

# A Coach's Notes<sup>1</sup>

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**Connecticut Debate Association**

**Joel Barlow High School and Westhill High School**

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**Resolved: The Courts should set State education policy.**

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## Introduction

This is the October edition of the 2016-17 CDA season. 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 Joel Barlow 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. So 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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## **Walking Through the Round**

Everything I discuss below I actually noticed during the round as it happened. With experience you can learn to spot the strengths and weaknesses in arguments automatically. But finding a good way to explain them takes time. In this case I think that going through the debate in order makes the most sense.

The wording below differs from my flow notes. I've used complete sentences and changed the wording to make the points clear.

### **The 1AC**

The First Affirmative has three contentions. But before presenting them he gives one statements by way of definition/plan, one comment and one voting criteria. Here are all six:

*Def/plan: State Courts are the easiest way to set school funding.*

*Comment: Legislators are conflicted and likely to support local interests.*

*Voting criteria: solving the problems of the education system.*

*A1: The current system fails to provide and equal and adequate education.*

*A2: A non-local system of funding would be better.*

*A3: Each child deserves an equal and adequate education.*

I'll analyze this as I go along, using material presented by both sides. But I do want to point out that the most important statement here is the "Comment." This should actually be the central contention of the Affirmative case. Rather than asserted in passing, it should be presented as a fully formed argument. Do you see why?

### **Cross-Ex of the First Affirmative**

Neg starts out asking if Aff has any more definitions to present, then asks if "education policy" is more than just funding, then repeats this question when Aff replies "education policy" is primarily about funding. This issue never comes up again in the debate.

This could be the basis for a strong Negative argument. First, Neg can argue that Aff is unfairly limiting the scope of the debate. Most would agree that education policy is more—and Judge Moukawsher's decision certainly covers more—than funding. Second, this would amplify an argument that Neg does make, that the judiciary lacks the expertise to make education policy decisions: graduation requirements, teacher evaluation standards all increase the complexity of the problem. Third, it also supports the Neg argument that this is an example of judicial overreach, which, if applied elsewhere, could lead to total judicial control of public policy.

Your questions in cross-ex should have a purpose. If you are asking questions with no intention of using the answers you receive you are asking the wrong questions. If you get what you ask for, use it.

Neg then asks, is the Affirmative plan "mutually exclusive," that is, is there any reason the legislature can't revise school funding? Aff answers the courts are more efficient and not conflicted. There's a small problem and a big problem here.

The small problem is Neg is misusing debate jargon. A Negative counter plan should be mutually exclusive with the Affirmative plan. But learn to avoid jargon. If you say “mutually exclusive” maybe one judge in three would know this is code for a particular issue. In this case the question is about the plan, so the jargon doesn’t apply. The question is simply, “Why can’t the legislature do this?”

The big problem is this is *the* glaring hole in the Affirmative case: the debate isn’t about whether education should be improved, or can be improved, or even what needs to be done. The debate is about who should decide what needs to be done and how to do it. The legislature clearly has and does set educational policy with regard to funding—the Aff focus—and has and does set policy in many other aspects of education. Showing why the legislature can’t or won’t enact a policy that provides an equal and adequate education is a type of argument called “inherency.” If Aff can demonstrate there is a problem that the resolution can solve but that the status quo cannot, they are a long way towards winning the debate.

Neg follows up with a series of questions about the qualifications of judges and courts that are fine as far as they go and feed the Negative contentions. But Neg misses a chance to end the debate right here: Doesn’t the legislature usually set policy? Can you name one area where the courts have set public policy? Won’t the legislature have to enact any decision the courts make? Didn’t the Moukawsher decision direct the legislature to come up with a remedy? Won’t the legislation actually be the policy? *Doesn’t the Affirmative have to show the status quo can’t solve the problem?*

## **The 1NC**

So what does the First Negative do in his constructive? He starts by rebutting the Aff case, and in particular regarding A1, says something like “We on side Negative agree that the status quo isn’t good, and we won’t defend it. We will simply argue against the resolution and the Aff plan.” Except that’s not what he proceeds to do.

Remember Neg has four basic strategies. First, they can simply rebut everything the Aff says and convincingly demonstrate that Aff has not met the burden of proof. Second, they can argue that the harm doesn’t exist or is small relative to the cost of the Aff plan. Third, they can argue that the status quo, with minor changes, can solve the problem. Fourth, they can propose a counterplan, shifting the debate from Aff plan vs the status quo to Aff plan vs Neg counterplan.

