



American Mock Trial Association
2013 Mid-Year Board Meeting Minutes
Conference Call
Sunday, December 15, 2013, 1-3pm EST

I. Call to Order

Conference call attendance:

Members present (X): Bernstein, Detsky, Eslick, Guliuzza, Halva-Neubauer, Heytens, Langford, Leckrone, Nelmark, Olson, Racheter, Vile, Wagoner, Walsh, Weatherby, Woodward, Zeigler

Members not present (X): Butler, Creed, Haughey, Hawley, Kelly, Satler, Schuett, Seelau, Scott, Smith, Thomason, Warihay.

Candidate Members present (X): Keener, Leapheart, Parker, Pavely, Ben-Merre, Dorman, Gelfand, Kopko, Smith

Candidate Members not present (X): Minor, Winget

Staff & Guests (X):

Directors Emeritus (X):

Motions appear in bold. The decision of the respective committees follows each motion **IN BOLD, CAPITAL LETTERS AND UNDERLINED**. Final disposition of the motions appears in **BOLD, RED CAPITAL LETTERS**. Dispositions of motions to call previous question (end debate) appear in **red**. Secretary's notations appear in **blue**. Motions that have been recommended or advanced by committee do not need to be seconded at the meeting.

II. Welcome and Remarks (Halva-Neubauer)

- Condolences to Jim, Wagoner on the loss of his father, DeLois Leapheart on loss of her brother, and Georgie Weatherby on the loss of her mother.
- Congratulations to Kristofer Lyons (former Director) on birth of his second child and to David Ben-Merre on earning tenure.
- Holiday gift for Susan Ewing: If you would like to contribute to Susan's gift, please make your pledge to Glen Halva-Neubauer by Friday, December 21, 2013.
- Scholarships: An AMTA student from Yale, Vinay Nayak, received a Rhodes scholarship.
- Compliments to Grant Keener and David Ben-Merre on the newsletter, *Pretrial*

Matters. A commendation to Melissa Pavely for her work on new school mentoring project, as well as thanks to all of those who are mentoring schools. Thanks also to Adam Detsky on handling team assignments, and to Grant Keener and Sara Zeigler for negotiating the Kaplan contract for \$12,500. Thanks to Will Warihay and Josh Leckrone for their work on TAC.

Announcements:

- All candidate directors will receive an email asking for a paragraph on their AMTA service over the last year.
- All candidate directors will receive feedback on their work prior to January 1.
- A reminder on deadlines for director applications will be sent via email.
- Annual board meeting will be hosted by Justin and Michael in Newport Beach on July 11-13, 2014.

III. Format of Agenda:

Delivered by Secretary – Zeigler

The agenda for the mid-year conference is set by the Executive Committee pursuant to rule 10.2.1.

IV. Approval of Agenda

APPROVED WITHOUT OPPOSITION

V. Approval of 2013 Board of Directors Meeting minutes.

Motion by Detsky to approve the minutes, seconded by Wagoner.

APPROVED WITHOUT OPPOSITION

VII. Committee Reports

A. Audit Committee (M. Smith)

The Committee is working with Shirley Pepples, a CPA in Iowa, to review our books and ensure that we are following appropriate procedures. The Committee will institute a procedure for yearly audit.

B. Budget Committee Report (Eslick):

Please start making your travel arrangements for AMTA Rep assignments, bearing in mind the travel policy regulations that were distributed with the final assignments. The financials for month ending October 31, 2013 are available. AMTA is over budget for registration income (which is good) and a bit low on revenues regional fees. Send an e-mail to Mr. Eslick if you would like to the current financials and he will send them to you.

C. Criminal Case Committee (Parker):

Thanks to those who have provided feedback on the case, which has been very useful and has shaped the changes. Case changes will be out by Sunday, December 22, 5pm EST. Case balance is very good.

P 48.5%, D 47.7%, T 3.9%

Will address “playability” issues in the changes. Send suggestions via email or by phone to Parker. There will be no changes between December 22 and regional tournaments absent an unexpected issue or crisis.

D. Civil Case Committee (Heytens):

The Committee is pursuing an idea for a case. The DVD is still under review – the videographer was not as good as we had hoped and Susan Ewing is working with Tom Sawyer to see if the two DVD set produced by the videographers can be merged into a single DVD. The DVDs produced by the videographer contain footage of the speeches of Justice Kagan and Secretary Napalitano.

