



2021 National High School Mock Trial Championship Case Errata

This errata sheet serves to clarify or correct errors in the Mock Trial case and/or rules. Questions that were submitted might have been reworded from the original submission for clarity and conciseness. Duplicative questions from multiple advisors might have been combined using different phrasing. The case file will be updated with these corrections, as applicable.

Updated April 15, 2021

1. Q: Will the Indiana Bar Foundation be providing jury instructions for the offenses charged?

A: Jury instructions will not be provided. We have provided the language from the Indiana Code to assist teams in devising their legal strategies. The prosecution must accurately prepare its case to meet the legal requirements of each charge beyond a reasonable doubt. The defense should use the code to prepare its case to counter the charges. Even though no jury instructions have been provided, each team in its opening and/or closing may reference that the presiding judge will instruct the jury on the law.

2. Q: In a state competition, teams were not permitted to do any outside legal research. I did not see a similar rule for this competition. Is that the case for the national competition?

A: It's impliedly illegal. You can research evidence law, but you can't argue it, because we're under the National rules of evidence, not any individual state's. You can research substantive law, but you can't argue it, because it's not provided. You can research facts, but you can't provide them, because it would be unfair extrapolation. The National Mock Trial Competition doesn't *forbid* research, because it feels awkward to stop people from learning, but the national rules are the same the states: you can't use outside legal or factual materials in your presentation.

3. Q: Competition Rule 4.11 does not make clear whether a party may or may not ask the court to admit an exhibit subject to the court's redaction of objectionable material. Can you clarify that exhibits may only be admitted in unredacted form?

A: The Exhibit that any team seeks to introduce is the full exhibit that was provided with the case materials. The Presiding Judge may, upon a proper request, instruct the jury to disregard portions of an exhibit that is sought to be admitted.

4. Q: Must expert witnesses be formally tendered as such to the court before proceeding to give expert opinion testimony?

A: The following will be added as Stipulation 26: An expert witness does not have to be tendered as an expert before proceeding to give expert testimony.

5. Q: In the paragraph starting with Line 109 in Neer's statement, Neer states that the drive was 2.5 hours, but has an arrival time only 1.5 hours later. Which is correct?

A: The statement should read "After a one- and half-hour drive..." (Line 114).

6. Q: The date of the incident on the Charging Document is "on or about May 7, 2019". The rest of the case uses the date of May 4, 2019. Which is correct?

A: The Charging Document should indicate the crime took place on or about May 4, 2019.

7. Q: None of the witness statements have dates or signatures. Is this an issue?

A: No, it's not an issue. All witness statements are true and accurate statements from the point of view of each witness. Regardless of date and signature, each witness is bound by the facts contained in his/her own witness statement, the statement of facts, if present, and/or any necessary documentation (such as exhibits and stipulations) relevant to his/her testimony.

8. Q: Will there be any clarification of the prosecution's burden regarding the causal relationship between the defendant's actions and Catfish's death, such as primary cause, contributing cause, substantial factor?

A: Teams should look at the Indiana Code and Charging Document provided, which outline the crimes and criminal culpability. Those should be used in combination with the statements and exhibits to guide a team's legal strategy.

9. Q: We were confused by the editor's note on page 7 and thought that it does not make clear that it is meant as a caution not to rely on Exhibit 8 in real life. Can you clarify that the Editor's Note in no way affects the use or admissibility of Exhibit 8 in the case itself?

A: This exhibit is considered true and accurate for the purposes of mock trial. It is not true and accurate in real life.

10. The Indiana Bar Foundation has changed the name of one of the witnesses. Obie Servant shall now be called Obie Goode.

Updated April 22, 2021

11. Q: Given Stipulations 13 and 14, we must presume the trial takes place on or after February 2021. Does this mean the witnesses should assume that the deal outlined in Exhibit 13 closed in accordance with the dates and terms therein?

A: The case writers believe no elaboration is necessary on this question.

