

High School Mock Trial 2017
Pat Justice v. CAT News, et al.
Errata Sheet

Please note:

The errata sheet serves to clarify or correct errors in the Mock Trial case and/or rules, and does not address team strategy, coaching, or judging protocol. Per OCLRE rule IV, section ix., if it not deemed necessary to respond to the question in the Errata sheet, you will receive an individual response to your question via email.

1-10 – Final Errata

- 1) In line 18 and 19 of Sam Jackson’s statement, Jackson refers to both “margin of error” and “margin of sampling error,” placing the former at +/- 2 points among registered voters. There is no information about how that margin of error was obtained – is this an across the board margin of error?**
No, the margin of error is not standard across the board, and that margin of error and margin of sampling error refers only to that study, and not to all studies included in the case materials.
- 2) In Line 97-99, Jackson also adds the margin of error and margin of sampling error together to come up with a margin of +/- 5 points. Are these errors able to be added together?**
In Exhibit A, the margin of error is the aggregate of all the forms of sampling error. Therefore, in line 98, it should read that the margin of error is 3, as it is listed in the exhibit.
- 3) In Reese Murphy’s statement, line 85, they refer to the CAT News Poll as having a sample of 1198, however Exhibit A lists that as having a sample of 1360. Which of these is correct?**
The sample size in the exhibit is correct.
- 4) On page 85, line 32 it states, “ current Governor Pat Justice was coming to the school to give a speech on the importance of ,”. Is this a typo? Should it tell us what the speech was about or should we fill that in?**
It should read “on the importance of civic education.”
- 5) After reviewing Cameron Carter's affidavit, it's not discretely disclosed if the original tweets posted by CAT's twitter were at all removed. It only states that they were retracted.**
For the sake of clarification, are the tweets still up on CAT's twitter, and are retracted only through the stations words?

Or have the original tweets since been removed, and are no longer available on the stations twitter?

Yes, the tweets were removed from the twitter handle.

- 6) It has been asked and answered the gender of Jeri Block, primarily due to the lack of actor portrayal. Seeing as how Principal Veritas falls into the same category, what would be the preferred gender to recognize him/her?**
Principal Veritas may be referred to as a man, but the gender is not legally significant.

- 7) The errata states that Pat Justice has no familiarity with exhibit A (the polling numbers) however he makes the claim that “all polls had [him] ahead of the other candidate,” prior to the incident. Does this mean that Pat Justice has a familiarity with the polling data in exhibit A? Further, if a witness does not have familiarity with a given exhibit, are lawyers allowed to question them about the established facts in the exhibit, i.e. that Justice was not firmly ahead in all polls prior to the incident?**

Pat Justice’s statement does not imply familiarity with the contents of Exhibit A. Established facts within exhibits may be used as the basis for questions directed to a witness, however, these questions are still limited by the rules of evidence (e.g. opinion testimony by a lay witness, relevance, etc.).

- 8) In line 88 of Reese Murphy's deposition it references a poll completed by Public Policy Projects in June, but all the following information is from their poll in March according to exhibit A. Is it supposed to say March in the deposition?**

The study referenced on line 88 refers to a poll not included in Exhibit A.

- 9) Is the feud between Veritas and Justice well known public knowledge?**
No elaboration needed.

12-13

- 1) In Cameron Carter’s statement, page 89, line 44, it is stated that CAT News conducted a poll of 600 likely voters in September. However, Exhibit A only reflects one poll conducted by CAT News and it was taken in November rather than September. Is this an error?**

No elaboration needed.

- 2) I also noticed that in Carter’s statement, he/she indicated that the CAT News poll indicated that Justice had the lead, when the polling exhibit shows the CAT News poll taken in November shows Block with the lead.**
The poll referenced in the exhibit is not the same poll Carter referenced from September.

- 3) On Exhibit A (the polling exhibit), there are two polls that do not list a margin of error (the Ohio News Average poll and the New York Times**



poll). Are we to assume the margin of error for these polls was not reported, or that there was no margin of error for these polls?

No elaboration needed.

- 4) **In preparing cross examination questions for Cameron Carter, we wondered if we were able to use the information in Andy Rather's statement in questioning Cameron Carter? Andy is a party opponent and is making admissions against their own interest in their statement.**

Please refer to Rule 601, on page 30 of the case materials, which states "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that S/he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses."

- 5) **There are two typos in the case materials:**

Page 77, line 74 reads "were wheeling Principal Veritas out of a stretcher." This should read, "were wheeling Principal Veritas out ON a stretcher?"

