

A Coach’s Notes¹

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THW prohibit geofence warrants.

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Introduction

This edition relates to the March 2026 CDA tournament and topic. Previous year’s editions can be found through the Training Materials page on the CDA web site. Accompanying this document are my notes from the final round at Farmington High School presented in two formats, transcript, and flow chart.

These Notes are intended for your benefit in coaching your teams and for the students to use directly. I hope that you will find them useful. Please feel free to make copies and distribute them to your debaters.

I appreciate any feedback you have, good and bad. The best comments and suggestions will find their way into subsequent issues. I would also consider publishing signed, reasoned comments or replies from coaches or students. If you would like to reply to my comments or sound off on some aspect of the debate topic or the CDA, I look forward to your email.

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Topic—no ground for Gov

I do not feel that this motion provided much ground for the Government side. It is a case before the Supreme Court. It is being argued seriously at that level by both sides. Just because something is being argued about in the real world does not make it a good topic for high school debate.

Fourth Amendment search and seizure cases like this generally revolve around the expectation of privacy, a legal term of art largely based on precedents going back to English common law. Without the knowledge of those cases and the ability to compare geofence warrants with other types of search warrants and the circumstances where the courts approved or denied them, you would find it very hard to argue before the Supreme Court or even follow the arguments the litigants are likely to make.

The packet mentions the expectation of privacy several times but doesn't give you the background to show why geofence warrants should be prohibited. It also mentions that one court ruled they were general warrants, which are traditionally banned. Another court disagreed. But the history behind general warrants and the reasoning why geofence warrants should be considered to be general warrants is absent. And, as all debaters should know, simply because something is unconstitutional or against some existing law is not an argument: you need to provide the reasons why it should be unconstitutional or illegal to be persuasive.

High school debates are generally won or lost on more mundane issues. Those who might be found through a geofence warrant are out in public, seen by others and by a proliferating array of cameras, and have tacitly (even explicitly) allowed tech companies to acquire and store their location (and other) data. A Gov team that argues on the grounds of an expectation of privacy will find these replies hard to overcome.

Certainly Gov will argue that cell phones are almost universal. A geofence warrant is like a dragnet search sweeping up everyone who happens to be in a particular place at a particular time. Most will be innocent. Mistakes can be made and some of those innocents may be questioned, detained, arrested, and even convicted. Isn't that enough for Gov to win?

Actually, no. Remember, debate is about comparing two worlds. The list of harms are inherent in the justice system. Police question bystanders all the time. Witnesses misidentify people. Camera images are imperfect, as is facial recognition. There is no uniqueness to these harms.

But, argues Gov, geofence warrants likely increase those harms in both frequency and probability. This is hard to quantify, and Opp can argue likely marginal giving spread of surveillance cameras and everyone posting photos publicly on social media. Geofence warrants are only one aspect of the spreading technology that makes any public outing widely known to anyone who cares to look.

And Opp will argue there are protections. All warrants require a judge's approval. Law enforcement must present evidence of a crime and limits as to time and place. The

geofence warrant results don't identify anyone. Law enforcement must take steps using additional information to narrow down the number of referrals it will make for identifying data. Opp can argue this takes time, as does contacting anyone specifically identified. Resource constraints as well as the warrant process act as limitations.

No one can be convicted on location information obtained from a geofence warrant alone, any more than they can be convicted simply because they were found near the scene of the crime by other means. Geofence warrant data also implicitly excludes suspects whose cell phones are not found in the area.

Other types of warrants and investigation techniques also lead to persons of interest who have no connection to the crime. It seems difficult to show a world with geofence warrants is significantly more harmful than one without. Opp will balance these harms—which Opp will characterize as mere inconvenience for only a few—against serious crimes that might otherwise go unsolved.

What about the risk of mass surveillance by the government? That harm is inherent in the technology, not the existence of the geofence warrant. As long as companies record and retain cell phone location data, the risk of abuse is always there. A government determined to abuse it will likely find a way to strong arm companies to provide data. And remember, Google (and others) use your location data all the time, and they aren't required to get a warrant.

