
Case and Rules Question and Answer Report

As of 4/19/2012 9:20 AM

- Q.** The rules manual is silent on the issue of hostile witnesses (i.e., it doesn't state that you can treat a witness as hostile, nor does it expressly state that you cannot). However, an earlier post suggests that Gutierrez is not to be considered a hostile witness. May any witness be treated as a hostile witness, or is that not allowed?
- A.** Pursuant to Mock Trial Rule of Evidence 611(c), any witness can be considered a hostile or adverse witness so long as the proper foundation has been laid. In the case clarification posted on April 13, 2012, the question was asked whether all prosecution teams should plan to treat Sydney as a hostile witness. The answer to that question is no, because teams are permitted to pursue whatever strategy they think most effective, consistent with the rules of competition, and because each presiding judge remains free to reach whatever determination s/he thinks best with respect to witness treatment. However, the response to that question may have overstated the bounds of the rules by implying that it would violate the rules to attempt to treat Gutierrez or any other witness as hostile. Rule 611(c) provides the rule of decision, and it provides that any team may attempt to have any witness treated as hostile, if a proper foundation is laid. To the extent that this response is inconsistent with that posted on April 13, 2012, this response controls.

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- Q.** Groves initially refers to herself as a partner in Answers LLP (1). Then on line 45 she refers to it as Answers LLC.
- A.** All references to the company "Answers," should be Answers LLC.

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- Q.** DeBaca's statement (line 135) refers to "land in Colorado" that DeBaca had lost. However, the only mention of DeBaca land (or Red Mountain land) was that in northern New Mexico. Although this doesn't appear to be a significant issue, for consistency's sake, should line 134 read "land in northern New Mexico"?
- A.** Yes.

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- Q.** I managed to find the meaning of the term "sinister pig". (The term Sinister Pig comes from a French phrase "cochon sinistre". It refers to the biggest, meanest pig in the lot ... who eats everything he can possibly hold and then refuses to let any of the other pigs have anything to eat. <http://www.popmatters.com/pm/review/sinister-pig>) Clearly there is some meaning behind Mankin/Canfield using that term as he lay dying in the dirt. However, the meaning of the phrase is not mentioned in any capacity in the case materials...and I have to believe that if it ever was in relatively

common usage it no longer is...I certainly had no idea that it was an actual "term of (french pig farming) art". If it was a common phrase I would be less hesitant to mention its meaning in an cross or direct (an example from the case would be "need this guy out of play" as allegedly spoken by Winsor to DeBaca...from the context, as well as just common usage, having DeBaca testify that he knew this meant that the target needed to be killed seems fair game. Having an attorney ask a witness if she knows the meaning of the term "sinster pig" would clearly be outside the literal scope of the materials...and yet, at the same time, the whole point of using the phrase in the case materials is lost if it cannot be explained on some level... (And maybe I just am not as well versed in the pig farming terminology of the day...)

- A. In the Hillerman novel *Sinister Pig*, the term is described in some detail. There, it was a clever double entendre, first referring to the farming term you mention and second referring to a device used to clean oil pipelines that in the novel were used to smuggle drugs across the border with Mexico (hence, it was made "sinister"). The meaning of Mankin's last words is left deliberately ambiguous in the problem, because a paragraph-long exegesis on pig farming was too indulgent even for our authors. However, Mankin was a cultured, well-traveled man, and he was using the term in the manner that you suggest (and that Hillerman used it, at least in one of his meanings), that of the cochon sinistre or porc sinistre, the biggest, meanest pig in the lot, who literally "hogs" the food of others and then refuses to let any of the other pigs have anything to eat. The authors are proud to have brought the National High School Mock Trial Championships its first Francophone pig farming reference, but teams are free to provide whatever meaning to the phrase they wish, as the case materials do not define it.

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- Q. In exhibit 9, the emails between Gutierrez and Kendall go in chronological order, however the last email urging Kendal to take the meters out now is dated MARCH 23,2010 05:20:38 and the previous email is dated APRIL 11, 2009. Is the last one really March 2010 or is it April 2009? Or even 2010 as in the day Makin was killed?
- A. The case stands as written.

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- Q. My teacher coach asked for clarification regarding the introduction of exhibits. If proper foundation is laid, can exhibits be introduced during cross-examination, or only during a team's case-in-chief?
- A. Exhibits can be introduced during direct or cross.

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Week ending April 13, 2012

- Q. Our team has encountered a unique situation with a team member. The young man has learned that he must take part in a long family vacation over April break, and will be gone approx. 10-11 days. In short, he will be unable to participate in team practices during this time. We may want this student to swap roles with a student observer who is accompanying the "official" team. BOTH students had performing roles on the team that won the state championship for Maine. Our team has completed on-line registration (we did so early due to the pending April break) but has not yet sent in the registration fee. Are we allowed to swap the alternate for the young man listed on the "official" roster?
- A. Please refer to the last sentence of Rule 3.2, which states that the team roster becomes official at the time of onsite registration. The key word is "onsite" which means when you register once arriving in New Mexico.

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- Q.** Since Gutierrez has been forced to testify, should all prosecution teams plan to treat Sydney as a hostile witness?
- A.** No. Although Gutierrez has been compelled to testify, s/he not is hostile to either party within the meaning of the rules. S/he should be treated as any other witness for a party for purposes of direct and cross examination.

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- Q.** In Groves' statement, at line 164, it uses the date "April 24, 2011". Should this be 2010?
- A.** Yes.

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Week ending April 6, 2012

- Q.** The team has six official members who are confirmed plus one timekeeper, one attorney coach and one faculty advisor who will be attending. They would like to bring two alternates but are concerned that the rules require all team members to act as attorneys or witnesses in the rounds and that there is no specific reference in the rules to alternates. Would you please clarify whether alternates are allowed, and if so, whether they count toward the limit on official team members? Thank you.
- A.** Your student team members can be up to 9 (only the designated 8 can be a witness or attorney with the other being a time keeper). Under your facts you can name 8 people plus a time keeper while using only 6 in the trials. There is no requirement that you use any more than 6 as attorneys or witnesses.

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- Q.** I have a question about the Prosecution rebuttal under Rule 4.5. Is there a limit to the amount of time which can be reserved for rebuttal? Our state rules only allow half of the allotted time for rebuttal, but the National rule does not specify a limit.
- A.** There is no limit to the amount of time that can be reserved for rebuttal.

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- Q.** I have a question about Rule 4.11: Costuming. Last year in Arizona, our team faced a number of teams with young ladies portraying the D'Baha spiritual leader who were dressed in colorful, Native-American print dresses and dangling feather earrings. Although that seemed like costuming to me, the students were reluctant to object for fear of alienating the judges. Given that this year we have Native American "trackers" as witnesses, can you provide any further clarification as to when attire crosses the line into illegal costuming?
- A.** No.

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- Q.** I believe there is a minor error in the jury instructions.
Jury instructions, page 91, Count 1:
"Conspired with DeBaca to kill Mankin or hired DeBaca to kill Victorio"
Count 2 says:.

"Conspired with DeBaca to kill Victorio or hired DeBaca to kill Victorio"

I believe that Count 1 SHOULD say Mankin twice.

A. You are correct.