Page 78, line 85 reads "They though the school brought in"

This should read: "They THOUGHT"

- 6) **We have a question concerning Exhibit A. On the thumb drive, this exhibit is in color, but in the printed casebook, it is in black and white. Are we allowed to use a colored / shaded copy of the polling data during the trial?**

You may use the exhibits either in color or in black and white. Shaded portions carry no additional meaning and should not form the basis for a line of questioning. Color coding in the spread column merely indicates which candidate led the poll – Justice is blue, Block is red, and black indicates a tie.

- 7) **Were all statements contained in Exhibit B posted on the CAT News Twitter account by Andersen Rather?**

The four twitter posts were posted by Andersen Rather using the CAT News twitter handle. The Associated hashtags were not posted by CAT News (with the exception of justicekillstruth, which was listed in the second twitter post.)

Associated hashtags were created by twitter users after the CAT News posts were posted on October 3, 2016.

- 8) **I noticed that the 2017 problem has 4 exhibits in the packet, but none of the witness statements say if the witness is familiar with them. I think that could present a problem, as there are teams that will claim that if a witness talks about an exhibit that isn't expressly referenced in the affidavit, it is an invention of fact. If sustained the team can be penalized. I ask that OCLRE specifically identify the exhibits the witness knows so teams aren't working with materials that they could be penalized by a judge.**

The following witnesses have some level of familiarity with the exhibits listed below. Teams should still establish the witnesses familiarity with the contents of the exhibit, e.g. Micky Harris saw the posts on twitter and re-tweeted one of them.

Exhibit	Witness Qualified to Discuss
Exhibit A	Sam, Reese
Exhibit B	Andy, Cameron, Sam, Reese , Mickey, Pat
Exhibit C	Andy, Cameron, Mickey, Pat
Exhibit D	Mickey, Cameron, Andy, Pat

- 9) **There is no stipulation or special instruction requiring the witnesses to admit that the exhibits are what they purport to be. Based on the briefs, I believe I understand what the case committee intends the exhibits to be; however, teams are not allowed to rely on statements in the brief during competition. For example, the Plaintiff's brief states that Anderson Rather used CAT's Twitter account to create false/defamatory hashtags which went viral and were re-tweeted 70,000 times. However, Andersen Rather's witness statement does not claim responsibility for the specific statements in Exhibit B (so on cross, Rather could deny that those were his/her tweets and instead say that he/she tweeted something different - and less "defamatory"). I believe it would be consistent with the spirit of the competition to prevent this from happening.**

Because the exhibits are stipulated as admitted, there is no longer any issue as to authenticity, accuracy, relevance, or hearsay as to the contents of the exhibit. No testimony is required on these elements, and, these issues cannot be contested.

11-29

What are the dates that Justice served in office as Governor?

No elaboration needed.

Can witness statements be introduced into evidence and used as exhibits during the trial?

No, per trial procedure rule 13, "only exhibits that are part of the case materials may be used as visual aids." Only the materials labeled as exhibits in the case file may be used as exhibits.

When presenting the Closing argument, may a lawyer refer to statements made by an opposing side's witness, even if the opposing side did not have him testify?

No. Per Trial Procedure rule IV. B "closing statements are permitted for the purpose of aiding the finder of fact in analyzing all the evidence and determining the facts of the



case.” The closing statement cannot be used to introduce new facts or evidence to the case.

11-15

1. In response to Question 4 on the Nov. 1, 2016 errata sheet, you indicate that the burden of proof in this case is a “preponderance of the evidence.” This is contradictory to the case law and the written arguments contained in the case packet, wherein the burden of proof for at least the element of “actual malice” is “clear and convincing evidence.” Are you changing the burden of proof? Did you mean to say the burden of proof is a “preponderance of the evidence” for all elements of defamation except actual malice? As there is no case law provided on the matter, can you confirm that the burden of proof is a “preponderance of the evidence” for the affirmative defense of protected opinion?

The response in the last errata was an error, and the case materials are correct. The burden of proof for “actual malice” is clear and convincing evidence. The burden of proof for all remaining elements of defamation, and the defense of protected opinion, is preponderance of the evidence.

3. On page 34, Examples of Common Objections, Part II, #2 reads “Irrelevant evidence that should be excluded:” I believe it should read “Relevant evidence that should be excluded:” Irrelevant evidence already is inadmissible. But this section address relevant evidence that is unfairly prejudicial, so the bold portion should be changed to “Relevant evidence.”