The First Negative’s statement suggests they intend to pursue the first strategy, pure refutation. Their contentions seem to support that:

*N1: The resolution is a case of judicial overreach.*

*N2: The judiciary is not qualified to set education policy*

*N3: The resolution increases the amount of judicial law*

But in each case the Neg supports these contentions by comparing the role of the judiciary to that of the legislature. Explicitly they say they are simply against the resolution; implicitly they are saying the legislature should make education policy by passing legislation, which is the status quo.

This is a minor point, and it has no effect on my decision. But you always sound better when your words are consistent with your case. If you are on Neg you should choose your strategy, make that strategy clear to the judge, and present a case that follows that strategy. If you say one thing and do something else it can be confusing. In some rounds Neg may pursue more than one of the basic strategies, in which case they have to be very clear at every point which strategy their argument is supporting.

We noted above that Neg misses the main point in cross-ex, that Aff has not presented an argument why the judiciary should make education policy. The INC starts with a quick refutation of the Aff case in which they basically agree with all of the premises of the Aff contentions but not the conclusions.

*A1: We agree the status quo is not optimal, but the judiciary is not a good way to fix it;*

*A2: We agree with equitable school funding, but that should not be set by a judge;*

*A3: We agree that the constitution mandates an equal and adequate education, but courts should not legislate.*

Neg should agree in this case, but if you are going to make this sort of move you want to shout it out to the judge as clearly as possible:

*The Negative agrees with the premise of all three Affirmative contentions: students deserve an equal and adequate education, and our current system of school funding in Connecticut does not provide that. But this does not justify having the courts set education funding policy, or any other aspect of education policy. Note this argument applies to all three Affirmative contentions and shows all three are not relevant to this debate. Let me now turn to our case and show you why the judiciary is not suited for this role.*

This is both more economical in terms of time and concept, and also more powerful.

Most teams lack the confidence to point out areas of agreement with their opponents. This Negative team does not. Effective refutation doesn't require you dispute everything your opponents say. It means recognizing the key issues and focusing on winning them.

## **The 2AC**

The Second Affirmative covers all the arguments in the debate. If you look at the flow he responds to each Negative reply to the Aff contentions and to each Negative contention, clearly noting each as he deals with it. This is just what a debater should usually do in the 2AC, and at the end of the speech I would have said the round was about equal.

He also begins to make arguments that get to the central issue while replying to the Negative contentions. In replying to N1 he argues the judiciary would be more efficient, as fewer people can make a decision more quickly. This is a weak argument, but it does support judicial over legislative action. In replying to N2 and N3 he deals with the issues of expertise and democracy, defending the courts' role, and makes a second weak inherency argument, that the legislature could fix the problem but they simply haven't.

It is a mistake for the Affirmative to make arguments central to their case through refutation. This is similar to trying to reverse the burden of proof. Aff teams often argue that they should win because the Negative has not shown the resolution to be false. That

isn't how the burden falls. It's not enough for Aff to argue Neg has not given a good reason for the courts not to set educational policy (note the double negative). To win Aff must provide a good reason to shift educational policy to the courts, a simple positive.

At this point in the round, it appears that neither side clearly understands the central issue. Everyone agrees the current system is flawed. Aff mentions the legislature's inherent inability to fix the problem as an unsupported side comment. Neg says it won't support the status quo but proceeds to attack the judiciary and defend the legislature as policy makers, which is the status quo. Aff replies by defending the judiciary as the best option.

### ***Intermission: Cross-Ex***

Let's take a breather here before we get back to the heart of the drama and talk about cross-ex. Most of the cross-ex I see in CDA debates—including final rounds—is ineffective. That's to be expected: asking good questions is one of the hardest skills to master. To do so, you need to know why certain types of questions don't work well. Here are some examples from the round:

*Neg asks 1<sup>st</sup> Aff:*

*Are judges experts?*

*Should judges who are unelected make law?*

*Aff asks 1<sup>st</sup> Neg:*

*Do you think judges are unqualified?*

*Are the courts representative of the people?*

*Neg asks 2<sup>nd</sup> Aff:*

*Doesn't this sacrifice democracy?*

*If the legislature fails, shouldn't the courts act?*

*Aff asks 2<sup>nd</sup> Neg:*

*Are you saying judges can't make good decisions?*

*Isn't it undemocratic if the legislature ignores the problem?*

Do you see anything in common with all of these questions? In each case the questioner asks the speaker for a conclusion that will hurt the speaker's case. That's not likely to happen, especially since each question can be answered with a conclusion that will support the speaker's case. Both sides and most judges know where each team wants to go, but these questions aren't going there.

