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Dear AMTA Teams,

On March 2, 2018, the AMTA Executive Committee (“EC”) adopted the recommendation of the Competition Response Committee (“CRC”) to reprimand an AMTA team and suspend two members for egregious improper inventions of material facts. This public letter is intended to provide guidance for teams competing at the future tournaments this season. This notice includes the most salient facts, but does not include all of the facts or circumstances.

The Committees voted to sanction based on two egregious improper inventions of material facts. This letter addresses the most serious invention, and the only invention that on its own warranted suspension of students: The defense team’s Bailey Bell-Leon recanted the witness’s affidavit during both direct and cross-examination.

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.” 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 . . .”

#### “Recanting” The Affidavit

The CRC concludes that the defense’s Bailey Bell-Leon committed an egregious improper invention of material fact by making multiple statements that amounted to recanting the witness’s affidavit. The committee reached this conclusion based on: (1) the statements of the schools involved; (2) the statements of the AMTA Reps; and (3) a video that was provided to the CRC during its investigation.

Specifically, the committee determined that the witness made the following inventions:

- On direct examination, the following exchange occurred, “Q: Are you sure about [facts that were helpful to the other team]? A: Yeah that’s what I’m supposed to say. Q: What do you mean supposed to say? A: I mean ... [long silence]. Q: Bailey do you know you are under oath, right now? A: Yeah. Q: Bailey, Have you lied before? A: Yeah. Q: Have you lied on behalf of your mom before? A: Yeah. Q: Nothing further.”
- On multiple occasions, when being impeached on not including certain inventions in her affidavit, the witness stated "I'm sorry if I did it wrong I was in the room with the lawyer and my mom and they said it was fine.”

- On cross-examination, when asked about a fact that is clearly stated in the affidavit: “I don’t know. What do you want me to say?”

Other statements by the witness provide context that make the prior two inventions egregious and amount to recanting the affidavit.

- On cross-examination, when asked about facts supporting the prosecution, the witness responded “that’s what I am supposed to say.”
- On redirect, after being impeached on not including inventions in her affidavit, the defense asked who was in the room with Bailey when the witness wrote the affidavit and the witness responded “the lawyer and my mom.”

First, there is no affidavit support for the testimony that Bailey had lied on behalf of Kerry Bell-Leon, and it cannot be reasonably inferred from the affidavit. Second, even if it could be reasonably inferred that Kerry Bell-Leon and a lawyer were present when the witness made her affidavit (itself a debatable proposition), when being questioned on not including information in her affidavit, the witnesses stated that the individuals told her this “was fine.” Such a statement cannot be reasonably inferred and was not called for by the crossing attorney’s question. Third, the witness stated “I don’t know” to a fact clearly stated in her affidavit. While in some cases a witness may not remember what was said, the context here made it clear this was a strategic move to deny that a stated fact in her affidavit occurred.

When determining if these inventions were egregious, the CRC looked at the statements made, rather than the tone or demeanor of the witness (which the defense admitted was a “lying tone”). However, the CRC did not look at each statement in isolation. When determining both the meaning and egregiousness of the inventions, the CRC considered other statements surrounding the inventions, both inventions and non-inventions. Here, the above described statements taken as a whole made it clear that the witness was recanting her affidavit on the stand.

### **Sanctions**

The CRC next considered the available sanctions and relevant factors (including the severity of the conduct and the desire to impose a sanction no more severe than the conduct warrants). After discussion, the CRC voted to recommend the following sanctions: (1) suspension of the student portraying the witness and the directing attorney from ORCS and NCT for the 2017-2018 competitive season and (2) a written reprimand.

This sanction is based *primarily* on the witness recanting her affidavit. The CRC considers recanting affidavits to be 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. Accordingly, the CRC takes witnesses recanting their affidavits extremely seriously and believes that a severe sanction is warranted. The CRC notes that it does not believe the other egregious improper invention would have warranted suspension of students. The Executive Committee has adopted the CRC’s recommendations in full. Accordingly, the offending students have been suspended from competition at ORCS and NCT for this competitive season and the defense team was formally reprimanded for committing an egregious improper invention of material fact. Teams are advised to consult AMTA Rules 1.4, 1.5, 1.6, 1.7, 8.9, and 9.5 as you prepare for future competition.

Sincerely,

Frank Guliuzza  
President, American Mock Trial Association

Brandon Harper  
Chair, Competition Response Committee