E. Development Committee (Olson):

The primary work has been the new school mentoring program led by Melissa Pavely. Eight mentors are working with eighty schools (total). The participants are primarily new schools, but also some that had dropped out to determine the reasons for the drops. Anyone interested in mentoring should contact Pavely. The Committee is also working on the alumni database, especially with graduating seniors.

F. Ad Hoc Committee on Religious Accommodation (Leckrone for Koblasz):

One accommodation will be necessary. Washington Adventist has registered and paid all fees and will attend the regional in Richmond, and Josh will work with host on accommodating the school.

G. Rules Committee (Seelau):

No report.

H. Strategic Planning Committee (Halva-Neubauer):

The Committee is making good progress, having met in Indianapolis in mid-September, hosted by Johnny Pryor(former Director). The meeting was facilitated by Marilyn Kuhn and the members discussed mission, vision, and core values. The Committee began to work on the strategic goals. Committee work has focused on the mission statement, which emphasizes the educational value of the organization’s primary activity. The members are currently refining the mission statement and will have more interaction with the remainder of the board prior to Newport Beach meeting, for which we will have a full

document. The Board will vet the document prior to the issuing of the agenda. A special thanks to Kyle Kopko, who took notes for the meeting.

I. Tabulation Advisory Committee (Woodward):

The revised tab manual was issued on time with much help from Monica Dorman. This is the quiet time of year, and Johnathan Woodward will be in touch with reps shortly after the start of the year to review bid procedures and the new all-loss rule.

J. Tournament Administration Committee (Leckrone for Warihay):

25 Regionals are scheduled with a large number of new hosts this year. The AMTA Representative Committee has ensured that veteran reps go to the new tournaments. Leckrone has been working with the hosts on judge recruitment and to ensure that initial contacts with teams have been made. There was a late replacement of the Sacramento regional with Fresno. Thanks to Gordon Park for stepping in. ORCS sites are prepared as well. All teams that have registered have been assigned. Everything is going smoothly. 643 teams have been assigned.

K. Other Committee Reports:

IX. Motions:

BUDGET

BUD-01: Motion by Eslick to amend Rule 2.5 as follows:

Rule 2.5 Refunds and credits.

(1) WITHDRAWAL FROM REGIONAL COMPETITION. A school that withdraws one or more teams from regional competition after October 15 shall not receive any credit or refund. **A school that withdraws one or more teams from regional competition before October 15 shall receive a refund equal to the regional registration fee paid for the team(s) withdrawn.**

(2) NON-QUALIFICATION TO THE CHAMPIONSHIP SERIES. If a school competes at a regional tournament, has paid championship series registration fees, but fails to qualify to part or all of the championship series, the school shall receive a credit for the unqualified fees. The credit shall be applied to the school's registration the following year. Any school that does not **register use its credit the year following the acquisition date of the credit within two years after a credit is obtained** shall forfeit the credit. No refunds will be given.

(3) EXCEPTION FOR NEW PROGRAMS. A new school, **as defined in Rule 2.4(2)(B), school registering with AMTA for the first time** that has paid **fees of any kind but does not compete at a regional tournament the fee and is unable to compete** may roll **any fees paid the fee** over to the next year. **This applies to the first registration only and the fee may be rolled over only once.** This does not apply if the school withdraws from regional competition within 30 days of the start of the

tournament.

(4) SCHOOLS THAT HAVE NOT COMPETED FOR FIVE OR MORE SEASONS. If a school has not registered in the previous five seasons (or longer), any fines or penalties owed by the program to AMTA are voided and the school can begin with a clean slate.

Rationale: The amendment to Rule 2.5(1) clarifies what happens when a school withdraws one or more teams from a regional competition before October 15. Previously, schools were given the option of a credit or a refund. The amendment to Rule 2.5(2) resolves a conflict in the rule concerning whether credits carry over for one year or two years. The amendments to Rule 2.5(3) resolve an ambiguity regarding what “the fee” is, and clarify that “new schools” (*i.e.*, those not registering with AMTA for five or more consecutive seasons) are eligible for the fee roll-over.

The formatting was incorrect in the issued agenda and is corrected here. The refunds are provided instead of credits as carrying over a credit creates a liability on AMTA’s books that is challenging to track. This procedure was changed several years ago at the recommendation of AMTA’s accountant.

APPROVED WITHOUT OPPOSITION.

