

A Coach's Notes¹

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Ridgefield High School and Amity High School

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Resolved: All accused terrorists should be tried by military tribunals.

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Introduction

This is the third edition of the 2000-10 CDA season. Past editions may be found on the CDA website, <http://ctdebate.org>.

I did not attend the tournaments this month, so there is no accompanying flowchart. However, I would like to thank the Amity and Westhill teams for providing me with a copy of their notes from the final rounds. They served as the basis for some of my examples below.

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 teaching tools. Please feel free to make copies and distribute them to your debaters.

I appreciate any feedback you have. 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 in subsequent issues. 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.

Mailbag

This edition is made up from questions I have received from coaches and students over the past three months. I try to answer every email that I receive carefully, respecting both

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CDA policy and debate theory and practice as I understand it. I hope that you find the questions and answers interesting.

I just want to emphasize that debate has few strict rules. The rules that do exist generally define the things like eligibility, format, timing and so forth. They do not prescribe in any great detail how debaters should debate, how they should make their case, or how judges should decide a round.

So my answers and commentary are simply my opinions. I hope that you find my analysis thought provoking and convincing, but it carries no authority beyond that. If you don't agree, send me an email. I'd like to know why.

Whence Packets?

Who comes up with the debate topics and organizes the packets?

The packets are prepared by two experienced coaches and the Executive Director of the CDA. We discuss potential topics, then one coach prepares a draft resolution and packet. The other coach and I review and edit the draft. Things go back and forth until we all agree or we run out of time. The process usually takes about a week by email. The number of people involved is kept small in order to keep the topic confidential and to keep the process manageable.

This is the second year we have used this particular process, and it seems to work well. Prior to that, for several years, the CDA Executive Director chose the topic and wrote the packet. Prior to that there were many different methods used. In some cases the host school chose the topic and wrote the packet. In some cases the topic area was announced a month prior to the tournament.

For the past two years we have consciously tried to favor topics that are in the news. This has always been an unofficial policy for choosing topics, but the idea of how "current" the topic has to be has varied. My personal bias is to try and grab recent headlines to reward students who follow the news. This could change as coaches' preferences change. If you look at the file of past resolutions on the web site, you can see how selections have varied over the years.

We welcome comments or questions about the topic or the packet, both from coaches and from debaters. If you or your team has suggestions for topics, or believe we should use a different approach to selecting topics, please send me an email. Fresh ideas are always helpful. I'm also happy to provide feedback as to why or why not I think a subject would make a good topic.

Interpreting Ballots

After looking at my novice teams scorecards Saturday afternoon, I noticed a lot of judges giving a "5" score on things like case, when it is obvious that they are not yet at the level to be nearly perfect for the case they present. After attending the judges seminar I understood that we should not give a 5 unless that section was nearly flawless, and not something to be thrown out liberally at the novice level. I know that we have a lot of parents that do the judging, especially in the novice division, but I feel strongly that there is not a clear standard for what makes a 3, a 4, or a 5.

The current ballot reflects the desire to provide a rubric to help new judges score debates. However, experienced judges recognize the fact that a rubric by definition separates out skills and ignores the synergies that make a good speech more than the sum of its parts. Also, there is no one prescribed method for judging, and reasonable coaches will differ as to how they judge a round.

When I teach the judges workshop,² I don't tell people not to give 5's. I tell them not to give 30's and to be careful about 28's and 29's. I also tell them to be careful about anything lower than a 23. I am more concerned about totals than individual categories. The standards should also be higher for Varsity than for Novice. A strong Novice might only be an average Varsity debater.

I also explain that some judges are “constructive,” building up the score from the rubric. Others--including myself--are “holistic,” assigning a overall score first then marking the rubric boxes to get the right total. I try to mark debaters down in the things they do less well than others. Getting a 5 on my ballot doesn't mean the debater did that skill flawlessly. It simply means that I needed a 5 to get the right total, and the debater was better in that category than in a category where I assigned a 4 or a 3.

While it sounds like it would be nice if we all judged the same way, it's not clear that would be a good thing. First, the amount of training and testing that would require would be impossible. But second, there are differences in how we understand, evaluate and weight arguments. Two judges can listen to the same debate and legitimately come to different conclusions. I've been on numerous panels with more than one judge, and they are rarely unanimous in their decision. One goal of debate is to teach students these differences exist and how to deal with them.