12. Q: We have questions about the use of the word "alarms" in the plural and the time frame in the affidavits. Are there two alarms that go off on the Roberts? If so, is there a 10-15 minute break between them? If there was only one alarm, was the alarm sounding for 10-15 minutes?

A: The case writers believe no elaboration is necessary on this question. Witnesses sometimes contradict themselves or other evidence and it is the job of the trier-of-fact to decide what the truth is.

13. Q: There are mundane and/or undisputed quantitative facts in the "Introduction" that are not specifically present in any of the witness statements or exhibits. Can those facts be elicited from

witnesses that would or should have that knowledge without being considered an unfair extrapolation?

A: We refer you to Rule 2.2 (Witnesses bound by statement) and Rule 2.3 (Unfair extrapolation) as well as the preamble to the Introduction, which states “This introduction is of no legal significance and issued for convenience only. It is not admissible for impeachment purposes or for any other purpose.”

14. Q: Can the committee please provide the jury instructions for the burden of proof?

A: Please refer to Errata #1. Jury instructions will not be provided.

15. Q: In one of the previous questions, it was stated that anyone marked as an expert witness does not need to be tendered in order to give expert testimony. Just for clarification, in this case it specifically marks Portino/Portina Storm as an expert witness only, does that mean that anyone else not marked as an expert in the case material should be tendered as an expert before giving expert testimony?

A: The case writers believe no elaboration is necessary on this question and refer you to Errata #4 and Stipulation 26.

16. Q: Are Neer and Storm able to testify to each other's statements? And/or to the statements of the other witnesses? The information I'm specifically wondering about is whether Neer can testify to the contents of Hitter's and Bennett's witness statements when they talk about the position of the towboat--whether it was inside or outside the buoys--because this information isn't found in any of the exhibits that Neer is able to testify to. Storm's statement specifically says that she reviewed the other witness statements. Is it intentional that the defense expert reviewed all witness statements and the prosecution expert did not?

A: As noted in Rule 2.2: Each witness is bound by the facts contained in his/her own witness statement, the Statement of Facts, if present, and/or any necessary documentation relevant to his/her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection under Rule 2.3, "unfair extrapolation." A witness is not bound by facts contained in other witness statements.

The following phrase was added as part of Neer’s statement (line 190-191): “Once I took all these factors and information into consideration, including reviewing all statements and exhibits, I determined...” This mirrors the sentence already in Storm’s statement (line 84) indicating “I have reviewed all of the reports and the witness statements...”

17. Q: In our state competition the students were not allowed in the same room unless granted permission by the State. Our students would like to set up by having the attorneys in one room and the witnesses in a separate room. Is this a violation? Also in Rule 4.1 each student signs in using a separate device. Would the team be allowed to use a separate device such as a big screen monitor and/or a separate microphone to improve the quality of the sound?

A: The rules provide that students can be in the same room but need to abide by the provisions regarding communications with others. Separate monitors or microphones are permitted. We recommend that when the attorneys communicate with one another, they do so on screen when practicable to avoid the suggestion that they are communicating with a coach. You may use a large-screen and microphone, but the rule requires that log-ons be from a “normal” device, something

commonly available off the shelf. So teams should not use advanced, professional-grade audio or video equipment.

18. Q: We have more than enough members, so our team does not qualify for the witness and timekeeper arrangement for teams with only 6 members. Do we need to have a singular separate timekeeper in which that is their unique role, or can we have two timekeepers who switch off that role and play a different role for one side of the case? Our team is unclear with the rules.

A: You can have two timekeepers who switch off that role and play a different role for one side of the case, as long as every student who is to be a timekeeper attends the timekeeper orientation, in accordance with Rule 1.4(b).

Updated April 29, 2021

19. Q: The affidavit of Hitter says Hunter's boat is the Sea Dolphin. The affidavit of Storm says he/she cannot be sure the towboat struck the Sun Dolphin. Is this in reference to the same boat? If so, which is the correct name?

A: The previous owner of the boat called it the Sun Dolphin. This is corrected in Hitter's statement.

