Dear National Trial Competition Community,

For the past year, we have been listening to and discussing with various stakeholder ideas to improve NTC. This letter outlines the culmination of this past year’s work, including “beta” changes and permanent changes in the rules, format, and operation of NTC effective for this coming year and in the years to come. As one of the country’s premiere mock trial competitions, we are dedicated to ensuring that NTC grows with changes to advocacy education and our community of competitor schools, and we hope these changes further demonstrate that dedication.

A. "Beta" Changes

1. Regional Host Teams to Compete in a Different Region

Beginning this year, we are asking each regional host to volunteer their teams to compete in a different region, adjacent to the host school’s region. This year the exchange is voluntary and the region in which volunteering host schools will compete will be selected by NTC in conference with volunteering schools. During this year, TYLA will be examining the feasibility of making this change permanent across all regions.

We are aware that recruiting judges always presents a challenge. Scheduling local judges to avoid conflicts with your local competitors can prove even more difficult. In addition, whether there is an appearance of impropriety because alumni are judging host school teams or host schools are voluntarily receiving a poorer overall judging panel to avoid the appearance of impropriety, it appears to TYLA that the host school competing in its hosted region is no longer a best practice in administering a national tournament. Our hope with this change is to ease the burden of scheduling judges while simultaneously enhancing the integrity of this competition.

2. Regional Witness Procurement

To improve the quality and consistency of witnesses in our regional competitions, we will be amending Rule 5.5 to outline specific options available to the region host for procuring witnesses or requiring schools to bring their own witnesses. In addition, we will add a rule specifically amending Rule 5.5 to outline specific options available to the region host for procuring witnesses or requiring schools to bring their own witnesses. In addition, we will add a rule specifically amending Rule 5.5 to outline specific options available to the region host for procuring witnesses or requiring schools to bring their own witnesses.

5.5 Each region may determine how witnesses will be supplied for the various regional tournaments. Regions may choose one of the following methods of supplying witnesses for the region, but this is not an exclusive list, and each region may choose an alternative method if desired:

A. Option One. All witnesses are supplied by the regional host. Witnesses made available for each team will be selected by lot from the witness pool.

B. Option Two. Each competing school shall supply two (2) witnesses for each team they have competing in the region. Witnesses made available for each team will be selected by lot from the witness pool. No witness may witness in a trial involving the school from which they come.

C. Option Three. All fact witnesses are supplied by the regional host. Fact witnesses made available for each team will be selected by lot from the witness pool. All expert witnesses will be provided by the teams competing in the region. Expert witnesses will be selected by lot from the expert witness pool. No witness may witness in a trial involving the school from which they come.
5.6 All bailiffs should be supplied by the regional host. The regional host may choose to designate any witness in any round to serve as the bailiff as well, regardless of which method of providing witnesses is used under Rule 5.5.

These changes expand the options for regions to improve the quality of witnesses while retaining one of NTC's critical features - competing with "unkempt" or lay witnesses while not materially changing the existing options historically utilized in the various regions.

B. Permanent Changes

1. Reasonable Inference Rule Changes

The “reasonable inference rule” is amended to the “necessary inference rule.” This change largely involves replacing the word “reasonable” with the word “necessary,” along with a few clarifications and examples. This change is intended to better conform the plain language of the rule to TYLA's long-running interpretation of rule 7.4. It has never been the rule—and this change forecloses the argument—that an inference is acceptable because it is a "reasonable conclusion from the facts in the problem." Under the Necessary Inference rule, TYLA intends for allowable inferences to be non-material and the rare exception. This revision also adds a paragraph H to the existing subsections of Rule 7.4. Rule 7.4 will now read:

7.4 Witness Testimony

…

C. Witnesses may testify as to necessary inferences drawn from the case material on nonmaterial facts, such as a witness’s background. Teams must confine their presentations to the facts given in the fact pattern, any matters judicially noticeable under the Federal Rule of Evidence 201, and those inferences that are absolutely necessary, inescapable, and inevitable. An inference is said to be necessary if another and a different inference cannot be reasonably drawn from the facts stated. A necessary inference is NOT any fact that you might wish to be true nor is it a factual inference that is merely possible or consistent with facts in the fact pattern.