I tell my teams not to over interpret the ballot, and especially not to dwell on the numbers. A 5 in organization does not necessarily mean you were perfectly organized. A one or two point difference in the score does not necessarily mean the debate was close, in the sense that the decision was difficult. I often score debates closely if both teams debate well, even if I thought one team won easily on the basis of the arguments.

A ballot is only useful to the extent it helps you figure out how to improve for the next debate. Understanding why you won or lost is more useful than noting you got a 5 in Organization and a 3 in Clash. The 5 and the 3 probably indicate that your organization was better than your clash, but they tell you nothing about what was good about the first and what was weak about the latter. And those numbers are almost useless in understanding why you won or lost or how to improve. A comment saying you lost because you mis-analyzed your opponent's first contention is much more valuable than any point score. If I could improve one aspect of judging, I'd want judges to provide more and better commentary on the ballot.

Rights, Laws and Facts

One thing that I noticed specific to Saturday's resolution was that many teams—even those in the final round—said that the Constitutional rights of the accused only apply to

² You can find a written version of how I teach the judges workshop under *Workshop Transcript* on the *Training Materials* page on the CDA website.

U.S. Citizens. I know that we can only judge the teams on what they present, but I was surprised that such an essential thing was lost on the two top teams, especially when teams are allowed to use the Constitution as a reference.

You learn some interesting "facts" listening to debaters, even Presidential and Vice-Presidential candidates, and they get briefed and prepped beforehand. Some forms of debate permit more research on the topic before the tournaments, and the debaters can be expected to be better prepared. In CDA we announce the topic one hour before the first round and we severely limit the amount of research material they have available. Debaters have to go with what they know, or what they think they know.

Several years ago one of my own teams was in a final round when their opponents said it was much more environmentally sound to get our oil from Alaska than to bring it in by tanker from overseas. I waited for the obvious cross-ex question, "Does the name 'Exxon Valdez' mean anything to you?" but it never came. Neither team had ever heard of that infamous event. (We won the debate anyway, and I got them little oil tankers as rewards.) On the other hand, last year I heard a team give an excellent description of credit default swaps and use it effectively in the debate. They had recently heard a discussion on public radio, and remembered it correctly. So you really don't know what high school students know and what they don't.

I agree with you that all high school students should know that the protections under the Constitution apply to "all persons" in the United States. (Not exactly true, as by statute certain immigration, national security and most military cases operate by different rules, but these are supposed to be relatively infrequent exceptions.) But my guess is that most Americans believe these rights only apply to citizens, and many others believe that they should only apply to citizens. So I'm not surprised that the students and even many judges hold similar misconceptions.

Since we permit little research material, there are two things a team can do as part of their training. The first is to make sure they know the material they are permitted to bring: a dictionary, and almanac and a copy of the Constitution. There is a lot of useful material in those three items, and in my experience they are woefully under utilized. Every team should spend on team meeting to review the contents of each of these items so that they are prepared to use them.

The second is to emphasize the fact that extemp debate rewards general knowledge. Every debater should read widely. Every debater should read the newspaper, watch news programs or read a newsweekly on a regular basis. A lot of the material is free to read on the web if you register.

While you can't research CDA debate topics ahead of time, Freshman, Sophomore and Junior debaters should do background research on every topic after the tournament. If you take a look at the resolution topics over the past 15 years, posted on the CDA web site, you will see that certain topic areas come up over and over again—health care, law, economics, government, foreign policy, etc. That background research will pay off over the debater's subsequent career.

Another good practice is to have each debater research one subject area and give a background briefing to the team. It's good practice researching, it's good practice

presenting, and it improves everyone's background knowledge. Take 15 minutes out of each team meeting for a topic.

There are two further points I'd like to make, one general and one specific. There are some debaters and judges who are under the impression that the only material you can use in the debate is in the packet. This is emphatically not true. You can present things you know from your own general knowledge. You have to be able to convince the judge that they are true and reasonable, and your opponents may dispute them, but you are allowed to use what you know. Your case and your evidence need not follow nor are they limited to the packet.

