

A Coach's Notes¹

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AITE

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Resolved: Connecticut should eliminate the death penalty.

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Introduction

This is the third edition of the 2010-11 CDA season. Past versions can be found in on the CDA web site, at <http://ctdebate.org> . Accompanying this document are my notes from the final round in two formats, transcript and flow chart, and a copy of the packet from the tournament. I try to post the flows and the Notes within two weeks of the tournament.

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, 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 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.

Just by Looking

The most important skill a debater can learn is how to listen. The ability to listen is evidenced by the quality of the notes a debater takes during the round. And by looking at those notes, you can find what you need win.

In an attempt to convince you, I am going to walk through the notes I took during the final round at AITE. I will reproduce portions of those notes as I refer to them. To see the complete flow you should download one of the two formats—transcript and flow chart—that accompany these Notes on the web site.

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In walking through the debate, I will look at each speech from the perspective of the opposing team listening to and flowing the speech. I will point out things they should notice and how they can exploit them in cross-ex. As we get further into the debate, I will explain how the flow tells the next speaker what they need to accomplish.

First Affirmative Constructive

Value Criterion

After introducing the team and stating the resolution, my notes show the First Affirmative made the following statement:

Aff bases its case on Lockean theory of basic rights to life, liberty and property, primarily life

This is a value criterion, more often used in Lincoln-Douglas debate. In that context it is meant to be used as a standard against which to measure the value of competing arguments. The Aff is proposing that the side that does the best job of supporting this value should win the debate. A team does not need to use a value criterion in a policy debate, but it can provide a useful ruler to measure the strengths of your case against the strengths of your opponents.

Here, however, this value criterion raises more questions than it answers, and these could be raised by the Neg to weaken the case:

- The Aff mentions three basic rights, then chooses one, life. Why? What about the other two? Does Locke discriminate?
- Who's life? The life of the accused murderer or the life of the victim? Or the life of the potential victims?
- What about quality of life?

The Neg can use these quick questions to shake the Aff case. The second question is especially important, as the Neg will want to use the Aff criterion against them by arguing the death penalty respects the lives of the victims and through deterrence save the lives of potential victims in the future. And the third question ties in to the later Negative argument that life in prison is a worse punishment.

A Plan with a Contradiction

The Aff next presented their plan:

***Our plan is to replace the Death Penalty with Life without Parole
This will not be retroactive, and will not affect current Death Row inmates***

Do you see the problem here? The Aff says they value life, but apparently not the lives of anyone already on death row. If the death penalty is bad, why not eliminate it immediately for everyone? This is a contradiction—a small one certainly—but the Neg should not let it pass. Pointing this out in cross-ex helps weaken the Aff case.

An Affirmative team will often try to strengthen their case by hedging, by not accepting the full import of the resolution. They try to carve out the the harmful impacts by narrowing the plan. This often works in CDA because Negative teams fail to compare the plan to the resolution and point out where the plan is lacking.

Any exceptions in the Affirmative plan should be a red flag to the Negative. The Neg can argue the Aff is not taking the full burden of the resolution and therefore their case fails. And the exclusions to the plan are obvious arguments for the Negative: in this case all the murderers now on death row whose horrible crimes are known and seem to call for the death penalty.

First Affirmative Contention

The Aff starts their supporting arguments with this contention:

A1 : The Death Penalty is a drain on financial resources

There is nothing wrong with this argument. Cost is a standard disadvantage. But it's a bit jarring after the the Aff says it will base its case on the Lockean value of life. Coming right after the value proposition it weakens rather than strengthens the Aff case.

The cross-ex should be something like:

- “You said life is the most important thing, but your first contention says the problem is cost. Which is it?”
- If money is important too, what else might be important? How about ‘justice’?”

The Aff has given the Neg an opening to introduce additional values to use to justify the death penalty.

Second Aff Contention

The Aff second contention is:

A2: Certainty cannot be established in capital cases.

This contention doesn't really support the resolution. There is uncertainty about a lot of things. The Neg can agree with this contention because it applies to all criminal cases regardless of the crime or the penalty. The Neg should be sure to pin this on the Aff in cross-ex.

When writing your contentions, Aff or Neg, always ask yourself two questions: Is this contention, as stated, an argument that would convince you to adopt or reject the resolution? Can my opponents agree with this contention and not damage their case? If the answer to either is “yes” then the contention is poorly written. Try again.

The Aff can't mean there is uncertainty in every case: some killers are caught in the act or on camera, some cases have overwhelming evidence. One Neg response would be to argue that we will only apply the death penalty in cases where we are certain of guilt. But the Aff will simply claim that this is what we do now and point to the death row exonerations.