1. For example, if your witness is a police officer, it is a necessary inference that the officer went to and graduated from the police academy. However, it is not a necessary inference that the officer received any specialized training, like training in accident reconstruction.

D. If during a direct examination a witness testifies to a material fact not contained in the case materials, the witness may be impeached during cross examination through impeachment by omission. A witness must admit that the fact was suggested by counsel or that the witness him/herself made up the material fact, if true.

E. During cross examination, an advocate may question the witness about non-events that are necessary inferences based on the problem materials. For example, if a police officer witness is testifying and the record is completely silent relating to DNA samples, it is a necessary inference that a police officer witness did not collect DNA samples from the crime scene. In this example, it is permissible to ask the police officer witness “You never collected any DNA samples, correct?”

1. This is permissible because the witness statements are full and complete statements of everything the witness knows. Therefore, the absence of information in the record pertaining to the collection of DNA means DNA was not collected. If a witness is asked on cross examination about the absence of information, the witness must admit that collection or testing was not done. The witness is prohibited from saying “I do not know” or “that was not asked at my deposition.”
However, an advocate may not invent facts or use outside resources in their questions to enhance the cross examination of a witness. For example, if a police officer witness is testifying and the record is completely silent relating to DNA samples, an advocate shall not reference topics outside of the problem materials such as: the reliability of DNA, the scientific theory of DNA, the process of DNA collection, etc. In this example, it is not permissible to ask the police officer witness, “You’re aware that the margin of error for DNA tests can be as high as five percent, correct?” This is not a necessary inference.

H. A witness may not intentionally and unreasonably refuse to answer questions during cross examination and may not take any action designed to exhaust the time of the cross-examining advocate’s team such as repeatedly asking to be refreshed or shown their deposition or statement. Any team that encourages a witness to violate this rule is subject to sanctions consistent with 8.5(C).

2. **Witness, Judge, and Bailiff Instruction Videos**

TYLA is filming instructional videos for each region to use to instruct their witnesses, judges, and bailiffs. These videos will be accessible through the website for use by region hosts. We recommend all hosts watch the videos as well to be aware of the instructions in case of a need for clarification or a protest.

3. **Impeachment by Omission Instruction**

Beginning this year, NTC judges’ instructions include the instruction that impeachments by omission are “permissible and appropriate to allow a student during cross-examination to show that the witness testified on direct examination to a material fact that was not contained in the case materials. Judges/scorers should evaluate any impeachment by omission for effectiveness, necessity and appropriateness.” This update to the rules reflects an inescapable difference between the mock trial environment and real-life practice, and we hope that it will focus the judges’ attention on other matters more worthy of their rulings.

4. **Preliminary Rounds and Power-Matching**

Rules 5.3 and 5.4 will be expanded to clarify the number of preliminary rounds required in each region as well as the process for seeding. By this rule, we hope to encourage uniformity across the regions, which should, in turn, escalate the integrity of the competition at the national level. Rules 5.3 and 5.4 will read:

5.3 The regional competition must consist of at least three (3) preliminary rounds. Any exemption to this rule must be approved by the TYLA NTC Committee Chair(s). The first two rounds will be randomly matched such that each team tries both sides of the case during those rounds. No team from the same school shall face another team from the same school during the first two rounds. The third round, and any subsequent preliminary round, will be power matched. The seeding for power matching shall be determined as follows: (1) win-loss record; (2) number of ballots won; (3) total point differential; and (4) total points. Sides in round three will be determined by a coin flip, which may be conducted by the regional host or may be conducted with the teams. If the teams are involved in the coin flip then the higher seeded team has the right to call the coin flip.

At the conclusion of the final preliminary round, the regional host may elect to conduct a round of sixteen (16) teams. Following the preliminary rounds or the round of sixteen, eight (8) teams shall advance to the elimination rounds of the tournament. The advancement and seeding of teams from preliminary rounds to elimination rounds shall be determined as follows: (1) win-loss record, (2) number of ballots won, (3) total point differential, and (4) total points. The first elimination round will be paired as follows:
In the next elimination round, the winner of Semifinal #1 will play the winner of Semifinal #2, and the winner of Semifinal #3 will play the winner of Semifinal #4. The winners of those two final rounds will advance to the national competition.