Second, what many debaters consistently miss (even the ones who know their rights) is that legality and Constitutionality are not arguments. After all, for the first 80-odd years of the United States, a significant number of "persons" residing in the US were not considered "persons" and could be bought and sold under the law and this was upheld by the courts, even the Supreme Court. As Dickens noted, at times "the law is a ass."

The essence of the December topic is whether terrorists should be afforded the full rights and protections of the US legal system, or a more limited version available under military tribunals. The Affirmative that explains why they should not be afforded full rights will win; the Negative that explains why they should will win.

Resolutions are always worded "should" for this reason. It isn't what the law or the Constitution says, or even what the Supreme Court or the President says it says. It's what the debaters can convince the judge it *should* say. If an Affirmative presented a contention saying this resolution should be adopted because only US citizens have full legal rights, the fact that this is wrong would be my second argument. My first argument and first questions in cross ex would be "The Constitution once said slaves should not have full legal rights, didn't it? And they changed that because it was wrong, didn't they?"

Templates

I noticed that students from several schools used a template to organize their information for their speeches. I was wondering if you have a version of a template for extemporaneous debate.

No one came forward and volunteered their template but it's not hard to put one together. It's a good exercise to work one out with your team over one or two team meetings. If a team develops their own form, they will have a better understanding of its parts and how to use them. They will be more successful with their own product than if they use someone else's template. Once you have your own template, you can go back to the packet and their cases from the last tournament, and see if they can improve by following the template.

With that warning, I've developed two sample templates, included with this piece. The first sheet has an outline of my suggested strategy for using the one hour preparation period,³ and space for defining key terms in the resolution. The second sheet is designed

³ See *A Coach's Notes*, "Sixty Minutes," November 15, 2008 for suggestions on how to manage the one hour preparation period.

for building contentions, one per page. In a tournament, you would need one or two copies of the first pages, and six or seven copies of the second page, assuming you will be debating both Affirmative and Negative and will have slightly different preferred definitions and three or four contentions for each side.

The template for a contention needs some explanation. At the top right one can circle whether it is an Affirmative or Negative contention. Below that is a space for the formal statement of the contention and the tag or short form you will use to refer to the contention in rebuttals and summaries.⁴ Below that there are boxes for three supporting arguments. Each supporting argument is composed of a claim, or formal statement of the supporting argument, evidence (a reference to something in the packet or almanac, or to facts known to the debaters and likely to be accepted by others) that supports the argument, a reason that explains how the evidence supports the argument, and that supports the contention, and finally points for rebuttal. The claim/evidence/reasoning structure follows the Toulmin model of argument that I discussed in October.⁵

The block for each argument has a space for a number to indicate the order in which to use it. Use the strongest arguments first, even if this is not the order in which they are written down. There is also a space to check whether or not to use that argument in the first constructive speech. It is a good idea to have more arguments supporting each contention than can be used in the first constructive speech. Some can be saved for the second constructive, or they may not be used at all. Remember to watch the amount of time spent on each contention. It's better to present all of your contentions with one supporting argument each than to run out of time presenting only one contention with all of its supporting arguments.

My forms are just suggestions. Change the format to match your own ideas about how to use the preparation period and how to build a case. You could provide room for more arguments, with less space for each. You could put multiple contentions on one page. You could have a summary page with definitions and statement of contentions to start the debate. That page might permit some indication of the relationship among the contentions, for example the standard harm/inherency/solvency/benefits style of Affirmative. You might have a separate form for presenting a plan or counterplan if you choose to use one

The form is good for structuring the First Affirmative Constructive. But remember that a good First Negative Constructive will use approximately half the speech responding to the First Affirmative. The First Affirmative Constructive is the only speech one can script prior to the round. Sooner or later—the First Negative Constructive is a good place to start—you have to work from your flow, your notes taken during the debate. When I debated, I outlined my speech on the next column in the flow while I was taking notes during my opponents' speeches. My partner and I would then review and adjust that outline before either of us would rise to speak.

⁴ See *A Coach's Notes*, "The Point of Contentions," October 24, 2009, for a discussion of contentions and the importance of having a clear formal statement and a catchy short form or "tag" to use in rebuttal.

