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Dear AMTA Teams,

Congratulations on a hard-fought month of regional competition. As teams continue down the road to our National Championship Tournament (“NCT”) in Philadelphia, Pennsylvania, the AMTA Competition Response Committee (“CRC” or “Committee”) provides this memorandum of additional guidance relating to our investigations of various factual inventions during the AMTA regional season. As was our practice last year, and in keeping with our desire for transparency where appropriate, we will continue to issue public memoranda when unique circumstances warrant informing the entire AMTA community. We will not issue public statements on all CRC action as a matter of course. Complaints to the CRC are down significantly during the 2019 competition season, as the Committee received three complaints alleging improper factual inventions.

**Reasonable Inference**

A responding team’s first defense to an allegation of an egregious improper material invention is often that the fact in question is “reasonably inferred” from the witness’s affidavit. Rule 8.9(4)(c)(ii) defines a reasonable inference as “a conclusion that a reasonable person would draw from a particular fact or set of facts contained in the affidavit.” An answer is not a reasonable inference “merely because it is consistent with (*i.e.* does not contradict) statements in the witness’s affidavit.” *Id.* As the Committee interprets the AMTA Rules, a fact can be *entirely consistent with* a witness’s affidavit and even *make a fair bit of sense* given the facts in the affidavit and yet it is possible that the specific fact is not *reasonably inferred from* the facts stated in the affidavit. The question is whether a reasonable person as an objective observer reading the affidavit would infer that the fact in question logically flows from the affidavit.

For example, if an affidavit said, “it had been raining all day and it was obvious that Andy had been caught in the rain,” it would be a reasonable inference that Andy’s hair, person, and clothing were wet and that Andy’s makeup was smeared. It would likely not be a reasonable inference from that line in the affidavit that the witness saw Andy holding an umbrella.

**Materiality and Egregiousness**

In assessing whether an improper invention constitutes an egregious invention, the Committee first determines whether the invention is material. Rule 8.9(4)(c)(i) defines material facts as facts that “affect the merits of the case.” Facts are not material “if they merely provide background information or develop the character of a witness.” *Id.* One factor “that judges and competitors can use to assess materiality is whether the facts at issue are of the type that could reasonably be expected to be included in the party’s closing argument.” *Id.*

Although relevant to the assessment of materiality, whether a fact is included in the closing argument is not dispositive. In other words, a fact may be material even if it is not actually included in a closing argument, and a fact on which the closing argument is silent could still be material. The materiality test looks to whether the *reasonable student competitor*, not the reasonable witness that the

student is portraying, would find the fact in question to be material (*i.e.* what matters is whether an objective reasonable student competitor of ordinary prudence would think the fact is material, not whether that witness would think the fact was material). The question for the Committee is whether a student competitor who has read the case packet would realize that the omitted fact in question is material. A competitor's ability to respond to an impeachment in round (as the fictitious witness on the stand) by claiming that she had no idea a fact was material is not controlling of either the materiality or the egregiousness question.

### **Recusal**

The CRC reviews all complaints seriously, regardless of the identity of the complaining and responding parties. When a complaint or a response involves a member of the CRC (or a team with which that member is somehow affiliated), that member recuses from all aspects of the deliberation, including any votes or discussions of further committee action (including sanctions). When, for any reason, a CRC member believes that her or his impartiality might be questioned because of the identity of either of the parties involved, that member recuses from all aspects of the deliberation. The Board of Directors last summer passed a rule substituting the Chair of the National Championship Tournament Case Committee for any recused CRC member during the Regionals and Opening Round Championship Series ("ORCS") competition season. In the event that any CRC member recuses from deliberations the Regionals or ORCS season, the Chair of the Nationals Case Committee will participate in that member's place. The NCT Case Chair is a regular member of the CRC during the NCT season and the Regionals and ORCS season case chair is an ad hoc member for recusal purposes during the NCT season.

### **Conclusion**

We hope that this and our other memoranda provide helpful guidance as teams prepare for future competitions. As always, the CRC expects that all complaints are filed in good faith and not out of animus for one's opponent or rival. Indeed, filing frivolous complaints or filing complaints in bad faith could amount to a violation of, among others, Rules 1.4, 1.5, 1.6, and 1.9. All AMTA teams are reminded that CRC decisions can apply to entire programs, not only to the teams involved in the round(s) in question in a complaint. To that end, the responsibility to ensure conduct comports with our rules falls with a school's entire program. We wish everyone a successful rest of the competitive season.

Sincerely,

/s/

William B. Warihay  
President, American Mock Trial Association

/s/

Brandon D. Harper  
Chair, Competition Response Committee