasonable expectation as the focal point of this resolution’s conflict.

### Conflict Without the Two-Part Test

 This third clash framing strategy is for the Affirmative side of the resolution, and it bears a slight resemblance to the Affirmative strategy that we just outlined, but with one important difference: it completely disregards the two-part privacy test. Shocking, right? Most of this strategy article has been spent exploring, explaining, and strategically implementing the two-part test, so a clash framework that doesn’t include the two-part test probably seems absolutely bonkers. Before we get into why this strategy isn’t absolutely bonkers, I think there’s a larger lesson to be learned here, one that’s useful for debate strategy and life as a whole. Oftentimes, in debate and in life, we get so used to hearing an idea or dealing with a concept that we stop questioning it, or stop looking for better alternatives. It’s extremely easy to become intellectually complacent, to stop examining assumptions, to just sort of float along on the current of the same old ideas. That’s a bad habit for debaters, and it’s a bad habit for people in general. So, let’s be diligent about our due diligence, and make sure that we periodically examine the ideas that we’ve started taking for granted.

 With that said, let’s talk about why the two-part test isn’t an invulnerable bastion of this resolution’s clash framework. Given how much it’s come up in this article, you might be surprised to learn that the two-part privacy test isn’t included in most definitions of privacy and privacy rights. Yes, Supreme Court Justice Harlan’s two-part test has influenced U.S. jurisprudence for more than a half-century, but outside of appellate courts, not many people think about privacy in terms of reasonable expectations or the criteria that would require law enforcement to obtain a search warrant. Since most resolutional conflict stems from the definitions, let’s take a quick look at some dictionaries.

Cornell Law School’s Legal Information Institute defines the right to privacy as “the right not to have one's personal matters disclosed or publicized; the right to be left alone.”[[2]](#footnote-3) Merriam-Webster defines it as “the right of a person to be free from intrusion into or publicity concerning matters of a personal nature.”[[3]](#footnote-4) Nolo's Plain English Law Dictionary gives two definitions of privacy, the first of which is “the right not to have one's personal matters disclosed or publicized; the right to be left alone.”[[4]](#footnote-5) Even the U.S. Supreme Court, before Justice Harlan came along with his two-part test, referred to privacy as the "right to be let alone."[[5]](#footnote-6)

 Using this definition of privacy on the Affirmative side gives us a great opportunity to frame the resolution to our strategic advantage. Here’s how to do it. Step one, use a definition or two to establish that privacy is the right to be left alone. Step two, use a point of resolutional analysis to frame the clash in terms of the amount of information the public has the right to know and the amount of privacy afforded to candidates. Under this framework, valuing the Aff side of the resolution above the Neg side means that a candidate has less of a right to be left alone and more of his personal matters publicized, compared to the amount of privacy he would be afforded if he wasn’t seeking elected office. On the flip side of the coin, valuing the Neg side of the resolution over the Aff side means that the public’s right to know information would go unfulfilled, and the candidate would have the same right to be left alone and the same amount of his personal matters publicized as he did when he was just an ordinary citizen without political aspirations.

 Step three, use your contentions to establish that the actions of the very candidates themselves demonstrate how the public’s right to know ought to be valued above a candidate’s right to privacy. Candidates are sacrificing their own right to be let alone, their own right to not have their personal matters disclosed or publicized, in order to gain the approval of the public by valuing its right to know. For the fourth and final step of this strategy, you’ll need to defend your framework. That’s easier said than done. Though the logic of the framework is sound, it provides you with such a vast strategic advantage that your opponent will almost certainly mount a vigorous challenge, because they really can’t afford not to. After all, no one is forced to run for office, so candidates are willingly forfeiting their privacy. That part is indisputable, which leaves the Negative debater with a choice: he can either disprove your framework and convince the judge that candidates’ voluntary forfeiture of privacy doesn’t count as resolutional clash, or he can spend the entire round listening to you drive home the point that even the people losing their privacy (the candidates) value the public’s right to know above their own privacy. The second option isn’t going to work very well, so be prepared for your opponent to launch a full-out assault on your clash framework. If you can weather that assault and successfully defend your framework, you’ll remain in a fantastic strategic position.

## In Conclusion

This article is a strategy overview, not a strategy be-all and end-all or a strategy silver bullet. This resolution has so many more avenues to explore, so many more strategies to implement, so many more articles to read and concepts to learn. The debate year has only just begun, and we’ve only just scratched the surface of a great LD resolution. So, go research thoroughly, prepare well, continue learning, and enjoy your year of competition.

1. Supreme Court Justice John Harlan, Dec 18 1967. “Concurrence, Katz v. United States.” Legal Information Institute, Cornell University. www.law.cornell.edu/supremecourt/text/389/347 [↑](#footnote-ref-2)
2. Cornell Law School’s Legal Information Institute. “Right to Privacy” <https://www.law.cornell.edu/wex/right_to_privacy> [↑](#footnote-ref-3)
3. Merriam-Webster Dictionary. “Legal Right” <https://www.merriam-webster.com/legal/right%20of%20privacy> [↑](#footnote-ref-4)
4. “Right to Privacy.” *Legal Information Institute*, Cornell Law School, <https://www.law.cornell.edu/wex/right_to_privacy#:~:text=Definition%20from%20Nolo's%20Plain%2DEnglish,fundamental%20personal%20issues%20and%20decisions.> Accessed 27 June 2020. [↑](#footnote-ref-5)
5. Skousen, Mark. “The Right to Be Left Alone: Mark Skousen.” *Foundation for Economic Education*, 1 May 2002, fee.org/articles/the-right-to-be-left-alone/#:~:text=The%20Fourth%20Amendment%20forms%20the,a%20free%20and%20civil%20society. Accessed 27 June 2020. [↑](#footnote-ref-6)