

Santa Clara County Mock Trial Steering Committee

Guidance to Schools and Presiders Re: Unfair Extrapolation and Witnesses

The Steering Committee may, from time to time, issue guidance to the Santa Clara County Mock Trial community, including guidance to the participating schools, scoring attorneys, and presiding judges, on issues pertaining to the county tournament. For example, in 2022, the Steering Committee issued guidance to schools and presiders re cross examination answers. The Steering Committee hereby issues the following guidance to schools and presiders regarding unfair extrapolation and witnesses.

An unfair extrapolation is inadmissible. An unfair extrapolation occurs when a witness creates a material fact not included in the official record. A material fact is one that would likely impact the outcome of the case. Rule 3.8.B. Unless otherwise stated in the rules, attorneys may not solicit information from a witness that requires the witness to testify to information not included in their own statement, the fact situation, stipulations or exhibits. Rule 3.7

Pursuant to these Rules, an attorney may not ask a witness to infer a material fact from its absence in that witness's statement. For example, an attorney may not ask the investigating officer about investigative steps not included in the investigative officer's statement to infer that the investigating officer did not take those investigative steps. Similarly, an attorney may not ask a witness interviewed by the investigating officer about questions that the investigating officer may not have asked that witness. Such questions are improper because they create material facts not included in the official record that would likely impact the outcome of the case by helping the defense argue that the police investigation was inadequate. Although an examining attorney may not ask a witness to infer a negative fact from its absence in the record, attorneys may ask the trier of fact to infer a wide array of positive or negative facts in opening and closing statements."

Like the prior guidance, this guidance may be cited during a mock trial round. However, it cannot form the basis of a rule violation or complaint. The Steering Committee hopes that all schools will discuss, adopt, and follow this guidance.