

A Coach's Notes¹

Everett Rutan

Xavier High School

everett.rutan@moodys.com or ejrutan3@acm.org

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Resolved: The U.S. should significantly limit total compensation paid by corporations to individual employees.

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Introduction

This is the sixth edition of the 2008-09 CDA season. If you would like to receive the previous editions of these Notes, please email me and I will send them to you.

Accompanying this document are my notes from the first round that I judged and from the final round, each in two formats, transcript and flow chart. A copy of the packet from the tournament was distributed earlier.

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.

Plan or No Plan?

In the first round that I judged at State Finals the Affirmative team presented an extraordinarily detailed plan, spending almost two minutes of the First Affirmative Constructive describing it. In the final round, the Affirmative did not present a plan at all, they only presented contentions in support of the resolution. Both strategies can win the debate, and either strategy can lose the debate if poorly executed.

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What Is a Plan?

In one sense, the resolution itself, or any definition of the resolution, is a “plan.” The more detailed and specific the interpretation, the more plan-like we consider it to be. Debates tend to operate on a continuum, from a simple re-statement of the resolution designed only to avoid confusion to highly evolved implementations.

One text says that a fully developed plan consists of five parts²:

- Agency: Who will be responsible for administering and implementing the plan?
- Mandates: These are the details of the plan. What will the agency be expected to do to implement the resolution?
- Enforcement: Most plans require people obey new rules or laws. What will happen to those who don’t comply?
- Funding and staffing: How will it be paid for, and how will enough qualified people be found to implement it?
- Addendum: Any additional details that need to be specified.

The Affirmative must deal with these issues in any policy debate. The Negative can attack the Affirmative by showing their plan is lacking in one or more of these attributes.

An Example of a Detailed Plan

In the first round at state finals, the Joel Barlow team of Bilinski and Streams presented the following plan:

The Aff proposes the following plan to implement the resolution

- 1) A law will require all performance bonuses to be put in escrow for five years, with payment conditional on the company not going bankrupt
- 2) Severance pay will be limited to \$1 million
- 3) Payment in restricted stock and options will be permitted
- 4) This will not apply retroactively, only to new contracts
- 5) This plan meets the resolution because it limits pay in amount and in timing.

This plan consists of a series of mandates. The other aspects are assumed, but since they are not described, each can be questioned by the Negative. Simply passing a series of laws does not ensure successful implementation. For example, local police generally don’t enforce corporate law, so you would need someone like the Securities and Exchange Commission (Agency). They would need to get regular reports on executive pay and have trained personnel review them in order to monitor compliance (Funding and Staffing). Finally, there would have to be appropriate penalties to encourage compliance—beheading violators would probably be too severe, a simple fine in an amount significantly less than the compensation involved would probably be ignored (Enforcement).

A Negative should always question any missing aspects of an Affirmative’s plan. There is no reason to let the Affirmative assume that the plan will be implemented without significant cost and effort.

² See Freeley, Austin J., and David L. Steinberg, *Argumentation and Debate*, Chapter 12, “Building the Affirmative Case,” p. 208. (Thomson-Wadsworth, 2005)

Is the Plan Necessary?

Another issue is how closely the plan is linked to the contentions. The Affirmative had three:

- 1) A1³: The plan provides incentives to work hard for the long term
- 2) A2: The plan lessens the likelihood that we will need another gov't bailout.
- 3) A3: The plan will make the US more competitive globally

Typically the Negative will question whether or not the Affirmative has shown the contentions follow from the plan. I'm not going to discuss that here.

A more interesting question is whether any of the details are necessary to the contentions. For example, why lock up bonus payments for five years? Why not six? Or four? If limiting severance pay to \$1 million is good, wouldn't \$500,000 be better? Why permit payment in stocks and options? Doesn't unlimited payment in securities void the other limits? If the plan will work well with new contracts, why not revise existing ones?

Let me make three observations. First, too much detail can weaken the Affirmative case. It is unlikely that the Affirmative can justify the particular numbers chosen—five years and \$1 million—and under questioning the Affirmative might be caught trying to defend the indefensible or contradicting themselves.

Second—and opinions differ on whether this is permissible—the Negative might run what is known as an “on topic counterplan.” That is, the Negative proposes a counterplan that falls under the resolution, but is different from the plan proposed by the Affirmative. In this case the Negative might propose:

- 1) Placing all performance bonuses in escrow for ten years;
- 2) Limiting severance pay to \$500,000
- 3) All payment in restricted stock and options to be considered a performance bonus and placed in escrow per (1) above;
- 4) This will apply to all compensation immediately

Some would say that since the Negative is now urging adoption of the resolution, the Affirmative wins. Others would say that since the Affirmative defined the resolution through their plan, they can only win by justifying that specific plan. After all, the Affirmative had the choice of what to argue. The Negative is taking a chance that they can convince the judge that this strategy is valid, and may not be willing to take that risk. But by considering arguments like these we get a better idea of the limits and possibilities of academic debate.

