

A Coach's Notes¹

Everett Rutan

Connecticut Debate Association

ejrutan3@ctdebate.org

Connecticut Debate Association

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Resolved: Internet sites should be required to remove fake news.

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Introduction

This is the February edition of the 2016-17 CDA season. Previous year's editions can be found through the [Training Materials](#) page on the [CDA web site](#). Accompanying this document are my notes from the final round at Daniel Hand presented in two formats, transcript and flow chart. This month we also have RFDs (reason for decision) written by all three judges who decide the winner, which you may find interesting.

These Notes are intended for your benefit in coaching your teams and for the students to use directly. I hope that you will find them useful. Please feel free to make copies and distribute them to your debaters.

I appreciate any feedback you have, good and bad. The best comments and suggestions will find their way into subsequent issues. I would also consider publishing signed, reasoned comments or replies from coaches or students. So if you would like to reply to my comments or sound off on some aspect of the debate topic or the CDA, I look forward to your email.

The Adaptive Negative

While the Affirmative can prepare its case before the round begins, the Negative cannot. Neg can prepare a variety of arguments, but they cannot know which ones apply until

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they hear what Aff has to say. Even if their arguments do apply, they should be adjusted during the 1AC to clash directly with the Aff case. One common mistake by Negative teams is to present the case they prepped, which is a response to their own interpretation of the resolution, rather than present a case which is a response to the resolution as interpreted by the Affirmative.

In the final round at Daniel Hand, the Warde team adapted their case during the First Affirmative Constructive. I suspected this while listening to the round, but confirmed it afterwards when I spoke to the debaters. They set up their shift in cross-ex, focusing on the Aff plan and whether it had an enforcement mechanism. While the first Negative contention is still a bit general (“the resolution places an undue burden on internet sites”), the second and third contentions directly cite the Aff case (“the status quo will achieve the Aff goals of suppressing fake news” and “the Aff plan will be ineffective”).

Learning to adjust your case while listening to your opponent takes some practice. You have to be sure to hear them correctly. You have to reword your own contentions and adjust the supporting explanation and impact. You have to make sure you and your partner use the adapted versions and don’t mistakenly go back to what you prepped before the round, confusing the judge and yourselves.

The only prepared speech in a round is the 1AC. Everything else is extemp, especially the First Negative Constructive.

Listen and Use What You Hear

In the final round at Daniel Hand the Negative focused on the word “required” in the resolution, and that Aff had not defined it. I agree compulsion is the heart of the resolution. But I noted the two terms that Aff did define could also have been problematic.

Aff defined “internet sites” as “social media platforms.” That is sort of replacing one undefined term with another. As commonly used, Facebook and Twitter are social media, but Google, CNN and Breitbart News are not. Neither is the CDA website. You have to know this, but if you do, it opens up the argument that even if Aff cleans up social media it will leave most of the internet untouched. Aff can argue that social media is replacing conventional news sources for most people, and so their limitation is reasonable and their impact will be significant. But you can see how the debate could go in another direction.

The other definition was “fake news” as “false information with the intent to deceive.” If you are sensitive to the criminal and civil justice system—it pays to read widely if you want to be a successful debater—you know the issue of intent is a very difficult one. A number of people have criticized Congress and government agencies for writing new laws and rules that don’t require the prosecution to prove intent because that requirement often makes it impossible to get a conviction.

Many people would say much of Breitbart News and even some of President Trump’s tweets are fake news. But Breitbart and President Trump believe they are providing correct and useful information others fail to publish. Is there an “intent to deceive”? And if you must prove an intent to deceive, wouldn’t that force a trial-like process—which would overwhelm the court system or any new system set up for the task—every time

any web site insisted its “fake news” was either true, an opinion or a mistake? Again, an issue that could have been explored in the debate.

Finally, the Aff plan allows the public to “flag” fake news, and enough flags leads to review by an editorial committee. Think about this: liberals start flagging conservative sites, conservatives flag liberal sites, and the poor editorial committees are swamped having to review them all and criticized by one side or the other for every decision. It’s all too easy to see this sort of nightmare come true once a law requires action.

I’m not suggesting these are better arguments than those actually used. But they are good attacks on the Aff that can be stated very quickly. Giving the other side more arguments to handle is a useful tactic.

The Stock Issues Case

This topic and the final round at Daniel Hand provide a good example for discussing the Stock Issues Case. The Stock Issues Case is rarely used these days, but it is useful in making sense of what happens during a round and evaluating the outcome. You will find it explained in most debate texts, but I find most debate texts aren’t entirely helpful if you don’t understand the terms already. It helps to have a good round like this one to make the concepts clear.