⁵ If you type in "Toulmin Model" in Wikipedia you can get a better explanation. Most texts on speech and debate will cover the model. The text I like is *Argumentation and Debate*, Freeley, Austin J., and David L. Steinberg, Thomson-Wadsworth, 2005.

My final warning is to remember that forms don't win debates. Scripted arguments don't win debates. Listening closely to your opponents and responding to their arguments does win debates. This is because arguments should evolve over the course of the debate. A good way to look at a debate is that it is a process by which you discover the real points of contention between the two sides. A good debater must move from their original statements to those real arguments by the end of the debate. A debater who keeps repeating the same arguments scripted during the preparation period isn't debating.

For beginning debaters, a form can help them learn the standard structure of an argument and practice using it. For an experienced debater it should be second nature.

Experienced debaters should also be using more complex case structures, where the contentions work together to create a stronger argument than if they were considered separately. It is hard to capture this complexity on a template. Debaters should realize that if they rely on a fixed approach too heavily and too long, it may limit their growth as debaters.

Topicality

Halfway through the prep period, one of my students picked up on the fact that the resolution didn't say "in the U.S." The whole team scurried to modify their cases appropriately. Unfortunately, in every single debate I judged both sides assumed the resolution pertained to the U.S.

Many of my debaters, especially when Negative, used the global nature of the resolution to their advantage. As far as I can tell there weren't any judges who misunderstood my students' global interpretation of the resolution. But the opposition made arguments like: "the packet clearly implies the resolution only applies to the U.S."

Wouldn't an interpretation that the resolution only applies to the U.S. be non-topical since the resolution says "ALL accused terrorists?"

Frankly, we never considered a global interpretation when putting the packet together. The topic was prompted by the recent decision to try KSM in New York, and we were thinking about the US. Kudos to you team for clear thought and creativity. Debate the resolution, not the packet!

However, there is no one required interpretation of the resolution. An Affirmative could probably convince a judge that "the US should use military tribunals to try all terrorists" is a reasonable interpretation of the resolution. The Affirmative does not have to advocate every possible interpretation of the resolution, just one that respects the wording and gives the Negatives sufficient grounds to make an opposing case.

First, the Affirmative has the right to a reasonable definition of terms. If the Affirmative advocates that the US use military tribunals when trying accused terrorists, they can argue that this is an interpretation that fits within the wording of the resolution. After all, while the resolution does not say "the US should..." neither does it say "all countries should..." or "the UN should..." I don't believe that one reading is no more correct than the other, though they are different and lead to different debates.

Second, the Negative has the burden to show that the Affirmative interpretation is unreasonable. The Negative does not have a right simply to re-define terms any way they

like. It is not enough that the Negative can come up with a different definition, or would prefer to use a different definition. Unless the Negative can show that the Affirmative definition does violence to the English language or leaves the Negative no room to present a case, the Negative is obligated to accept and debate the Affirmative interpretation.

Third, the difference here is, I think, one of emphasis. The global interpretation emphasized the words "all terrorists." The local interpretation emphasizes that the resolution does not say "all countries" or make any reference to who should conduct the trials or define terrorism. The issue is certainly significant whether argued from a US or a global perspective, and the Negative has plenty of grounds to oppose the resolution in either case. The interpretation, "the US should try all terrorists using military tribunals," limits the scope of the resolution but arguably not unreasonably so.

Not all limitations are reasonable. Suppose that instead of the US, one interpreted the resolution as "Fiji should try all accused terrorists using military tribunals." The US is a country, Fiji is a country, isn't it the same thing? No, because "Fiji" doesn't leave much room for a debate. I don't believe that Fiji has a significant problem with terrorism, or that Fiji is a major player in the anti-terrorist effort, or that Fiji's constitution, laws and legal system provide a model for other countries. The issue may be of great theoretical interest to the people of Fiji, but I don't see anything that would sustain a one-hour debate. And if the Affirmative happened to be an expert on Fiji and had particular knowledge that allowed it to make a significant case, it is unlikely that the Negative would have comparable knowledge to match it. Such a debate would be unfair.