Think back on your legal training—multiple seasons of *Law and Order* or any other courtroom drama. You may recall two common objections to questions, “The questions calls for the witness to draw a conclusion” and “The prosecution (or defense) is leading the witness.” That's because, broadly, witnesses are there to testify about facts; juries are supposed to review those facts and draw the conclusions; though attorneys for both sides will review the facts for and suggest conclusions to the jury. Like a prosecution or defense attorney, you will do better asking for facts, not conclusions.

Let's rework the questions with the help of material in the packet:

*Neg asks 1<sup>st</sup> Aff:*

*Do judges have a background in education? What about Judge Moukawsher?*

*Are judges in Connecticut elected? Re-elected?*

*Aff asks 1<sup>st</sup> Neg:*

*Aren't judge and their qualifications reviewed by the Governor before they are appointed?*

*Don't judge appointments have to be confirmed by the legislature? Don't they hold hearings? Can they be impeached by the legislature for misconduct?*

*Neg asks 2<sup>nd</sup> Aff:*

*Do the Governor and legislators face regular elections? Do judges?*

*Can you provide another example of the courts setting policy just because the legislature did not act?*

*Aff asks 2<sup>nd</sup> Neg:*

*Do the courts make decisions in civil cases? Did court decisions change police policy? Integration policy? Marriage policy?*

*You agreed that students have a right to an equal an adequate education, and that they are not getting it. Do our current laws set school funding?*

*Doesn't the court act as a remedy when laws deny basic rights?*

I'll leave you to decide whether these questions are more "factual," more effective, and what the answers and follow up might be.

## **The 2NC**

The 2<sup>nd</sup> Negative presents arguments that, on my flow, win the round for his side. But he does it in a very peculiar way. Between covering the Aff contentions at the beginning of his speech and the Neg contentions at the end, he presents something new and unconnected to either that takes up most of the middle. This is either several new points or one big point with several subpoints:

*We agree that there are problems with education.*

*But the issue in the debate is who should make policy to fix them.*

*Aff says it should be the courts in order to conserve resources and act quickly.*

*But this avoids proper review. Unelected individuals become "educational tyrants."*

- 1. Judges are undemocratic as they are appointed not elected..*
- 2. Judges are not accountable because they are appointed for life.*
- 3. Judges are not diverse. Aff notes the advantages of a diverse work group: the less diverse the group, the worse the decision.*
- 4. Judges are not representative.*

The 2<sup>nd</sup> Negative is correct: this is what the debate is about. And these arguments win the round because Aff never effectively replies to them. But there are a number of problems with the way it is done here.

First, it confuses the judge. There's no sign-posting, no indication where this should fit on the flow. The 2<sup>nd</sup> Neg just launches into it after one-sentence replies to the Aff contentions, and follows it with one-sentence replies on the Neg contentions. Is this a new contention? A summary and grouping of previous points? A new way to view the entire round? The judge doesn't know.

Second, this argument is well-structured. While it re-purposes some material from the three Neg contentions, it sounds like a new argument. Why wasn't it the 1NC? Why wasn't it one of the Neg contentions? This is the final round. Neg has debated this topic three times before. It can take a while to fully understand the resolution, but once you do, change your case at the start, don't wait until the middle of the round.

Third, while new arguments are permitted in the constructive speeches, a new argument in the 2NC opens the door for the Aff to present new arguments in reply in the 1AR. I certainly would have allowed them here. Aff can still win by recognizing the issue and concentrating the 1AR and 2AR on it. Neg would only have the 2NR to reply!

Fourth, Neg is basically dumping all the contentions. After the one sentence replies in the 2NC neither Negative speaker mentions any of the contentions again, Aff's or Neg's.

Let's assume that between the end of the 1NC and the start of the 2NC the Negative team had an epiphany and realized the central issue of the debate. They want to shift the focus away from the Aff and Neg contentions and onto the central issue and the Neg arguments in support of it. There is a better way to do this.