This is a typo, and the rule should read “Relevant evidence that should be excluded.”

11-1

1. The Plaintiff’s Trial Brief indicates that the issue in the case is “whether the Defendants, CAT News, Inc. and Andy Rather, are liable for defaming Plaintiff . . .” (two defendants) The “Defendants’ Trial Brief” indicates that it is being filed on behalf of multiple defendants. How are the students to deal with the conflict of interest between “CAT News, Inc. and Andy Rather”?

The Order for Hearing refers to a “defendant” in a singular reference but the case caption lists multiple defendants, CAT News and Andy Rather. Isn’t there a possibility of a finding of liability against one defendant, but not the other?

CAT News is not taking the position that Rather was acting outside the scope of his agency relationship with CAT at any relevant time. Further, as Rather was CAT’s intern and agent, CAT and Rather are equally responsible for any damages caused by Rather’s conduct, if Rather is found to have defamed Justice. Consequently, the Defendant’s interests are unified, and there is no conflict of interest. The reference to a singular defendant in the order for hearing should be read to include both defendants.

2. **Since Jeri is not a witness, can we have a definitive gender pronoun determination? The witness statements use she/he, but since this character is not played by any student, it might be easier if everyone just has a set pronoun.**

Jeri Block may be referred to as a female.

3. **Reese Murphy's statement discusses in quite a bit of detail polling numbers reported by CBD News with a margin of error of roughly 2.7%. No polling data completed by CBD News is included in Exhibit A, although there are other polls, including a poll done by CAT News, with the same margin of error. Please advise as to whether the omission of polls conducted by CBD News from Exhibit A is an error.**

Line 81 and 82 should read as CAT News, not CBD.

4. **Now that there has been an affirmative defense added to the case, will you please clarify/specify the burden of proof that the defense has in order to prove the affirmative defense?**

The plaintiff in this case bears the burden of proof by a preponderance of the evidence that the defendant is liable for defamation. The affirmative defense offered by the defendant in this case requires them to prove by a preponderance of the evidence that the speech was constitutionally protected opinion. The plaintiff will still present their case first, with the defense going second.

10-18

1. **Can we assume that all witness statements were given under oath?**

Yes.

2. **As my students and I read through the case, we noticed a discrepancy in the survey data in Sam Jackson's statement. Lines 27-30 discuss survey results and say that 58% believe Pat Justice was better informed on education issues, while 50% believe Jeri Block was better informed on education issues.**

On Sam Jackson's statement, line 30 contains a typo; Jeri Block was 40% better on education issues, not 50% as is listed in the text.

3. **There is confusion about using the 1st Amendment to the U.S. Constitution vs Article I, §11 of the Ohio Constitution. The hearing order refers only to the US Constitution; the cases provided in the materials (and the briefs) discuss both the US and Ohio Constitutions, and hold that the protections for the media are broader under Article I, Section 11 of the Ohio Constitution than under the 1st Amendment.**

This has been addressed by re-issuing the order. Please see the amended Order for Hearing in the errata sheet. The new Order will also be posted on the OCLRE website.



4. **Do we have any time or date references for when the Tweets were posted? Or are we to assume these tweets are chronologically ordered with the top one being the newest?**

This is a transcript of the tweets, which appear in chronological order, with the first tweet being the first to be posted, and the last being the last chronologically. All tweets were posted between 2pm and 4:30 pm on October 3, 2016.

5. **Were the associated suggested hash tags tweeted by CAT News?**

The associated hashtags are other hashtags being used on twitter that that appeared to be related to the news story reported by CAT News, but #justicekillstruth was the only hashtag used by the station.

6. **How do we know that the Governor died of natural causes? There is no stipulation.**

All parties agree, the principal died of natural causes (brain aneurysm.)

IN THE MATTER OF:

Pat Justice

v.

CAT News, et al.

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Case No. **2016-CV-2017**

Judge Hegedus

ORDER FOR HEARING

The Court will conduct a bench trial on liability issues in this case. The Plaintiff will bear the burden of proof to establish their claim for defamation. The Defendant will bear the burden of proof to establish their affirmative defense that the statements at issue are protected opinion under the First Amendment to the U.S. Constitution and Article 1, Section 11 of the Ohio Constitution.

Trial shall commence on January 20, 2017 and continue day to day.

SO ORDERED

Judge Hegedus