A Coach's Notes[1]

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Resolved: In the US, a student's race is an appropriate factor in admissions policies & practices at public elementary and secondary schools.

Contents

Introduction

This is the third edition of the 2006 CDA season. If you did not receive the October or November editions please email me and I will send them to you. Accompanying this document is a transcript of my notes from the final round in two formats: transcript and flow chart. I email these along with a copy of the packet to CDA-registered and CDA-interested coaches usually within two weeks after a tournament. I hope that you will find them useful teaching tools.

I would 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 reasoned comments or replies from coaches or students in subsequent issues. If there is sufficient interest, this could evolve into a CDA newsletter.

But It's Illegal![2]

I regularly hear debaters cite the constitution, other laws or various court decisions to support their arguments. In the final round, the two teams cited the 14th Amendment and Brown v. Board of Education, and the packet discusses the particulars of a more recent case, Meredith v. Jefferson City Board of Education.

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[2] I am indebted to Sally Acevedo at Moody's Investors Service for reviewing this section and providing the detail regarding the law and courts.

There is nothing wrong with having the law or the court on your side, but it's important to realize that these alone are not valid arguments in a debate. Laws change and court decisions turn on the precise facts of each case. If the resolution violates an existing law that is not an argument against it. If a Supreme Court decision seems to favor the resolution that is not an argument in favor.

First, the fact that adopting the resolution would violate an existing law is not a reason to reject the resolution. This can be quickly seen by restating the issue: just because implementing the resolution would require a new law or a change in existing law is not an argument against it. Almost any change in policy requires legislation. And a great many practices now considered reprehensible—slavery, debtor's prison, state-supported religion—used to be quite legal.

Similarly, courts, as well as legislatures, have held or enacted conflicting opinions or laws at different times. One does not simply win at law because you can cite more case law[3] or legislative law[4] in your favor than against. One wins at law by using the reasoning that was favored by the court or legislature[5] in the past in order to demonstrate that a decision in your favor today is the correct one.

In other words, a law or a court decision supports your case only to the extent that you look to the reasoning behind them and cite that logic. The situations that led to that law or decision and the deliberations of parties involved contain arguments that you can use to support your case. Why was the 14th Amendment added to the Constitution? Why did Brown v. Board of Education hold segregated facilities inherently unequal? Only when you present these arguments do you make your case.

Problems with Contentions

Most CDA debaters build their case on two to four contentions, with three being the most common number. As the basic building blocks of the argument, a certain degree of care should be taken in constructing them. The contentions from this month's final round at Pomperaug can be used to point out two common problems: poorly stated contentions and contentions that don't really make a case.

Note that in what follows I am not saying that either team failed to present a strong case. I am questioning the form of their contentions as presented. In both cases, by looking at the arguments presented in their first constructive speeches, it is possible to restate their contentions in a more satisfactory form. As you read what follows, you should ask

[3] As used in this paragraph, a case is a written statement of facts for a disputed matter which is presented to a court or judge for its opinion or decision. Case law or court-made law includes the aggregate of reported court decisions covering a particular subject (e.g., fact pattern). Case-law interprets statutes, regulations and constitutional provisions. Supreme Court cases form part of case law. Case law excludes legislative law.

[4] Legislative law is enacted by legislatures. The Constitution is a type of legislative law (not case law).

[5] The reasoning behind legislative law is found in its legislative history. Legislative history is the background and events that resulted in the passing of the legislation (i.e., debates, hearings and committee reports). Legislative history of major statutes is usually published. Courts review legislative history if a case involves the legislative intent of a law.

yourself whether you agree, and whether there might be even better ways to restate the arguments of either side.

Contentions should be like mini-resolutions: clear, concise statements that stand on their own. In this month's final round, the Negative introduced their case by stating (and this is close to verbatim):

> *"We have three contentions: masking the problem, worsening the situation, and better alternatives."*

What? I've been doing this long enough that I can't pretend I didn't know what they meant—well, "masking the problem" threw me for a bit—but these aren't even complete sentences. Suppose we had stopped the debate right there, permitting each side to state their contentions and nothing more. Would you agree that the Negative had failed to make a case?

