



June 3, 2019

Dear American Mock Trial Association Community:

**The American Mock Trial Association**

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After the completion of the 2019 National Final Round, the American Mock Trial Association (AMTA) Competition Response Committee (CRC) received a complaint that the Defense Team in that trial committed egregious inventions of material facts. After completion of the investigation, the AMTA Board of Directors has issued sanctions, as explained further below. In so doing, the AMTA Board of Directors considered all information submitted to it, including from the Defense Team accused of egregious inventions, which was given multiple opportunities to respond to the accusations. On behalf of the AMTA Board of Directors, we are writing this letter to the AMTA community to explain the decision and rationale.

In summary, AMTA concluded that in the 2019 National Final Round the Defense Team committed multiple violations of AMTA Rule 8.9 regarding the prohibition against improper invention, and committed violations of Rules 1.4, 1.5, 1.6, and 1.7, regarding the professional and ethical obligations requirements that all teams have.

AMTA does not always publish memoranda regarding rule violations, and we generally avoid identifying the schools involved. We do so here in part because the public nature of the National Championship Trial and nature of the sanction makes anonymity impossible. But, even more, we do so here because it is crucial that all students and coaches understand AMTA's commitment to enforcing its rules regarding factual invention. Few rules are as important to ensuring fair and educational mock trial competitions.

This memorandum includes a summary analysis of the findings and the sanctions issued as a result of this investigation. This letter is intended as a summary only of the most salient facts, and it does not necessarily include an exhaustive description of everything discussed or examined by AMTA, as the complete record examined in this matter exceeded hundreds of pages of documents and correspondence.

**Analysis of Egregious Improper Inventions**

As with any improper invention investigation, we first considered whether the Defense team committed any inventions of material fact. AMTA found that multiple Defense Team witnesses contradicted their affidavits at multiple points, and that they made statements that were neither contained in nor reasonably inferred from the case materials. *See* Rule 8.9(4)(a)(ii). The facts were not reasonably inferred from the case materials because they were not “conclusion[s] that a reasonable person would draw from a particular fact or set of facts contained in the affidavit.” *See* Rule 8.9(c)(ii). AMTA notes that a reasonable inference is not a conclusion that a person *could* draw from an affidavit, but a conclusion that a *reasonable person would* draw.

AMTA concluded that the invented fact(s) were material because they directly “affect[ed] the merits of the case” and were “of the type that could reasonably be expected to be included in the party’s closing argument.” *See* Rule 8.9(4)(c)(i). In fact, the Defense Team did use many of the invented facts in its opening statement and closing argument to advance its case. Ultimately, the Defense Team’s inventions were material because they were significant to the case at hand, and they were used to support their central argument.

AMTA next considered whether the improper inventions of material fact were egregious. Factors to consider include, but are not limited to “the significance of the invented material fact(s) to the case at hand; use of the material fact(s) elicited through the Improper Invention in closing arguments; repeated use of the same or similar Improper Invention in multiple trials; and any other evidence of prior planning or premeditation by the attorney(s) and/or witness(es) to knowingly engage in an Improper Invention . . .” Additionally, pursuant to AMTA Rule 8.9(6)(b), “[i]n determining whether an Improper Invention is egregious, the Competition Response Committee shall consider whether, based on the totality of the evidence, the Improper Invention additionally constitutes an ethical violation under Rule 1.4, 1.5, 1.6, and/or 1.7.”

AMTA found that the Defense Team committed multiple egregious improper inventions of fact across multiple witnesses in the 2019 National Final Round. In this review, AMTA concluded that the inventions were planned and intentional by the Defense Team, as they were previewed in the Opening Statement, and referenced throughout the trial, including objection arguments. AMTA notes that, while an attorney’s statements are not themselves inventions of fact, they are considered in providing context to a witness’ testimony and determining if the invention of fact was egregious. *See* Rule 8.9(4)(a)(ii). AMTA further considered the fact that the Defense Team committed similar inventions in round four of the National Championship Tournament as further evidence of premeditation.