RULES

RULES-01: Motion by Eslick to amend Rule 1.1 as follows:

Rule 1.1. Applicability. These rules shall apply to all sanctioned tournaments. Invitational tournaments are not sanctioned tournaments. Although invitational tournaments often follow some or all of these rules, they are not obligated to do so. Participants are cautioned that the absence of enforcement of any rule at an invitational tournament does not mean the rule will not be enforced at a sanctioned tournament. **Notwithstanding any provision in AMTA's bylaws to the contrary, in the event of a conflict between these Rules and any other materials published or made available by AMTA other than the Midlands Rules of Evidence and the AMTA Tabulation Manual, these rules shall govern unless the AMTA published materials expressly state that they contradict these Rules and that the contradiction is intentional.**

Rationale: A conflict between the registration webpage and the rules arose this year. This amendment clarifies which set of published materials governs in the event of such a conflict.

Eslick noted that the motion arose out of a problem that came up due to inaccuracy on the web page – ensures that the rules govern in case of inconsistency.

APPROVED WITHOUT OPPOSITION

RULE-02: Motion by Heytens to add the following language to the rulebook

defining "demonstrative aid" and to adjust terminology accordingly:

See Appendix A.

Rationale: Our rules currently use a wide variety of terms including "exhibits and demonstratives" (in the heading to Rule 4.12(3)), "exhibits, visual aids, or other enlargements" (body of Rule 4.12(3)), "demonstratives, visual aids, and exhibits" (header to Rule 8.5), "visual aids, posters, and enlargements" (header and text of subsection 8.5(1), "visual aids" (text of 8.5(1) and header to 8.5(2)), "aid" (text of Rule 8.5(2)), and "demonstrative," (text of 8.5(4)) and few if any of these terms are defined. This inconsistent terminology risks confusion about what must be shown in captains meeting and which objects are subject to the restrictions on demonstratives.

APPROVED WITHOUT OPPOSITION

RULES-O3: Motion by Heytens to amend rule 8.9(6) by inserting the following between the header "Post-Tournament Review" and the words "If a team":

"Notwithstanding Rule 9.2(1), an AMTA Representative may not impose any **tournament penalty** for an alleged violation of this rule. However, ..."

Rationale: Underscores that AMTA representatives (who may not be familiar with the case materials and who have a million other things to be doing) do not have the authority to sanction teams for violating the egregious invention rule and that any sanctions for invention beyond those imposed by the judges in the round may be imposed exclusively by the CRC. Our rules previously provided that impeachment was the sole remedy for invention, which made clear that AMTA reps could not impose additional sanctions. The addition of the post-tournament review system in the CRC removed this language, however, which could lead to the argument that AMTA reps may sanction invention pursuant to their general authority under 9.2(1). I believe this is an incorrect reading of our current rules given the specific sanctioning provision set forth in Rule 8.9(6), which expressly contemplate that reps may notify the CRC but not that they may impose sanctions themselves. That said, I think it would be wise to make this point clear before the start of the 2014 AMTA tournaments.

Woodward noted, in response to a question, that AMTA Representatives are not required to report allegations of egregious invention as the teams may report. Woodward asks the AMTA representatives to alert the Competition Response Committee of a likely complaint. AMTA Representatives are also free to report incidents independently of the teams.

APPROVED WITHOUT OPPOSITION.

RULES-O4: Motion by Zeigler on behalf of Parker to amend Midlands rule 804(a) as follows:

In Midlands Rule 804(a), regarding unavailable witnesses, replace "(5) omitted" with the following from the Federal Rules plus an additional comment:

"(5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:

(A) the declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6); or

(B) the declarant's attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4).

But this subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying."

(Comment: This rule may not be used at trial to assert that a team has "procured" the unavailability of a witness by choosing not to call that witness.)

Rationale: the absence of this rule forced the Criminal Case Committee to get creative in finding a way to allow an absent co-conspirator's testimony under 804. Inclusion of the rule comports with the Federal Rules and existing case law, which will reduce problems at trial and educate students properly about this hearsay exception.

Parker noted that this new rule will not replace the pre-trial order on motions in limine for the current case.

APPROVED WITHOUT OPPOSITION.

X. Unfinished/New Business

NONE.

XI. Adjournment

Reminder: The 2014 Board Meeting will be held on July 11-13, 2014 at the University of California-Irvine.

Motion by Heytens to move into Executive Session; substitute offered by Guliuzza to move into Executive Session and adjourn immediately thereafter. Seconded by Wagoner.

APPROVED WITHOUT OPPOSITION.

MEETING ADJOURNED AT 2:09 PM EST.