However, the Neg can make a much stronger argument based on the second contention the Aff uses here:

- We agree there is uncertainty. (*Disarms A2!*)
- That is why we have a long and expensive process to weed out the errors. (*Clash with A1 justifying cost!*)
- Many are convicted and sentenced, but the long appeals process means only the truly guilty are executed.

The Aff probably meant the second contention to say something like: “Innocent people will inevitably suffer the death penalty due to errors and uncertainty.” The Neg can still make the argument presented in the last paragraph. But the Neg will have to do all the work itself because the Aff has not given it a launch pad.

Third Affirmative Contention

The third Aff contention and supporting arguments are:

***A3: The value of life is too great violate it with the death penalty
If there is a shred of doubt we shouldn't execute anyone
Ray Krone was released after 10 years on death row due to DNA evidence
Innocent on death row suffer knowing death is near
There is a similar toll on family, community***

There are a number of things here that the Neg can probe on cross-ex:

- Is it okay to execute someone if there is no shred of doubt? (Aff argument implies support for the death penalty when there is overwhelming evidence.)
- Ray Krone wasn't executed, was he? Do you have any cases where someone was executed and later exonerated? (Evidence used by the Affirmative is ambiguous, in that it also supports the argument that the judicial system exercises sufficient care to weed out the innocent eventually.)
- But Ray Krone was convicted, wasn't he? And he would have spent 10 years in prison in any case? Would they have even checked DNA evidence if he wasn't on death row? (Another way to spin this piece of evidence to demonstrate the Aff has not shown harm or mitigation.)
- Didn't Ray Krone's imprisonment violate his life? (Builds equivalence between the death penalty and the Aff's preferred punishment of life in prison.)
- Don't the innocent always suffer if they are wrongly convicted and imprisoned? Don't their families and communities suffer? (Points out that the Aff solution doesn't eliminate the harm the Aff describes and blames on the death penalty.)

The strongest arguments you can make are always based in the words of your opponents. This contention has a number of things the Neg can turn to its advantage. Cross-ex is the tool to set up the arguments to be turned.

As an exercise, go to the full flow and look at the supporting arguments for the first and second Affirmative contentions. You should be able to construct a series of questions that turns the entire first contention and three points under the second contention against the Affirmative.

Another exercise is to restructure the Aff contentions and supporting arguments so they are more resistant to being turned by the Neg.

First Negative Constructive

At this point all the flow has is the Aff case in the top half. The First Negative needs to present his own case, but also cover the Aff contentions.

Definitions

The Negative defines “justice” and makes a statement that could be interpreted as a value proposition to counter that of the Affirmative:

Definition: “justice” is a system that respects the rights of the accused under the rules of law and equity

The Neg believes in the integrity of the American judicial system

Definitions and statements are fine, but the Negative never does anything with them. Worse, these play into the hands of the Affirmative:

- Is it justice to execute an innocent man?
- How much integrity is there if so many on death row get released as innocent?

The Negative probably meant to say something like “the American system of justice balances the rights of the accused and the rights of society.” This supports their later contentions on victims’ rights and deterrence, as well as the argument suggested above that the judicial system eventually discovers the innocent.

Missing Arguments

Note that the First Negative never discusses the Affirmative contentions in this Constructive. This is visually obvious in the flow chart version of my notes, where there is blank space in the top half (the Aff half) of the column for this speech.

Failing to cover the Aff case in the First Negative Constructive (1NC) is a serious tactical error. Some coaches may tell their debaters to use this speech to develop the Negative case, but if the First Negative doesn’t cover the Aff case then it is left to the Second Negative Constructive, which is awfully late in the debate.

Remember you cannot introduce new arguments in the rebuttals. Unless the Negative case clashes with all of the Affirmative case, the Negative will need to introduce new arguments to reply to the Aff case. Leaving these new arguments to the 2NC leads to two problems for the Negative.

First, the Second Affirmative can use the entire 2AC to attack the Neg case. If the Second Affirmative is competent, you will need to repair the Neg case as well as present the reply to the Aff case. Second, since your response to the Aff case is introduced in the 2NC, the Affirmative has no chance to reply to any new arguments you introduce until the rebuttals. This gives them the right to introduce new arguments in the rebuttals! A delayed response by the Negative gives the Affirmative the opportunity both to deliver a crushing 2AC dedicated entirely to attacking the Negative case, and to have extra flexibility responding to the Second Negative Constructive in the First Affirmative rebuttal.