20. Q: Is the Introduction on page 4 intended to constitute a Statement of Facts?

A: The case writers believe no elaboration is needed on this question.

21. Q: Is Jordan Bennett an officer, board member, limited liability company membership interest holder of White Star Investments XII, LLC or otherwise authorized to represent that company?

A: Jordan Bennett is authorized to sign on behalf of White Star.

22. Q: Indiana Code 14-15-4-4 makes it a crime to knowingly or intentionally violate Sections 1, 2, or 3 of Chapter 4. But neither Section 1 or 2 of Chapter 4 state whether the operator must have actual or constructive knowledge of his/her boat's involvement in a collision or accident to trigger the post-collision/accident obligations. The statute does not expressly provide that an operator has a duty to investigate. Nor does the statute define what constitutes "involved in an accident." Because teams cannot rely on or use outside sources of legal authority, are prosecution and defense sides free to argue their own interpretations of the express language of the statute?

A: The case writers believe no elaboration is needed on this question.

23. Q: Seeming discrepancy on dimensions of the towboat and not sure if this is an error or purposeful: Smith Dawson: p. 46, line 128: "Each of our towboats is 150 feet long and 45 feet wide...." BUT Smith Dawson's and Obie Goode's Interview reports Exhibits 4 and 5 both say: "Roberts is a Galveston class tug (150' x 26' x 27') Please advise.

A: The case writers believe no elaboration is necessary on this question. Witnesses sometimes contradict themselves or other evidence and it is the job of the trier-of-fact to decide what the truth is.

24. Q: On Exhibit 10, it lists the ships that passed by "Evansville 1". Where on Exhibit 2 is "Evansville located?

A: The case writers believe no elaboration is needed on this question.

25. Q: CR 4.20 B, read in conjunction with 4.11 (as required), prohibits "enlargement" of exhibits but allows marking and highlighting of exhibits. In a virtual trial, when a document or exhibit is

displayed via screenshare, may we zoom in on an exhibit to make document text or exhibit features more legible and more easily seen?

A: Yes.

26. Q: Are students allowed to be in the same room during the competition?

A: Yes. If local conditions permit teams to gather, they may gather. However, whether they are gathered or not, Rule 4.1 requires at least three individual devices be used: one each for the segment's attorney, segment's witness, and timekeeper. In addition, state experience suggests that it may be a good practice to have the attorney and witness competing from different physical spaces (e.g. adjoining classrooms) to avoid feedback or pick-up from one microphone or speakers interfering with the pick-up from the other microphone.

27. Q: May we use a large screen for the students, in addition to their own computer/laptop? In addition, may they use any other specialized equipment for sound quality?

A: We do not recommend use of a television, because it creates serious challenges managing feedback, etc., but we do not expressly forbid it. In terms of sound quality, the basic off-the-shelf rule applies equally. So if a student wants to use a set of headphones or a normal, commercially-available, consumer-grade webcam or webmic, the rules permit that. Students cannot use professional audio recording or mixing equipment for sound quality.

28. Q: Since voir dire is not a part of Nationals, can expert qualifications be challenged instead on cross?

A: Yes. Our judges are instructed to anticipate that all voir dire type questions will happen on cross-examination.

29. Q: Can we make objections to expert testimony based on bad methods/not enough information under 703? Or does the pre-qualification assume appropriate methods and facts have been used?

A: We interpret this to refer to Rule 702, and yes, you may. Although Nationals does not have a *Daubert* or *Frye* set of rules, there is no express stipulation to expertise. Teams should argue based on the factors established in *mock trial* Rule 702, i.e. knowledge, skill, training, experience, etc. Note however that mock trial Rule 702 does not have identical language to Federal Rule of Evidence 702(b)-(d). This may limit the arguments available to teams.

30. Q: Can other witnesses not pre-qualified as experts (i.e. Obie Goode) give expert opinions if qualified?

A: Yes. Rule 702 provides all of the standards for admission of opinion testimony. If any witness's testimony meets Rule 702, it is admissible. If not, then not.