Additionally, AMTA concluded that the Defense Team committed egregious improper inventions of fact that included disclaiming specific aspects of a witness affidavit on multiple occasions. In AMTA’s view, when the Defense Team disclaimed explicit statements contained within the affidavit, it essentially negated the ability to impeach. Because of how the facts were invented and integrated throughout the trial, no sufficient in-round remedy existed. Ultimately, AMTA found that the Defense Team inventions were material because they were central to the Defense team's theory, and they were egregious because they (i) appeared throughout the trial; (ii) were significant to the case at hand because they were used as support for a central argument on defense; (iii) were prepared and premeditated as seen by similar inventions in the Defense Team’s round four; and (iv) amounted to expressly disclaiming specific facts contained within an affidavit, which the CRC has emphasized, “is among the most egregious inventions of fact. It totally separates a trial from the case materials, and eliminates impeachment as an effective remedy. In doing so, it gives teams an unfair competitive advantage for which their opponent has no recourse.” CRC March 2018 Memo. For these reasons, the AMTA Board affirmed the findings of the CRC and EC that the Defense Team committed several egregious inventions of material fact across multiple witnesses during the 2019 National Final Round.

### **Sanctions**

Pursuant to Rule 8.9(6)(c), AMTA is authorized to impose sanctions for egregious improper inventions, which “may include any sanction permitted under this AMTA Rulebook.” Based on the developed nature and use of the Defense Team’s inventions throughout their case, AMTA was extremely troubled by the Defense Team’s conduct. As indicated previously by AMTA, we consider recanting affidavits to be among the most egregious inventions of fact. CRC March 2018 Memo. AMTA felt that the conduct by the Defense Team necessarily undercut the very foundation of the educational purpose of mock trial.

As a result, AMTA has issued the following sanctions:

- Vacating the results of the 2019 National Championship Final Round, which includes removal of the National Championship from the Defense Team and School;
- Removing the All-American designation from the Defense team students who earned such status by virtue of the Defense Team participating in the 2019 Final Round;
- Prohibiting certain individual students from competing or coaching during the 2019-2020 season; and
- Declaring all rostered members of the Defense Team at the 2019 National Championship ineligible to compete at the 2020 AMTA ORCS and/or 2020 National Championship Tournament.

## **Conclusion**

As indicated above, AMTA considers improper inventions to attack the very nature of the mock trial activity and its educational purposes. In real life, lawyers and parties cannot simply change the facts or information to create a more palatable narrative. Rather, the true test of an advocate in real life is how one takes the facts that they are given and argues as best they can for their client. An advocate cannot simply change bad facts for their client, a witness cannot lie under oath, and a lawyer cannot encourage a witness to commit perjury on the stand. A practicing attorney would face loss of their license to practice law for encouraging perjury by their client and/or attempting to alter evidence in a case. In mock trial, we seek to simulate the practice of law by providing a fact pattern that tests a competitor's ability to persuade, present, and argue zealously for their client. Improper inventions are not part of the "game" of mock trial; they are cheating.

We want to be very clear that these findings were not made and these sanctions were not issued because the Defense Team may have had a "creative" theory. Indeed, creativity is a cherished aspect of this activity. Advocates every day across this country look for unique and creative legal arguments that may persuade jurors or courts to find in favor of their clients. Likewise, AMTA encourages creativity among its participants. But that creativity must exist within the confines of the AMTA Rules and within the confines of the actual facts contained in the case problem. After a thorough investigation, AMTA concluded that the Defense Team's conduct in egregiously inventing material facts and disclaiming aspects of an affidavit during the National Final Round constituted a violation of those rules and warranted the sanctions above.

We hope this letter helps reiterate for the AMTA community AMTA's commitment to enforcing its rules against egregious inventions of material facts, and we look forward to everyone competing zealously and fairly in the future.

Sincerely,

/s/

William B. Warihay

President and Chair, Executive Committee

/s/

Brandon D. Harper

Chair, Competition Response Committee

### **The American Mock Trial Association**

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