Finally, one article provides a list of obvious mitigants, weakening any Gov case even further. I will consider these next.

When is a counterplan not a counterplan?

In all three rounds I judged on Saturday, the Opposition teams spoke about their “plan”, generally some version of the “model framework” presented in the sixth article on page 8 of the packet. “Reform don't ban” is a strong Opp argument that reinforces my claim above that Gov has little to support its position.

However, the way these plans were presented in each round was incorrect on two counts.

First, as I've written before, if Opp wants to present a counterplan, it should be the first or second thing presented in the LOC (second if Opp has issues about the top-of-case).

From that point on, the debate is about the Gov plan versus the Opp counterplan, and Opp should show how each of its contentions and replies to the Gov contentions arise from the counterplan. In the rounds I judged, each teams presented their “plan”—they did not call it a counterplan, adding a bit of confusion—as the final Opp contention.

Second, and more important, *if all Opp wants to do is make incremental improvements in the status quo, Opp should not use a counterplan!* The model framework essentially standardizes the terms, conditions, and process of geofence warrants. If the Supreme Court permits them, its decision may speak to these matters. These features are already included in some jurisdictions and required for other types of warrants. *Improving what the status quo is already doing in some form does not require a counterplan!*

The motion calls for a ban. That the status quo is not perfect is not enough to justify a ban, especially if the abuses can be curbed by spreading and enforcing correct practice. Courts often rule that police have abused search warrants. The call isn't to ban search warrants, but to correct police use of them.

Opp might present the argument as follows:

So far we have explained why geofence warrants are useful tools for law enforcement and present no more risk than other types of warrants and law enforcement procedures long established. Gov has not shown a significant harm, and the issues they raise would occur even if geofence warrants are banned. But we realize geofence warrants are a very new tool and best practices are still being developed. This is true of all new technology.

What should we expect? First, courts will likely standardize their use, clarifying under what circumstances they can be used and what information law enforcement must provide in order to have a warrant approved. Second, courts will limit what must be done to take the second step of identifying particular individuals from the large number of phones found in the time and place covered by the warrant. Law enforcement is likely to welcome this clarity, as every follow up takes time and requires officers to do the work. These resources are not free and limitless.

So even if you agree with Gov that there have been some abuses, these are minor and likely to be corrected with experience. There is no reason to ban geofence warrants, and you should reject the motion.

Explaining how the status quo can reduce harm or solve problems by enforcing or repairing existing practices is a legitimate Opp strategy. It does not require a counterplan.

Balanced use of time

I seem to be seeing more rounds where speakers spend most of their time on one side of the flow—either the Gov or Opp case—and little or no time on the other. I do keep time when I am judging, and I do note down the breaks when a speaker moves on from one part of the debate to another. It allows me to give feedback on the use of time, the one truly scarce resource in debating.

In the constructives there are three major segments: top-of-case, which may include the motion, definitions, interpretation, plan, weighing mechanism; Gov case; and Opp case. The PMC only has to deal with the first two.

Most CDA and most high school debaters don't spend enough time on the top-of-case, and by that I don't mean just definitions. A good debate requires that both sides and the Judge know what the debate is going to be about. As stated above, debate is about comparing two worlds. Debaters launch into contentions assuming everyone knows what those worlds are. In fact, Gov usually assumes worlds that favor the Gov case, Opp

assumes worlds that favor the Opp case, and the two teams are often talking past each other.

The PM should spend at least one minute, and probably as much as two, on describing what those worlds look like, not only the Gov world, but, just as important, the Opp world it will stand against. That description provides a framework for argument: my contention is true because this feature of the world I described to you supports it.

The PM should also make clear what the Opp world looks like in contrast, not in a negative sense, but in a fair objective manner that should be acceptable to the Opposition. This is what a point of clarification is for. When finished with top-of-case the PM can offer Opp a POC to gain agreement. Alternatively, Opp can stand for a POC to request more clarity from the PM. After this, the PM can present their substantive case, their contentions, in the remaining 5 or 6 minutes.