Your contentions should always be complete sentences that make a prima facie case to the judge. While you may want to use a shorter version to streamline your later speeches, when first presented there should be no need for the judge to wonder or guess what you mean. Part of your preparation should be to consider alternative ways of stating your contentions in order to achieve the exact meaning and impact that you want. Granted you only have one hour to prepare, but if the judge remembers anything about your case, it will be your contentions. So they are worth a bit of grooming.

Let's try again. Based on their further elaboration of their arguments, what I think that the Negative meant to say was:

> *"We have three contentions:*
> *First, implementing the resolution will have no benefit because there is no clear relation between increasing integration and reducing social inequality.*
> *Second, implementing the resolution will increase friction and animosity between groups.*
> *Third, there are alternative programs that can improve communication and reduce misunderstanding among groups."*

I think you will agree that if we stopped the debate here, the Negative would have presented a solid position.

The Affirmative contentions were complete sentences, but they suffered from a different weakness: it wasn't clear that they made a case for adopting the resolution. The Affirmative contentions were:

1. *The 14th Amendment guarantees equal rights.*
2. *In Brown v Board of Education, the Supreme Court found segregation inherently unequal.*
3. *The resolution promotes equality in education and opportunity.*

The first two are statements of fact, and as such are indisputable. Facts may support arguments, but they are not themselves arguments. I can agree with those facts and still feel no compulsion to adopt the resolution because no argument in favor of the resolution

has been given. The resolution sounds like it's supposed to be about equal rights and integration—and certainly the reading supports this—but just because a sentence sounds similar to the resolution doesn't make it a contention.

The third contention is, in fact, a contention: adopting the resolution will result in improvements in two social measures most of us accept as good things, equality in education and equality of opportunity. This claim needs to be supported. It isn't immediately clear that adopting the resolution, using race as a factor in admissions, will promote equality, but it sounds reasonable.

The Affirmative spent four minutes presenting arguments under the banner of the first two contentions. If all the judge remembers are the contentions, those arguments will have gone to waste. If we restate the Affirmative contentions, we can pull the gist of those arguments up into the contentions where they get the exposure they deserve.

1. *Unequal wealth results in de facto segregation with minorities concentrated in poor, under-equipped school districts*
2. *Segregation harms both individuals and the education process generally.*
3. *Using race as a factor in school admissions can overcome de facto segregation and improve the education process.*

These contentions don't stand alone, but rather form a chain of arguments positing a harm (segregation and its consequences), a cause (unequal distribution of wealth), and a cure through adopting the resolution. This is a very "policy debate" oriented case. In policy debate, the Affirmative case consists of a harm, a reason for the harm that is inherent in the status quo, and a plan, derived from the resolution, that remedies the harm.

Note that this resolution could also be interpreted in a more Lincoln-Douglas debate framework, as an issue of principle. The key words, "race is an appropriate factor in admissions policies and practices," do not force the Affirmative to embrace any particular policy prescription. One issue running through the often confusing court cases on segregation is to what extent race can be considered as a factor in public decision making. If equality of result is more important than equality of means to achieve such result, race-based admissions might be justified.

Dealing with Dilemmas

In the final round at Pomperaug, the Negative began its cross examination of the First Affirmative Speaker by asking a question that leads to a direct and obvious dilemma: "Does the Affirmative believe in forced integration?" Answer "yes" and you open up yourself up to having to defend forced busing. Answer "no" and it sounds like you'll let anyone go to any school they want, something not likely to end segregation. What do you do?

A debater should realize that every resolution has a conflict at its heart or else it would not be worth debating. Adopting the resolution will help some and harm others, exalt some values and diminish others. Your task is to show that the balance favors your side of the argument.