When the First Negative fails to address the Aff case in the 1NC, the first thing the Second Affirmative should say in the 2AC is to note that the entire Aff case stands. The rest of the 2AC should be spent on the Neg case.

First Negative Contention

The Negative describes some crimes as “inexcusable,” lists three Connecticut crimes and says the guilty in these cases should not be allowed to live. Later in their third contention, the Negative claims the death penalty has a deterrent effect.

Vengeance and deterrence are perhaps the two key arguments in favor of the death penalty. Since Connecticut has always had the death penalty, the Aff has a potential turn on deterrence. The cross-ex should be something like:

- Hasn't Connecticut always had the death penalty?
- Did it deter any of the crimes you mentioned?

By the way, don't ask why there is no deterrent effect. That gives the Negative the chance to introduce the argument that because the death penalty is hardly ever applied criminals believe they will avoid it. The Neg will probably try to insert this information when they answer the second question above. (If the Neg does insert that in their answer, how should the Aff respond?)

The Second Negative Contention

The second contention is that the death penalty is popular. The standard attack is to point out other things that are or were popular but ill-advised like slavery or torture.

Popularity is always a weak argument unless you give a reason why popular support is important. The Neg provide a reason, that public opinion should matter in the making of law, but this simply says that the law needs to be popular. Why? This sort of issue comes up often in debate, and it is a useful exercise to come up with some standard reasons whether and why popularity matters in this case and others.

The Third Negative Contention

The third contention is deterrence. As noted above, like vengeance it is one of the two traditional arguments in favor of the death penalty, so the Affirmative cannot let it pass. Also, as noted above, the examples used to support vengeance in the first Negative contention can be used as evidence against the deterrent effect of the death penalty.

The first supporting point is "crime should lead to punishment, and death is the ultimate punishment." The Aff can focus on the first half, "crime should lead to punishment" and separate it from the second half, death as punishment.

- Isn't arrest a punishment?
- Isn't imprisonment a punishment? Life imprisonment?
- Therefore don't they deter?
- Isn't imprisonment more common than the death penalty?
- How do you know the death penalty has been the deterrent if it isn't used often? (Note how this ties to the possible Neg response questions asked above!)

An Aside on Cross-Ex

You may have noticed that while I have analyzed the first two constructive speeches, I have said nothing about the cross-examination of either of these speakers. I do take notes on cross-ex, and they are included in my flow. So why is there no analysis here?

The simple reason is that this article is about listening to your opponents. My focus is what you can take away from the constructive and rebuttal speeches and why a good flow will help. You are engaged in cross-ex, so you can't listen or flow in the same way I can as a judge. Listening to cross-ex is a subject for another article.

The better reason follows from another point I made above: the best arguments come from using the words of your opponents against them. The questions above use the arguments and the evidence the speaker has just presented. Do the questions the Affirmative and Negative actually used in this round do the same?

Compare the questions suggested here with the actual questions used in the cross-ex of the First Affirmative and the First Negative. Some of the questions asked in the round do refer to the speech just completed, for example the questions about Locke to the First Affirmative. But most of the questions are trying to set up arguments the questioner wants to make in the next speech, arguments only tangential to what was just said. For example, the Negative asks the First Affirmative about deterrence, an argument not yet introduced. In a similar fashion the Affirmative asks the First Negative whether life without parole is similar to a death sentence, a rebuttal argument the Aff introduces in the next speech. These aren't bad questions, but I think the ones above are better.

As they say, it's not always about you, and that is especially true about cross-ex. Too often in cross-ex the questioner tries to get the speaker to say something to support an argument the questioner plans to make (often an argument the questioner probably planned to make before he even heard the speaker make his case). This sort of cross-ex regularly demonstrates how hard it is to put words into someone's mouth. None of the questions used in this debate strike home and none of the answers are particularly damaging.

The questions above are different. They begin with words the speaker has already uttered. Those words cannot be taken back and the speaker weakens his case if he starts changing or qualifying them. The answers to the questions are also usually obvious and inevitable.

(As an exercise, pretend you are the speaker answering the questions. Try to find the least damaging response.)

Finally, always remember that cross-ex is only effective to the extent you use the results in the next speech. Because the debaters in this round did not ask the questions given here, they will not have used many of the arguments they suggest.

Second Affirmative Constructive

Coverage

The Second Affirmative covers all of both the Aff and Neg cases starting with the Neg. (The transcript form of my notes shows the order in which the arguments were presented.) This is exactly what the Second Affirmative needs to do. Since the First Negative did not speak to the Aff case, the Second Affirmative could have simply noted this fact and spent all of his time attacking the Neg case.