Do it at the very beginning of the speech. The Judges have spent almost 30 minutes flowing the debate around six contentions and you want them to change that. Make it clear to the Judges you are asking them to revise the flow. Outline the approach you are going to take and then follow that outline consistently for the rest of the round. Finally, make sure you link it to the arguments you've made already. For example:

*In the Second Negative Constructive I'd like to focus on the central issue of the debate: who is the best party to set education policy? This is how side Negative will approach the rest of this debate:*

*First, we agree with the Affirmative that education in Connecticut can be improved. But Aff has presented no argument as to why the courts, as opposed to the legislature, should be the ones to do it. As my partner noted, this nullifies all three of their contentions and they no longer count in the round.*

*Second, there are a number of reasons that arise from the Negative contentions, and even arguments the Affirmative has made, that should convince you the courts are ill-suited for this role.*

*On the first point, the Aff case is basically, A3, that students deserve an equal and adequate education, A1, currently not all of them receive that, and A2, a better funding system would help. We largely agree with this analysis. But we note you can agree with all of these and still disagree with the proposed remedy, court control of education policy. Not one of these arguments supports turning control over to the court system.*

*On the second point, let me review the Negative arguments against court control:*

- 1. Judges are unrepresentative and undemocratic. They are appointed, not elected.*
- 2. Judges are unaccountable. They are appointed by life and there is no way for the public to influence them afterwards, as they can with the legislature.*

3. *Judges are not a diverse group. In their second contention Aff argued equal education leads to a diverse workforce, and a diverse workforce was good for the economy. If diversity is good for the economy, it should be good for setting policy, and the judiciary is not diverse.*
4. *Judges are not qualified. They are chosen because they know the law, not because they are experts on public policy, and especially not education.*

*Aff has given only one argument for courts to set policy. They say it saves time and resources. But the point of democracy is to reflect the will of the people and that requires a thorough review. That is going to take time and resources to be done well. Aff wants to make an unelected individual an “educational tyrant” and that’s just wrong.*

The Judge now knows exactly what the Negative is doing. You may find better ways of doing this, and you could certainly elaborate on any of the individual points. My point is that if you decide to shift gears, make sure you take care to bring the Judge with you.

One other minor point on the 2NC. Responding on N1, Neg cites Montesquieu as promoting the idea of the separation of powers in government. I thought that was Locke. Note mistakes on fact don’t generally affect my decision, as we all make them. I look more at the arguments presented. *But I always look up anything I don’t know or don’t agree with*—if I’m ever your judge you can count on it. In this case the Second Negative was right and I was wrong. You can find it in Montesquieu’s *The Spirit of the Laws* according to Wikipedia.

### ***The Negative Rebuttals***

The Negative team has winning arguments on the flow after the constructive speeches. It wasn’t pretty, and it took a while, but Aff has to climb out of a deep hole. So how does Neg follow up in rebuttal? Let’s lay the 1NR and the 2NR side by side.

<b>1NR</b>	<b>2NR</b>
<p><i>There are three issues: the problem, the solution and authority.</i></p> <p><i>Problem: both sides agree there is a problem in education. But that isn’t the main issue.</i></p> <p><i>Solution: Aff argues that Judges would be swift and effective. Swift yes; effective no. Judges are not experts in education, they are less diverse and they are less representative.</i></p> <p><i>Authority: the courts would be infringing on the separation of powers. This is unconstitutional and sets a dangerous precedent.</i></p>	<p><i>There are two issues: the courts would be ineffective and harmful to democracy.</i></p> <p><i>Ineffective: Courts are experts in the law not education. The legislature is better on policy.</i></p> <p><i>Democracy: judges are appointed for life rather than elected. They are few and not diverse. This presents a slippery slope where judges could end up making all policy.</i></p>



Does the 2<sup>nd</sup> Negative remember his constructive speech? Do the 1<sup>st</sup> and 2<sup>nd</sup> Negative talk to each other? Are they on the same team? Do they know each other?

I agree that the underlying ideas in the two rebuttals are similar, and that they can be traced back to the 1NC and through the 2NC. But the burden is placed on the judge to do the work. Neg gives us four ways to organize the debate, a different one in each speech. What would you think of a teacher who gave you four different sets of instructions for one assignment?