But third, the Negative can simply argue that the Affirmative has no convincing evidence that the plan will be effective. If a little bit is good, then it seems logical that more is better, or, alternatively that a little bit is not enough. If the Affirmative really believed their plan, they would make it even stronger, to realize greater benefits sooner. Since they have not chosen to make it stronger, then there must be disadvantages to tighter limits that the Affirmative is trying to avoid. The Negative should force the Affirmative to confront them in cross-ex. If \$500,000 is too low, who is to say \$1 million isn't too low?

³ “A1” indicates the Affirmative first contention, “N2” the Negative second contention and so forth.

No Plan at All

In the final round, the Wilton team of Dec and Tartell chose not to present a plan. In outline their case was:

- 1) Definitions:
 - a) “limit” means any legal initiative to lower compensation
 - b) “compensation” means any one of the five major components: salary, bonus, long-term incentives, benefits and perks.
- 2) A1: Adopting the resolution benefits the shareholders and workers.
- 3) A2: There is an inherent need to regulate executive pay
- 4) A3: Adopting the resolution will benefit the economy

The plan consists of only two definitions, “limit” and “compensation.” The contentions argue a need (A2) and two advantages (A1 and A3).

The first thing the Affirmative has to remember if they choose not to present a plan is that it must be a conscious choice. Either you have a plan or you don’t. If you simply forgot to present a plan you will find it very difficult to improvise one in cross-ex.

Second, if you have chosen not to present a plan, make sure you stick with your decision. The Negative is likely to try to get you to improvise a plan during cross-ex. What compensation will you reduce? How much? Who will enforce it? What will happen to violators? One of the reasons you decided not to present a plan was to avoid having to deal with these details. If you start providing details under cross-ex, you are improvising a plan and that is usually disastrous.

Staying Off Plan

If you choose not to present a plan, you need to be remember to stay “off plan.” Your contentions have to be tied to the general principle behind the resolution, not to any particular interpretation. If the Negative lures you into presenting specific details you will have two problems. First, a plan made up on the fly is usually flawed. Second, even if your plan details are sound, you won’t have prepared any defense for them.

To stay off plan you need to structure your arguments around the principle embodied by the resolution. If you present a harm, you have to show how that harm will be solved by adopting the resolution generally. If you present an advantage, it must flow from the resolution as a whole. What that means is that your solution or advantage must be realized by any reasonable plan that falls under the resolution. Note how this compares to presenting a specific plan, where your solution or benefits have to come from the plan you present.

In this month’s final round the Affirmative’s three contentions follow these limits. They are each stated in terms of resolution, and don’t depend on any specific limits on compensation or method of setting the limits. But look at the first questions the Negative asks in cross-ex and the Affirmative answers:

- Under your plan everyone would get a say on executive pay? If they are shareholders
- How many are there? Many
- How will you include all these shareholders? Don’t know. We aren’t congressmen or experts.

The Negative immediately asks about the Affirmative “plan” and the Affirmative responds. It isn’t until the third question that they refuse to provide more details, but at

that point the Negative already has two potential arguments. At the start of the First Negative Constructive they suggest that shareholder voting is vague and unwieldy.

If you choose not to present a plan, the correct response is to continue not to present one:

- Under your plan everyone would get a say on executive pay? We didn't present a plan. Our argument is that limiting executive pay is necessary and beneficial. We leave the details to others with more expertise.
- But how would you limit pay? That's not important. Each of our contentions show the resolution should be adopted.
- If you don't have a plan how do you know those benefits will be realized? We aren't required to present a plan. Look at our arguments. They show limits on executive pay are needed and benefit workers, companies and the economy. An expert panel or Congress can come up with appropriate details.

It's tempting and natural to start talking about details. If you've read the packet there are certainly plenty of them to choose from. But if you've chosen not to present a plan, it's the wrong thing to do.

Which Strategy Is Best?

There is no one correct strategy. You can win or lose with or without a plan. Once you make your choice, there are correct tactics. If you present a plan, make sure you tie your solution and benefits to the details you have selected. If you don't present a plan, link your contentions to the broad features of the resolution, and don't let your opponents lure you into providing details.