Reply to the First Negative Contention

The Second Affirmative replies to the vengeance contention as follows:

N1: We agree some crimes are inexcusable

The issue is the punishment. The death penalty is not the worst, and is morally incorrect

Life without Parole is moral and much worse

Arguing that life in prison is worse than the death penalty seems like a good idea. But the Aff started with their Lockean principle, presented as their third contention, that life was too valuable to violate it. Here they are saying, “look, we’re replacing the death penalty with something worse.” Is this consistent? The cross-ex might be:

- Didn’t you start the debate saying nothing is more important than life?
- And your third contention was that the value of life was too great to violate with the death penalty?
- So you want to violate it with something you claim is even worse?
- How is a worse punishment more moral?
- But you do agree some crimes are inexcusable and need an appropriate punishment?

(You don’t want to let anyone forget the Aff agreed sometimes vengeance is needed.)

Reply to the Second Negative Contention

The Affirmative answers the public opinion question two ways: first, the polls are inconclusive; second, politicians should rise above emotion and vote for the public good. The first isn’t an argument against the contention, and the Negative should get that out:

- If the polling questions were clear and the majority supported the death penalty, would you agree it should be allowed? (Aff will certainly disagree.)
- So you believe the legislature should go against the will of the people? (Aff will like say something about voting for the public good.)
- Well, suppose the legislators agree the death penalty is in the public good. Should they implement it? (Aff will disagree)
- Well, then who decides the public good? You?

In the 2NC you can push back on the polling evidence and make a case that the will of the people is the best measure of the public good.

Reply to the Third Negative Contention

The Second Affirmative says “the death penalty does deter” (and adds “so does life without parole”). Don’t let the agreement pass without noting it:

- So you said that the death penalty deters as we claimed in our third contention? (Likely reply is “Yes, and so does life imprisonment.” But if they disagree, don’t let them forget that is what they said in their speech!)

Second Negative Constructive

The Negative Block

The Second Negative Constructive and the First Negative Rebuttal comprise the Negative block, 10 minutes interrupted only by cross-ex. The Negative team should use that time to the best advantage. There are three principles to keep in mind.

First, in general there are no new arguments in rebuttal. The only exception is in reply to any new argument presented in the Second Negative Constructive. The Affirmative would not have an opportunity to reply to these arguments until the First Affirmative Rebuttal. The Second Negative Constructive always gives the Negative the opportunity

to respond to any argument introduced in the Affirmative constructives. So if the Negative hasn't presented any new arguments they need to respond to the Affirmative case by the end of the Second Negative Constructive, the Negative is out of luck.

Second, the Negative needs to look at the flow and cover all the outstanding arguments. After the First Negative Rebuttal the time advantage is reversed. The Affirmative has 8 minutes left and the Negative only 4. The Negative wants to leave the First Affirmative with more than 4 minutes of work.

Third, time is valuable. The Negative should not repeat any arguments in the two speeches, unless something in the cross-ex forces it.

Looking across the first three speeches we can see what the Negative has to do: the entire Aff case, and the Aff replies to the Neg case have to be covered. As we noted above, the First Negative presented the Neg case but did not reply to the Aff case. The reply to the Aff case will almost certainly require new arguments, so that should be the first priority of the Second Negative Constructive.

The Second Affirmative replies to the Neg case can probably be answered in part by comparing evidence already presented and adding new examples. That work can be left to the First Negative Rebuttal. But if the Negative wants to introduce a new line of argument against these replies, the Second Negative should do it.

Arguments without Anchors

The first two arguments the Second Negative presents are:

***There is a long historical precedent for the Death Penalty
Aff's Lockean analysis ignores the social contract***

There is nothing wrong with these arguments per se, but neither one is attached to any of the contentions presented so far in the debate. The Aff should ask about the relevance in cross-ex. The Aff still has to reply to them, but the Neg may sound confused trying to explain how they fit. You should be able to figure out the right questions to attach each argument from the discussion above. The "historical precedent" probably best relates to N2, the public supports the death penalty. Locke replies to the Aff's initial statement of purpose, but it's not clear whether those are arguments and where they fit.

Response to the First Affirmative Contention

The Second Negative replies to the Affirmative cost argument with:

***A1: Aff puts a \$ value on justice, which is inappropriate
Some crimes transcend money, and this is a murder trial, not robbery***

Note the contradiction: "value on justice" but then "some crimes" not all crimes. In cross-ex you should try to turn this around:

- How much should we spend on justice? No limits? (Transcending money can be expensive.)
- You'd spend more on some crimes than others? How much more?