Appendix A:

That Rule 1.2(i) be created as follows:

- i. “Demonstrative aid” means any of the following:
 - a. Any enlargement of any portion of the case packet;
 - b. Any object that combines, omits, or otherwise alters any material included in the case packet;
 - c. Any tangible physical object or collection of objects that any attorney and/or witness intends to show to the jury during trial, regardless of whether the object is referenced in or contemplated by the case packet.

Notwithstanding the foregoing, “demonstrative aid” does not include any of the following:

- a. Easels, pointers, or similar objects used solely for the purpose of facilitating the use or display of a demonstrative aid;
- b. Furniture, fixtures, or other objects present in the trial room prior to the start of the tournament.

That Rule 4.12(3) be amended as follows:

(3) ~~EXHIBITS AND DEMONSTRATIVE AIDS~~. Each captain shall show their opponent ~~any~~ **each** ~~exhibits, visual aids, or other enlargements~~ **demonstrative aid** intended to be used during trial. Any disputes shall be brought to the AMTA Representative at the captains’ meeting for resolution prior to trial. The AMTA Representative shall make a determination pursuant to Rule 8.5. Failure to show an opponent any ~~exhibit, demonstrative, visual aid, or other enlargement~~ **demonstrative aid** during the captains’ meeting shall prohibit the use of said ~~exhibit, demonstrative, visual aid, or other enlargement~~ **demonstrative aid** during the round. This Rule does not apply to any unaltered materials that are part of the case packet (i.e. affidavits and exhibits supplied with the case do not need to be shown to opposing counsel if neither their size nor their content have been altered in any fashion).

That Rule 8.5 be amended as follows:

Rule 8.5 Demonstrative ~~aids, s, visual aids, and exhibits.~~

(1) GENERAL RULE REGARDING ~~DEMONSTRATIVE AIDS~~ ~~VISUAL AIDS, POSTERS, AND ENLARGEMENTS~~. The use of **demonstrative aids** ~~visual aids, posters, and enlargements~~ is permitted, subject to the other provisions of these Rules, and so long as such **demonstrative** aids are not hazardous or potentially damaging to persons or property. If used, a ~~visual~~ **demonstrative** aid must be made available to the opposing attorneys for subsequent use during examination of witnesses and closing argument.

(2) ELECTRONIC ~~VISUAL~~ ~~DEMONSTRATIVE AIDS~~. The use of electronic or light projected **demonstrative** aids is prohibited.

(3) EVIDENCE RESTRICTED TO CASE PACKET. Only materials provided in the case packet

may be offered into evidence during trial. Exhibits and documents provided in the case packet, and demonstrative **aids** deemed allowable under this Rule and Rule 4.12(3), are not automatically admissible at trial. Unless the admissibility of an item has been stipulated, all items remain subject to objection on evidentiary grounds including, but not limited to, improper foundation.

(4) RESTRICTION ON MATERIALS NOT INCLUDED IN CASE PACKET. No team may introduce material facts through a demonstrative **aid** that it would not be permitted to introduce through testimony or AMTA-provided documents. Nothing in this rule prevents a witness from creating a demonstrative illustration during the course of his or her examination. The fact that a demonstrative **aid** is not excluded by an AMTA Representative does not render it admissible at trial. Evidentiary objections may be made. Restrictions imposed on the use of a demonstrative **aid** by an AMTA Representative must be honored and the failure to honor such restrictions may be grounds for a tournament penalty or sanctions.

(5) DEFACING PROHIBITED. Permanently defacing an opponent's **visual demonstrative aids** is not permitted.

*Comment to rule 8.5(4): No photographs, pre-made maps, pre-made drawings, or pre-made depiction of a particular **person/people**, particular places, or particular things may be used as a demonstrative **aid** unless ~~they have~~ **it has** been provided with or ~~are~~ **is** specifically permitted by the case materials. By way of example, "a skull" is not a "particular thing," but "the victim's skull" is. Similarly, a photo of a station wagon is not a particular thing, but it would be if described as a photo of the defendant's vehicle or the particular make and/or model of the defendant's vehicle. Lists, charts, graphs, phrases, etc. are not considered "drawings" for the purposes of this rule, and may be used to summarize, combine or illustrate facts that are already present in the case packet.*

Amend Rule 8.10 as follows:

Rule 8.10 Manner of examination. Whenever possible, counsel will stand when speaking to the court, to opposing counsel, or to a witness, and shall maintain a respectful demeanor. Participants should address a jury if there is a jury present and address the bench if there is no jury. Unless directed otherwise by the court, counsel will ask permission to approach the court or a witness or to use an exhibit **or demonstrative aid**.