One of the worst tactics a debater can use is to avoid this conflict rather than meet it head on. It almost invariably weakens your case. If you claim you are going to end segregation in education, someone is going to have to go to a different school, and that someone may not be happy about it. To claim you are going to end segregation but everyone will get to go to the school they want is simply not credible.

The Negative's opening question this month is classic cross ex: go right for the conflict and turn it into a dilemma with no pleasant alternatives. Make the question simple with as little wiggle room as possible: "Does the Affirmative believe in forced integration?" As the Negative, if you are asking a question like this, you should, ideally, be indifferent to the answer, and ready to exploit either reply. If the Affirmative answers "yes," find out what kind of force they favor. If the Affirmative answers "no," ask how they are going to get students to go to different schools.

To exploit either answer in a dilemma you must use a chain of questions that require your opponent to develop their ideas in detail. One of the best ways to use cross ex is to force the other team to be explicit and precise about what they are proposing. Vagueness gives them flexibility. They can choose the best answer to your attack at the very last moment when you have little time left to reply. Once the details are out, your opponent has to live with them, and you should have enough to show the contradictions, difficulties and unpleasantness inherent in their case.

If I had to identify the biggest weakness in most of the cross ex I've seen, it's the failure of either team to identify or exploit the conflict at the heart of the resolution. This directly gives rise to the second biggest weakness: both teams trying to browbeat the speaker into a "killer" admission that the speaker is not about to make. You aren't a prosecuting attorney, and your opponents aren't unprepared witnesses. Therefore, the likelihood of success from employing this strategy is slim. Instead, the admission you want will come much easier if it arises from a chain of questions where the other team is made to confront their position in detail. How does one achieve this? One way is to walk your opponents through how their arguments are going to work in the real world step by step.

So what do you do if you're the one answering the questions? Your interpretation of the resolution is not all peaches and cream and never can be, whether you are Affirmative or Negative. This is why it is important to have thought through your position. Remember it is always a question of balance: benefit versus harm. Your opponents' position isn't a bed of roses either. Your opponents are trying to highlight your dark side. Your answers should lead them back towards the light.

This month's resolution permits one very simple answer to the Negative's question based on how the current public school system works:

Question: "Do you believe in forced integration?"

Answer: "Parents and children currently don't have a choice as to what public school they attend. We are simply proposing race should be an important factor when assigning children to schools."

"Forced integration" is such an unpleasant phrase; "assigning children to schools" sounds rational and efficient. You've acknowledged that students will get moved around, but changed the sense of it from compulsion to enrolment, no different from occurs today other than the use of race in the process as called for in the resolution.

This doesn't end the cross ex, of course, nor eliminate the dilemma, nor even settle the question of "force." Just because the speaker has parried your attack is no reason to let it drop. How will race be used to reassign students to schools? Will other factors matter? When will race count for more than other factors? When will the other factors count for more than race? How many students will have to be reassigned? Will parents and students have any choice? What will happen if they object to an assignment? What will happen if they refuse an assignment?

These follow up questions all arise directly from the words used in the answer above. They also all focus on the central dilemma, relocating students to places they or their parents don't want them to be. And there are likely good answers to all of them. Thrust, parry, thrust, parry…..

Exercise

Good cross ex is hard. It is worthwhile practicing it separately rather than solely in the context of practice debates. You can take a situation like the one described here and have pairs of students work from a starting position and a starting question. If you have a set of contentions for both sides, you can run the same exercise as a cross ex of the Negative rather than the Affirmative. And if you have a good transcript of the round, you can pick arguments on either side.

Don't practice a full cross ex. Pick one argument and a starting question. Give the debaters a few minutes to think about a series of questions before the first pair begins. Hold them to a minute or 90 seconds, and stop them early if the questioning stalls or deteriorates. Let several pairs work the same argument and question, and see if the cross ex improves—both offense and defense—with repetition.