Topicality Arguments

Most of the time we think topicality is the issue of whether the Affirmative argues a reasonable interpretation of the resolution. If the Affirmative defines the resolution in a way that coincides with the way words are commonly used, then their case is topical. If they present an unusual reading of the resolution, the Negative will protest. For example this month, an Affirmative calling for a dollar limit on all payments to executives would be accepted. A case to eliminate corporate jets probably would not.

But there is another type of topicality argument that Affirmative and Negative should consider: do the benefits claimed by the Affirmative, or the disadvantages claimed by the Negative, flow from the Affirmative plan (or resolution)? Or are they the consequence of ancillary aspects of the case?

Consider an example based on arguments from the final round. As noted above, in cross-ex, the Affirmative and Negative talk about giving shareholders a say in setting executive pay levels. Let's use that as the basis for the following plan and contentions:

The Affirmative proposes to limit executive pay by requiring that all executive pay contracts be subject to shareholder votes.

A1: Shareholder vote will limit executive pay, benefiting the shareholders

A2: Limits on pay will align the interests of executives with those of the company

A3: Limits on pay will bring needed transparency to corporate pay decisions.

This certainly looks legitimate. After all, the packet discusses "say for pay," shareholder vote, as one of the proposed solutions for excessive executive compensation.

But doesn't the resolution require the Affirmative "significantly limit total compensation?" Look at it a different way. If the Affirmative had said, "we define 'significantly limit' as 'give shareholders the vote'" the Negative would have questioned it immediately. But by stating that they will use the mechanism of "shareholder vote" to "limit executive pay" the Affirmative confuses the issue.

Effects Topicality

This is an example of something called "effects topicality."⁴ The plan does not directly implement the resolution, but the Affirmative argues that the implementing the plan will have results that implement the resolution. The plan is topical because the effect of the plan is topical. Got that?

Topicality cannot be assumed by the Affirmative, nor must it be accepted by the Negative. If the two sides don't agree, then topicality has to be argued. The first argument the Negative should raise is to question topicality directly:

Q: The Affirmative plan is to give shareholders the right to vote on executive pay?

A: Yes.

Q: How does that limit executive pay?

A: Shareholders will vote to limit the amount paid to protect their own interests.

Q: But the decision is up to them. The plan is to give shareholders the vote, not to directly limit pay, correct?

A: Giving shareholders the vote will result in limits on pay.

Q: But it's not the same as limiting pay directly, as required by the resolution. How is your plan topical?

The second argument the Negative can raise is whether the plan will have the effect claimed. For example, the Affirmative first contention above is the "effects" piece, arguing that shareholder vote will result in limits on executive pay. But shareholders have always had the right to vote for directors, and to vote changes to the corporate charter. If all these shareholders for all these companies for all these years haven't voted to limit executive pay, why will it be different this time? Why won't they continue to leave it to the discretion of the company's directors, or simply vote in favor of whatever the directors recommend? One could even argue that shareholders might vote for even higher pay to attract a successful executive from another company.

The third argument the Negative can raise is that benefits don't come from the effect of implementing the resolution, but rather from other effects of the non-topical plan. The plan may have an effect that implements the resolution, but it may have other effects. The benefits that the Affirmative claims may be the result of those other effects, not because of the implementation of the plan. If the Negative can demonstrate this, then the Affirmative has no case.

Again let's see how the Negative might apply this argument to the example above. Giving the shareholder the vote over executive pay may or may not change compensation. But knowing that shareholders can vote on something that directly affects the executives may align their interests with those of the shareholders. They may spend more time explaining corporate strategy to shareholders—increase transparency—to

⁴ See Cheshier, David M., "Effects Topicality, All Over Again..." **Rostrum**, October 1999. Rostrum is the official magazine of the National Forensic League. Current and past issues are available for viewing at www.nflonline.org.

protect their popularity with those shareholders. The benefits are due to the existence of the vote, not because their compensation has changed.

There are two questions you can ask yourself to test for effects topicality:

Can the Affirmative plan (or some part of it) be implemented without implementing the resolution?

Does implementing the Affirmative plan (or some part of it) always bring about the resolution?

In this case, you can give shareholders a vote on pay without necessarily limiting compensation. And giving shareholders a vote on pay does not guarantee they will act to limit it.

Summary

There are two sides to topicality. The one we usually see is about definitions: is the Affirmative arguing a reasonable interpretation of the resolution? It's about the meaning of words, about definitions.

The other face, which debaters often neglect, is about logic and causality. Do the Affirmative benefits come from implementing the resolution? Or do the Affirmative benefits come from aspects of the Affirmative plan that are not needed to implement the resolution? It's a subtle distinction, but it can be a powerful argument.