Each region may choose to have a “final round” between the two teams that have qualified for the national competition, but such “final round” is not required.

5.4 Two teams from the same law school may not compete directly against one another at any point during the regional tournament.

The Regional Host Handbook will likewise be updated to read:

Format of Regional Competitions (P.6):

The regional competition rounds do not have to take place over just Friday, Saturday and Sunday. In fact, many regions hold rounds starting on Thursday evening and end the competition on Saturday or Sunday. The regional host, however, is required to have at least three preliminary rounds. If any host requires an exception to this requirement, such exception must be approved by the TYLA NTC Committee Chair(s).

The NTC Committee suggests using the national format for the regional competition (see the competition rules posted online at tyla.org/ntc). The national format consists of three preliminary rounds, a quarterfinal round, a semifinal round, and a final round. The regional champion and second place team from each region will advance to the national competition. (Some regions do not have a final round and simply send the winners of the semifinal round to the national competition.)

NOTE: If more than 18 teams participate in the regional competition, a quarterfinal round will avoid having a severe cut and will allow more participation by the teams.

5. Score Tabulation Spreadsheet

TYLA is preparing a standardized scoring spreadsheet to be used in all regions in order to maintain the neutrality and integrity of the competition. The spreadsheet will be accessible through the website for use by region hosts. We recommend all hosts review the spreadsheet and be familiar with its functions prior to the competition dates in order to promptly address any questions or protests that may arise during the competition.

6. Demonstrative Exhibits Rule

Rule 4.4 is clarified and expanded upon by a definition contained in a new Rule 7.7. This change is intended to narrow the scope of protests and eliminate arguments that teams may create in advance or bring items to make a part of the trial. Rule 4.4 and the new Rule 7.7 will read:

4.4 During any trial, counsel may use only: (1) those exhibits provided in the problem itself; (2) demonstrative evidence as defined in Section 7.7. No other evidence or audiovisual aids will be allowed.

…
7.7 For purposes of this competition, “demonstrative evidence” includes diagrams, maps, drawings, graphs, charts, and/or lists that are created during the course of the round on a flip chart, marker board, blackboard, and/or some other type of writing surface, and/or simulations or demonstrations performed by the attorneys and/or witnesses during the round.

A. Any demonstrative evidence that the parties use during trial must be created during that trial. Anything that the parties create prior to that trial may not be used during that trial.

B. For purposes of these competitions, demonstrative evidence does not include recreations or models of any physical evidence in the case, and any such recreations or models are impermissible. For example, if the case involves a flashlight, a team may not bring a flashlight with them to competition or create a flashlight to be used during the round. For another example, if the case involves a bag of cocaine, a team may not bring a Ziploc bag filled with sugar to represent a bag of cocaine.

C. For purposes of these competitions, demonstrative evidence does not include measurements of any of the witnesses, or any portion of the witnesses, in the room. You all know that the witnesses in the room are not the actual witnesses in the case problems, and should not be used to physically demonstrate the size of the actual witnesses in the problem. You are restricted to any measurements listed in the packet, and cannot compare the measurements in the packet to the actual measurements of the actual live witnesses in the room.

TYLA would like to thank the Dennis Maggi from the ACTL and numerous ACTL fellows, non-faculty coaches, students, and faculty who have been a part of this process over the past year. We are committed to continuously improving the caliber of this competition, and we believe these changes move us in that direction. TYLA and ACTL representatives will also present these changes and offer clarifications at the upcoming Coaches & Competitions Clinic at American University Washington College of Law on Friday, August 16 at 2:30 pm in Room C116.

We look forward to a successful 2019-2020 National Trial Competition.

Sincerely,

Ashley Hymel
TYLA NTC Co-Chair, 2019-2020

Brandon Draper
TYLA NTC Co-Chair, 2019-2020

Victor Flores
TYLA President, 2019-2020

Joel Towner
Immediate Past TYLA NTC Chair