Response to the Second Affirmative Contention

The Negative twists the Aff contention on certainty to being about capability (actually competence). The Affirmative should note the difference in cross-ex, and get the Negative to admit that even competent people make mistakes.

- You just said we said that “the judicial system is not capable.” Wasn’t our second contention simply that you can’t have certainty?
- Don’t very capable and competent people make mistakes?
- Are you saying the judicial system never makes a mistake?

Reply to the Aff Response to the First Negative Contention

The First Negative Contention was vengeance: some crimes deserve the death penalty. The Aff reply was that life in prison was a worse but morally correct punishment. The Negative simply denies life is worse, adds concern for the victim (which was actually introduced in cross-ex) and justifies this by adding that the death penalty is reserved for the worst crimes. The Negative doesn’t reply to the reasons the Second Affirmative gave as to why life in prison was worse. Use cross-ex to highlight the fact that the only difference here is only the punishment:

- We both agree that some crimes are inexcusable, correct?
- So we only disagree on the punishment. You say death is worse, we say life is worse?
- You said it was “pure pathos” to argue that life imprisonment is worse than the death penalty, correct?
- Did you respond to any of the reasons we gave as to why life imprisonment is a worse?

First Negative Rebuttal

Looking across the Flow

As noted above, the Negative team should plan out the entire Negative Block before the Second Negative rises for the constructive. Regardless of those plans, the First Negative should note what the Second Negative has left undone and add anything that was dropped to the rebuttal. Looking across the flow, the Negative still needs to respond to the third Affirmative contention and the Second Affirmative’s responses to the second and third Negative contentions.

Losing Structure

The First Negative does not specifically refer to any contentions in this rebuttal. While one can begin to summarize the debate this early, that is generally better left to the Second Rebuttals. Simply going through a laundry list of arguments is always a mistake. It is hard for the judge to follow and apply what you are saying.

When your opponent presents a speech like this, you do best to try and assign each argument to a contention or a number of contentions in order to better prepare you speech. In this case the argument that “the Negative sees the process as being thorough” seems to relate to the Second Affirmative Contention, as does the argument “science promises greater accuracy.” The argument “you can’t help the innocent victims” seems to relate to the First Negative Contention.

As an exercise, write a version of this speech that fulfills the requirements described above.

First Affirmative Rebuttal

Looking across the Flow

The First Affirmative should note the Negative has replied on A1, A2 and N1, and put out a number of loose arguments. This means the Aff is ahead on A3 (no Negative reply) and on N2 and N3 (no Negative reply to the Second Affirmative's response on these contentions).

The First Affirmative can either note the dropped arguments at the beginning and then move on to the ones that require a response, or take all of the contentions in order, note the drops as they occur and pull the loose Negative arguments into the speech wherever they fit.

Losing Less Structure

The First Affirmative stays a bit closer to the contentions, but fails to label the arguments as presented. Make sure you tell the judge where they apply. I would assign them as follows:

Economics (A1 on cost)

A2 is in part a matter of faith. (This one is labeled!)

Neg says that they have faith in the judicial system and the rights of the accused. (A2 and the Second Negative's response to A2)

Historical precedents. (N2 on public support)

Technology (A2 on certainty)

Second Rebuttals

Summarize! Summarize! Summarize!

The purpose of the Second Rebuttals is to summarize the debate to the judge. If you have to reply to particular points you need to incorporate those replies in your summary. You also want to note arguments that the other team has dropped, again within the context of the summary.

One way to summarize is to run through the contentions, first one side then the other. This should always be your choice if you don't have any other ideas. It's simple: you know what the contentions are on both sides, and all you have to do is summarize the chain of argument in each one. It's easy to include responses to any open points, to cover the arguments you've dropped, and to note the drops made by your opponents.

Reducing the debate to the major points of clash, often called "crystallizing" the debate, is a bit more difficult. You can't simply pick something that sounds good. If the debate has revolved around yours and your opponent's contentions then the crystallization has to come out of and encompass those contentions.

Sometimes a debate will move towards a subset of the contentions, or to an argument that grows out of the clash between the Affirmative and Negative contentions. The others become relatively unimportant. This is when you should step away from the contentions

and summarize the debate on this point. It takes practice. If you aren't sure stick with the contentions.

Above all the summary should explain why the arguments favor your side of the issue.

Second Negative Rebuttal

The Second Negative tries to do three things: reply to specific points, crystallize, and review contentions. How well does it work? Is public interest/opinion the crux of the debate?

Second Affirmative Rebuttal

The Second Affirmative answers two quick points and then summarizes, never mentioning any contentions. How well does it work? Are innocence and justice the key issues?