The final round at Daniel Hand turned on the issues of inherency and solvency—I’ll explain the terms in a moment if you are not familiar with them. All three of the RFDs are ultimately based on the Judge’s interpretation of the arguments on these issues. If you’ve read those RFDs, my explanation below may help you with some of the terminology.

When I was in high school (before the dinosaurs roamed or the Earth had even cooled) almost every Affirmative case had this structure:

- There is a problem that causes significant *harm*.
- The status quo is *inherently* incapable of solving that problem and so reducing the harm.
- The resolution, as implemented through the Affirmative *plan* will *solve* the problem.
- The plan may also have additional *advantages*. (Note, these are advantages in addition to the benefit of reducing the harm.)

So, five parts: harm, inherency, plan, solvency, advantages.

Today most debaters tend to skip directly to a case built around advantages or disadvantages, without realizing those advantages are often tied to the other four components. Thinking about the five parts can help the Aff improve its case and help the Neg devise attacks.

Where’s the Harm?

Two of the three Affirmative contentions in the Hand final round argue that fake news is harmful:

A1: Fake news leads to domestic and global tension;

A3: Fake news is saturating the media and forcing out real news on major issues.

In the 2NC the Negative concedes both of these, agreeing fake news is a problem but that this isn't an important issue in the debate. This is a good move. If your opponent makes an argument that is not critical to the debate, don't ignore it; take it off the table by telling the judge why it isn't relevant. If you agree with it, it's okay to say so. Certainly don't waste time arguing about it, but make sure the judge knows that your opponent has not won, nor have you conceded, anything significant.

The Affirmative spends about half of the 1AC presenting these arguments, and another minute plus in the 2AC. Given how the debate proceeded, Aff could have used this time differently. So, should Aff have bothered to present these arguments at all? Do you have to present a harm?

Assuming the harm is probably a mistake. While policy debate topics are almost always based on some underlying problem, in many cases it is possible to deny there is anything to solve. A perfectly reasonable argument can be made that fake news is not a significant problem, and is being blown way out of proportion due to the extreme partisanship of our current political process. (I leave constructing that argument to you, as a practice exercise.) If Aff does not show a harm, Neg can point that out and minimize the importance of the resolution. Aff looks unprepared and has to scramble in the 2AC to establish the harm and re-establish their case.

There is a way to minimize that risk and still save time in the 1AC for more useful arguments. If, after thinking through the resolution you are fairly certain the Neg will not dispute the harm, assume it, but tell the Judge you are doing so. This bit does the job nicely for this month's topic in under 30 seconds:

"Our first contention is that fake news is significantly harmful to our society. We think this is fairly obvious. Over the past year it has harmed the electoral process, provoked acts of violence, and even caused international incidents. The important issue in this debate is what to do about fake news. If our opponents wish to dispute the harmful nature of fake news, will be happy to present a more detailed argument in our second constructive."

You have established the problem, outlined the harms, and put the burden on the Negative to decide whether to contest it, all without using much time. If they do choose to argue fake news is not a problem, you've put down a marker. The Second Affirmative will sound prepared not harried when they reply in the 2AC.

Affirmative teams usually spend way too much time talking about the problem rather than the solution. It's like complaining about the weather, easy to do, and the packet usually has lots of examples. But establishing a problem does not justify the solution that is embodied in the resolution. Getting the judge to adopt the resolution—the solution—is what wins the debate.

Inherency

To understand inherency we first need to decide what the resolution is about. The resolution is not about whether fake news is bad. I've noted that in the final round at Daniel Hand, and, I suspect in most of the rounds during the day, no one argued fake news is good and few if any argued it really isn't a problem (though that argument can be successful!). The resolution is also not about whether fake news should be removed from the internet. Again, if it's bad most would agree we are better off without it, and again, I

doubt if anyone during the day argued it should be left alone—though again a strong argument can be made to do nothing.

The primary issue in the resolution is whether internet sites should be **required** to remove fake news. The point of stasis or central conflict is compulsion, almost certainly government compulsion. The side that wins this issue will likely win the debate. The final round at Daniel Hand is a good example because the Negative focuses on this issue in the cross-examination of the First Affirmative and makes it a central issue in their attack.

In the absence of a counterplan, the debate is between the resolution/plan advanced by the Affirmative and the status quo defended by the Negative. Inherency is an Affirmative argument that the status quo cannot solve the problem without adopting the resolution as implemented by the plan. In this case inherency should explain why the status quo will not be able to deal effectively with fake news without requiring (compelling) internet sites to remove it.