Amend Rule 9.5(2)(c) as follows:

(c) Intentionally destroying or defacing property, including an opponent's exhibits **or demonstrative aid**;

Appendix B: TABLED MOTIONS

Motion by Guliuzza to amend Rule 4.1 as follows:

AMTA representatives are authorized to oversee the tabulation room at AMTA-sanctioned tournaments. Further, it is understood that the tabulation room should/will be “closed” after the representatives receive the first ballots in round four. **AMTA representatives, however, do not have the authority to remove, without cause, a member of the AMTA Board when tabulating or otherwise processing round 4 if said Board member has been helping regularly in the tabulation room throughout the tournament.**

Rationale: Last year at several important AMTA-sanctioned tournaments, the representatives closed the tabulation room to everyone – including those who had been regularly “staffing” the tab room throughout the tournament. My understanding that these representatives took this measure primarily because those working the tab room at previous tournaments had leaked the results prior to the awards ceremony.

I am not without sympathy for those who would close the tab room. I think it is a wonderful thing when folks attend the awards ceremony anticipating the results – when they can enjoy the drama that comes with the element of surprise. And, to that end, even though I value having additional sets of eyes on the tabulation process (especially at the end of the tournament), I would happily remove one helping in the tab room if the situation warrants such action. In fact, just last March, Will Warihay and I politely but firmly removed someone from the tab room at the ORCS in Philadelphia who had violated the confidentiality that we requested.

I am also mindful, however, of just how many things need to be accomplished at the conclusion of round 4 to tabulate the ballots accurately and do everything else that is necessary to prepare for the awards ceremony. Too, I know how many opportunities there are to make mistakes at this most critical juncture of the tournament. I have made them when repping important tournaments, and have seen others make them – even some of AMTA's most talented and experienced representatives. Fortunately, there were experienced people in the tab room who helped catch my mistakes, just as I, when helping in the tab room, was often able to catch the mistakes made by the AMTA representatives. As important as it is to protect the element of surprise at the awards ceremony, it pales in comparison to an awards ceremony that is substantially later than planned (b/c, essentially, two people were trying to wrap up the tournament), or, even more consequential, should the results that were announced contain error(s).

The solution that I am proposing seems like a way to accomplish both the goal of protecting the secrecy of the awards ceremony and to maintain the goal of keeping more experienced eyes on the tabulation process during round 4. Board members are typically experienced in the tabulation room; each is expected to have served as representatives at other AMTA tournaments. Too, every member of the Board has taken a pledge to uphold the integrity and best interests of the organization (specifically all agree to: "Put the goals of AMTA ahead of his/her own program", "serve with a high degree of integrity", and "advance the educational mission of the association"). Given that pledge, it would

unthinkable for a member of the AMTA Board to violate the confidentiality of the closed tabulation room. If they have been helping the representatives out with the administration of the tournament, it simply doesn't make sense to remove them at the point where their service might be the most beneficial.

In anticipation of some questions: If the Board member doesn't help in the tab room throughout the tournament, then the rep is under no obligation to include him or her when tabulating round 4. If the Board member does disclose information, then he or she should be removed immediately, and the AMTA reps should report the offender to the President so that the Executive Committee might take action. There are other reasons I might offer in support of this motion, and I will be happy to discuss them if asked and/or at the 12/14 meeting. Thank you for your consideration.

Motion by Zeigler on behalf of Parker to amend Rule 10.3.2(3) as follows:

Add to 10.3.2(3) between first and second sentences: "To that end, the current year Case Committee will submit a completed draft of the case to the off-year Case Committee no later than two weeks before the Annual Board Meeting. The off-year Case Committee will review the completed draft and provide feedback to the on-year Case Committee in closed session at the Annual Meeting."

Rationale: The reason for this change is twofold.

First, the current Case Committee "firewall" effectively prevents the on-year committee from drawing upon the expertise of the off-year Committee members in troubleshooting and balancing the case prior to release. This modification would enable the use of that expertise in a limited window prior to case release, likely resulting in a better product upon release, without creating any significant competitive advantage for members of the off-year committee in AMTA-sanctioned competition.

Second, setting a deadline for a draft prior to the Annual Meeting creates the potential for a meaningful vetting by another independent AMTA body early enough that any major issues can be resolved at the Annual Meeting and fully addressed prior to the initial case release on August 15.