Every time you change your approach to the round you risk confusing the judge and losing, not because your arguments were bad, but because they were badly delivered and hence poorly understood. You basically have two chances to organize your case and the debate as a whole.

The first time is the 1AC or the 1NC. In all cases the 1AC you deliver will be the one you walked into the room with. The 1NC should not be the one you walked into the room with: it should be adjusted based on the 1AC you hear. After these speeches, in the best debates I see, both teams stick with these cases right through the end of the round.

If you are going to reorganize your case or the round, you should only do it once. If you do, you have to stick with the new version: you should not go back to your original approach and you should not change it a second time.

In order to bring the Judge along with you, you must: (1) make it very clear that you are reorganizing, and; (2) show that the reorganization is based on the arguments—Aff and Neg—that have come before. And make sure both you and your teammate stick with the new structure.

The most common place to reorganize is the last rebuttal speech. This isn't really a reorganization, it's a summarization of the round. Grouping arguments and highlighting the voting issues are just efficient ways to reach a conclusion.

But if you do this in the 1NR or 1AR or even, as here, the 2NC, then stick with it in the final rebuttals. If everyone outlines a different debate in the rebuttals, the Judge is left wondering whether they all saw the same round.

### ***The Affirmative Rebuttals and Reason for the Decision***

If the Negative wins the debate in the 2NC, the Affirmative loses it in the 1AR. The 1<sup>st</sup> Affirmative starts with the voting issue, which sides best solves the problems in education. He notes Neg is not defending the status quo and has not presented a counterplan, so they can't solve the problem, while Aff can. The burden of proof doesn't run that way.

The 1<sup>st</sup> Affirmative also only replies to the 1NR, and, in particular, does not reply to the heart of the 2NC. This leaves all of the Neg objections to judicial activism standing. I would have accepted new arguments in the 1AR due to the nature of the 2NC. The 2AR would be too late.

The 2<sup>nd</sup> Affirmative reviews the Aff case. There are no replies to the differing summaries presented in the 1NR or 2NR, and nothing about the 2NC. He is correct in that the three Affirmative contentions largely stand. But the Neg has agreed with them several times.

The objective in the debate is to persuade the Judge to adopt the resolution. Neg has shown Aff hasn't done that, and Aff never really deals with this point.

### ***Additional Review Exercises***

I have analyzed this debate on what was presented by the two teams. I haven't gone into other arguments either team might have presented, other information in the packet that might have helped either side, or other things I might know about the topic. That is an exercise I leave to you. This specific topic extends to many other states, see for instance this article from The New York Times I noticed while writing this piece:

<http://www.nytimes.com/2016/10/21/opinion/are-detroits-most-terrible-schools-unconstitutional.html?ref=todayspaper> .

Just as I looked up Montesquieu, you should look up anything you didn't know, either from this debate, your own debates or from the closer second reading of the packet you should do after every tournament. Do you know how judges are appointed? How the cases like the one Judge Moukawsher decided are conducted?

The influence of the courts on public policy is broad and affects many areas besides education: criminal procedure, discrimination, election finance, corporate conduct. This is why there is so much concern over the next Supreme Court justice. What are or should be the limits of the judicial action? We have overlapping layers of local, State and Federal government, each with executive, legislative and judicial functions. This interact and interfere in complex ways. You will see these issues again.

### **Why Watch Debates**

Watching debates is one of the best ways to develop critical skills, in the double sense in that you need the skills of a critic and the skills are critical to your development as a debater. When you are in a round your analysis has to be quick and instinctive. You don't have a lot of time to think. That pressure is gone when you watch someone else debate. You can focus on the strategy, the tactics, the arguments and the questions. As Yogi Berra said, "You can see a lot just by looking."

If you saw this debate at Joel Barlow, spend some time with your own notes and make a list of the issues you find. See if you agree with my comments. Create your own critique.

Then go to your own flows of your own debates this past weekend and review them the same way. If they aren't detailed enough, that's one thing you need to work on. Can you explain why you won or lost? Whether you deserved to win or lose? What could you have done better?

Debaters have a marked disadvantage compared to other activities as they are rarely observed by their coach. Unless you and your partner learn to create a good record of your rounds—your flows—and to review them the way I have here, it's hard to improve. Becoming your own best judge or critic is a valuable real world skill. As you advance in life you will find that good coaching is hard to find. You are quite often on your own. So take advantage of the opportunities you have, both to debate and to watch others debate.