As I judged the round, Aff lost the inherency argument, and that is fatal. First, Aff never gave an inherency argument. Second, they explained that fines under their plan would provide a financial incentive for social media sites to remove fake news. But when pressed by the Negative in cross-ex, Aff admitted that fake news was bad for social media sites by driving away users, so social media sites already had a financial incentive to remove fake news. Neg used this to argue the status quo could and would eventually solve the problem of fake news without an additional government burden.

This could just as easily have been a successful inherency argument for the Affirmative side:

“Granted, some will turn away from sites that post fake news. But social media make their money from advertising revenues based on the number of visitors. Fake news, according to some sources in the packet, is a very effective means of driving up web site traffic. The corporate profit motive is much stronger than the incentive for some citizens to boycott bad web sites. We’ve seen that in the past. Tobacco advertising didn’t leave television because consumers stopped watching, it required a government ban. Aggressive toys and sweetened food advertising didn’t leave television because parents pulled their kids away from the TV, it required a government ban. Similarly, fake news will not leave the web because social media sites are afraid users will leave, it requires the force of law.”

(And yes, it does help to know about those TV advertising examples. To debate well, read more!)

Solvency

Solvency was not an issue in my decision. The third Negative contention does state that “the plan will be ineffective” but the argument presented was that the plan would be an unnecessary burden on social media providers, which is really a disadvantage. By the end of the round, both sides tacitly agreed that given the right incentives, social media sites using algorithms or committees or whatever could solve the problem of fake news.

Really? Think of all the resources poured in to solving the drug problem over the past century as the country now faces its umpteenth opiate abuse crisis. Some fines or the loss of some angered users is going to eliminate fake news? I don’t think so.

In fact, debate resolutions are chosen so solvency is rarely possible. A law won't eliminate fake news. The US joining the International Criminal Court will not end crimes against humanity. Killing the Dakota Access Pipeline will not stop global warming or eliminate oil spills. Letting courts set educational policy won't equalize opportunity. Letting Electors vote freely won't result in better politicians. Go back over however many years of CDA or other resolutions you like and you'll see the same pattern.

Affirmatives often let themselves get caught by over-promising, like many politicians. You can't solve the problem; the best you can do is to significantly reduce it. If you claim to eliminate it, most adult judges will smile at your naiveté, but a good Negative will attack you by pointing out how your argument falls short. Then you will be forced to "walk back" your claim which, to many judges, looks like you lost the point.

Consider fake news. You can't know it's fake until it's posted. Once it's posted, it's seen and can be re-posted, forwarded, liked, re-tweeted, go viral and so forth. It's the old story of false gossip being like feathers in the wind: once it's out it's impossible to retrieve it.

However, you can reduce the impact. Labeling it fake warns readers. Taking down fake news limits further spread. Identifying repeat offenders permits them to be banned. Identifying bad sites allows them to be shut down. Creating a climate in which everyone knows fake news is illegal can improve behavior. Having a police force doesn't eliminate crime, but think of how much worse it could be without one.

Note how I've just taken the same information and used it first as a Negative and then as an Affirmative argument. Winning debate is about telling a good story, explaining the details, and in rebuttal, noting those details and replying in kind.

How Much Plan Is Enough?

By the time the Affirmative had finished presenting their plan, 1:40 of the 1AC had elapsed, over one-fourth of the speech (yes, I pay attention to things like that, and so should you). This included the speaker's introduction, reading of the resolution, two definitions and the plan. On my flow for the plan I have:

- *Sites can ask to be verified and receive a blue check if they pass*
- *The public can flag false news and these complaints will be sent to committee*
- *If a site receives too many flags, it will be labeled false news or taken down.*

Is that a good plan or a bad plan? I want to answer that question—well, not really answer it but give you something to think about—in two ways. First, what is a plan? Second, what is the right level of detail?

The debate texts tell us a plan has four components:

- a **mandate**, or what the plan is supposed to do;
- an **agency** or organization to implement the mandate;
- an **enforcement** mechanism to deal with non-compliance; and
- **funding** for all of the above.

The plan above is all mandate, what is going to be done to identify and remove fake news. Implicitly, the agents are the internet sites themselves and the public. Neg raises the lack of enforcement in cross-ex. Funding also comes in through a side door when Neg claims

the plan will overly burden internet sites and this evolves into an argument about financial incentives and profit.