Fourth, given the contents of the packet, the international argument may be strategically smart, catching other teams off guard. But it may be more difficult to make the international argument, since there is nothing in the packet about it. You should argue the resolution, not the packet. But practically, you don't have a lot of research material to work with beyond what is in the packet. So even if you interpret the resolution and argue from a global perspective, all of your evidence from the packet may refer to US examples. As I have said many times, debate the resolution, not the packet. But don't ignore the packet, either.

Finally, it isn't clear that either the US or global interpretation matters much to the type of argument you would want to make in this debate. It seems to me that the central question is what sort of rights should be given accused terrorists and why. Is terrorism more like war or more like crime? Is terrorism best fought using a military or a criminal process?

If the resolution is limited to the US doesn't that prevent the Negative from using arguments about the potential behavior of other countries? For example, nobody is going to believe that the U.S. would accuse patently innocent people of being terrorists, whereas it is easy to imagine Iran or North Korea doing so for propaganda purposes or to suppress dissent. The argument that I would want to use is that according to the resolution any person (citizen or non-citizen, military or non-military) can be an accused terrorist. This means that someone, e.g. an American tourist, a humanitarian aid worker, etc. could be railroaded through a military tribunal and end up dead or imprisoned for

life. This example strongly counteracts the demonized stereotype of the accused terrorist likely to be used by Affirmative.

Certainly the Affirmative's choice of a definition will make some lines of argument easier than others. That is why a good definition of terms is an important strategic decision for the Affirmative, as is the Negative decision to accept or contest the Affirmative definition. Beyond the definitions, of course, much depends on the specifics of the Affirmative case, whether they are presented as part of a detailed interpretation of the resolution or a stated plan. The Affirmative would be careless to use an interpretation of the resolution that permitted innocent people to be accused and tried willy nilly.

But I think that is particular argument is a red herring. Nothing prevents any country from abusing national or international law to suppress dissent. Similarly, nothing prevents other countries from accusing US soldiers or officials of terrorism, and some have tried to indict them. The issue here is the risk of false accusation not how or where they are tried. I doubt that it matters much to anyone apprehended by North Korea whether they are tried by a military or civilian court.

All legal systems, even the military, have a formal process to decide whether there is enough substance to an accusation to permit incarceration and move on to trial. While the resolution does say "all accused terrorists," it is unlikely that an Affirmative would propose, or that the resolution requires the Affirmative to defend, a system where any accusation, no matter how frivolous, proceeds directly to a military tribunal. The resolution is about the appropriate venue for trial, and does not imply the Affirmative must defend flooding the military with specious cases.

A good resolution raises one or more central questions that neither side can avoid. I believe that the key issue here is the nature of terrorism. Are terrorists criminals, soldiers or a separate category altogether? Is terrorism best fought with legal or military methods? Do certain acts justify depriving those accused of some or all of their rights? Can a liberal society defeat terrorism and maintain its ideals? The best debates will focus on these.

Other arguments are secondary or side issues, like the choice of the US or an international venue. Whether the military tribunal is run by the US or under international auspices is secondary to the decision to use military or civilian procedures. Note the US/international issue can be made central by changing the resolution: *All accused terrorists should be tried by an international court.* The primary issue becomes one of the appropriate jurisdiction. Is terrorism an attack on one nation and its citizens, or is it an attack on all nations or the international order? Can terrorism be defeated by national action, or does it require an international response?

Secondary arguments may be useful. For example, by using an international interpretation of the December resolution, the Affirmative may be able to avoid the argument that the use of military tribunals by the US harms the US image and weakens US moral authority at home and abroad. But the Negative might observe that since the US is the most important anti-terrorist actor in the world, most terrorists turned over to an international tribunal would be captured and turned over by the US. So US insistence that those it caught be tried would still affect the US image and moral authority. The Negative might also observe that if the US did not turn terrorists over to an international

authority, they might be viewed even more negatively. Finally, pointing to the World Court in The Hague, the Negative might argue that an international tribunal would be much less efficient in convicting and punishing terrorists. Of course, the Affirmative could argue that an international tribunal would make it more likely that other countries would apprehend and turn over captured terrorists, strengthening the international effort against terrorism. And so on... That's why it's called debate.