The remaining three constructive speeches should all be balanced, approximately equal time spent on the Gov and Opp case. Four minutes each should be the goal. There will be rounds where some issues will require more attention, but if you drift past a five/three split you are probably making a mistake. If Opp feels that Gov's framing of the debate needs further clarification or is unfair, that should be the first issue covered in the LOC, and in each subsequent constructive if it is not settled. The remaining time should then be split evenly.

The only exception is when your opponent ignores one side of the flow. If the LO drops all or most of the Gov case, presenting only the Opp case, the MG should note that, briefly remind the Judge of the Gov contentions, and spend the remaining 6 or 7 minutes attacking the Opp case. Similarly, if the MG ignores either the Opp case or the LO's reply to the Gov case, the MO should again note this, remind the Judge of what was dropped, and spend the remaining time on what the MG covered.

There are consequences if you fail to cover. If the LOC ignores the Gov case, all the MO's replies are new arguments. The PM can introduce any new arguments they please in rebuttal as long as it can be tied to the MO's replies and then use those new arguments to answer other aspects of the Opp case. Opp cannot object and gets no chance to reply. If the MG ignores the Opp case, or the LO's replies to the Gov case, any replies in the PMR are likely new arguments that Opp can call out with a point of order.

Speaking versus Reading

At the end of this month (March) there is a Coaches meeting to discuss banning computers from CDA debate. The reason given is fear that debaters are using electronic devices to cheat, either by using the internet for research, using AI to write arguments, or signaling a speaking partner.

I am opposed to a ban, first, because there is no evidence that a significant amount of cheating is going on (by significant, I mean enough to affect the fairness of competition), and second, because a ban would not prevent those determined to cheat from doing so.

I've written about AI and computers in CDA debate in other postings on the CDA website.

One problem I have seen that I think I can blame on laptops is debaters reading speeches rather than speaking from notes. I suspect one factor is that most debaters type much faster than they write and proceed to type out the entire speech rather than an outline. Some do this with pen and paper, and this is still not best practice, but computers do make it easier.

I'm not against presenting a written speech. Good speakers are always well prepared. But a good speech must be well presented. Written speeches are usually well rehearsed. The speaker makes an effort to appear as if they are not just reading. The CDA debaters I see are clearly reading, focused on the screen (or paper) rather than the audience.

This need not happen. Those who attended this year's Osterweis tournament at Yale and watched the demonstration round would have seen four excellent college debaters using laptops to flow the round and write their speaking notes. All of them would quickly glance at the screen to pick up their argument and then speak to the audience without referring to the screen until they needed to move to the next point. One speaker repeatedly stepped away from the podium, leaving their laptop for a minute or two at a time while elaborating on an issue.

That's what good debate should look like, however you choose to take notes!

RFD

This is a slightly edited version of my RFD for the final round at Farmington.

I voted Opp based on their arguments minimizing the harms posed by Gov and explaining how the counterplan—not really a counterplan but an extension of status quo procedures—would further protect the rights of individuals. This is a tough motion for Gov, and Opp did better job outlining the subtleties that make it hard: it is a warrant requiring judicial review; a phone swept up in a geofence warrant remains anonymous unless further steps are taken; being identified may simply make you of interest as a witness; it is not unusual for law enforcement to cast a wide net for questioning; legally the government cannot share or disclose the information gathered other than in a legal proceeding.

Gov does a good job of suggesting there is harm when these warrants sweep in people unconnected to the crime under investigation. But Gov stops at arguing that alone is the harm. Opp easily counters both by direct argument or suggesting modifications to the process per the counterplan.

To win, Gov needs to argue this power in government hands could be abused. Most would agree it's more an inconvenience rather than a serious harm to be caught up in an investigation and questioned, held, or even mistakenly charged. To drive the issue home Gov has to raise the specter of a government intent on either using these warrants sloppily to close cases, or using them intentionally to build cases to silence opponents or

to oppress minorities. Gov's arguments suggest this, but they never quite say it, and so the case fails.