A plan that isn't fully formed can, as in this round, lead to confusion, and confusion is not an advantage. In this case Neg focuses on enforcement by focusing on the word "required" in the resolution. This puts the Affirmative on the defensive and forces them to spend time addressing the issue in the 2AC. Neg replies in the 2NC by accusing them of unfairly shifting ground. As a judge I'm willing to accept the idea that implicitly Aff would have some form of government compulsion, but not all judges will. The Neg implicitly brings up the funding issue in their first and third contention noting the plan will burden internet site companies. But they could have pushed further by raising a lot of other practical issues: who is going to decide if an internet site is compliant? How are they going to do that? Won't it be expensive? (These do eventually come up, but in replying to other arguments, not directly.)

It may sound like I'm asking the Aff for a lot of detail. In the 2AC they make the point that they are not policy experts and can't be expected to specify dollar amounts for fines and so forth. Aff claims they can rely on "Affirmative fiat" to take care of that. Before I answer that let's consider my second question above, what is the appropriate level of detail a plan should have?

As Einstein said about theories, a plan should be as complicated as it needs to be, but no more. Finding that balance is an art. If your plan is vague, you can add detail to specifically counter Negative arguments. If your plan is detailed, those details can explain solvency and justify claiming advantages. But, if your plan doesn't have enough detail, Negative can use it to argue it won't solve the problem. Too much detail and Neg can argue they are the wrong ones, or even build a counterplan on the alternatives you didn't choose. All of these are valid tactics in a debate.

And "Affirmative fiat" doesn't help! Fiat just lets you assume your plan, whatever it is, will be enacted. Fiat does not let you assume that it will work, have advantages, or avoid disadvantages.

This leads to a third question: what should you consider when writing your plan? Certainly you should consider the four components listed above. But in deciding the details, here are my preferences.

1. Simpler is better. Simpler is usually shorter, easier to understand, and takes less time to present. The Aff is certainly right to say debaters are not policy experts.
2. General is better than specific. Specifics tie you down: you have to defend your one chosen detail against every possible alternative. The odds are not in your favor! You may be able to claim a general approach includes specifics suggested by the Negative, or add details to counter Negative arguments.
3. Look for analogies and examples. Compare your plan to something that worked for a similar problem. This provides you with a template that fills in your details and gives you a strong solvency argument.

What would I do for this month's resolution?

Our plan is to require all internet sites have a process to identify, flag and ultimately remove fake news. This would include allowing internet users to notify the site that an item was fake in order to prompt action. Sites that fail to do this would face prosecution and suitable penalties.

Note this plan captures many of the details that came up in the final round at Daniel Hand. Algorithms? Sure, if they work. Committees? Possibly. Fines? Probably. Shut down the site? In egregious cases. Would the FCC enforce this? Could be, or some other gov't agency. Due process? If sites refuse to act the case would end up in court. Wouldn't it be expensive? For the internet sites it's a cost of doing business, for the government just an extension of what they do now.

I can think of four analogous situations: libel laws, food safety and the EU's "right to be forgotten" or laws on pirated material. Libel laws in the US allow a publisher to be sued for knowingly false and defaming material. One defense is for a publisher to have a fact checking process to prevent and/or promptly remove and apologize for such items. Food safety is enforced by a combination of self-inspection, government food inspectors and public complaints. The EU's "right to be forgotten" is probably the most similar situation. EU courts held Google had to remove material from search results if someone complained that it was no longer relevant and the person wanted it removed. Google set up a review process that seems to satisfy the EU. Finally, there have long been complaints that pirated material like music, video and pictures is illegally posted. Google, Facebook and others have a process where you can notify them, they review the claim, and act if justified. The threat of government or private lawsuit encourages compliance.

Some resolutions require almost no plan. In December, any plan other than the resolution—the US should join the International Criminal Court—is too much. This month requires some thought and care.

How Relevant Is the Stock Issues Case?

The real question is how to come up with arguments. If you know everything there is to know about a subject, you already know what the arguments are. But if you are sitting with a packet and a resolution you don't know much about, where do you start?

Paradigms like the stock issues case provide you with a framework you can use to analyze a problem. It generates a series of useful questions: what problem is being addressed? Why isn't it being solved now? How can we solve it? Does solving it have other consequences? Answers to these questions can become the basis for your Aff and Neg contentions.

There are many other useful paradigms to discover and structure arguments. You may be familiar with the Toulmin model of argument, the simplest version of which is claim—warrant—impact. Cicero had a method called stasis theory for clarifying the main issue: is it about fact, definition or meaning, quality (was it justified), or jurisdiction (is this the right forum for dealing with the issue). It helps to know which of these you are arguing about. Every field of study has "stock issues" that any serious work in that field is expected to address. I see them as tools; the more tools in your kit and the better you know how to use them, the more debates you will win.

I haven't seen anyone present a stock issues case since I stopped debating. But I hope you will agree that it can be used to provide clarity to this month's topic.