

Questions asked (unrelated to typos):

Q: Exhibit 1 only shows 3 board member seats. If there were 5 board members, where did the other two sit? Important for line of sight witness testimony.

Q: We were wondering where the members of the school board are supposed to be seated in Exhibit 1 on the day of the shooting, considering there are only 3 chairs on the platform. These are the facts that the case provides:

- Weston sits in between Truman and Cumberland (Rayburn, lines 126-127)
- Weston can see into the hallway where Truman was shot (Rayburn, lines 129-130)
- Adams could not see into the hallway where Truman was shot (Rayburn, lines 120-121)
- Goodman could not see into the hallway where Truman was shot (Goodman, lines 181-182)
- Goodman ducks under a table after hearing the gunshots (Goodman, line 182)

The only place which would allow a sightline into the hallway is the platform, meaning Weston must sit there. The other two platform seats would then have to belong to Truman and Cumberland. This would place Goodman and Adams somewhere else in the audience. The problem therein lies in the fact that Goodman has no table to hide under if he is in the audience.

So where were the school board members sitting?

Q: Is there any information as to who prepared Exhibit 1? While it is stipulated to be a true and accurate diagram of the school board meeting room and the blue star shows where Truman's body was, there is nothing in the case to indicate who actually prepared the diagram of the meeting room.

A: We have updated Exhibit 1 as well as Stipulation (g) of the pretrial order. Exhibit 1 has been modified to reflect five seats in the front of the room. In addition, names have been added to reflect where each board member was sitting prior to the meeting moving to executive session. Stipulation (g) now reads: "Exhibit 1 is a not-to-scale diagram of the school board meeting room created by the school board for its administrative use. The blue star was added by Officer Rayburn to indicate the location of Riley Truman's body when he arrived at the scene on December 2, 2021. The names on the diagram show where the board members were sitting just before the meeting went into executive session."

Q. Frankie Rose states (Rose, line 153) that their assistance in the autopsy is noted in Exhibit 6. Their assistance does not seem to be noted in Exhibit 6.

A: The phrase "but my assistance is noted in the report" has been stricken from the statement. A stipulation that Dr. Rose assisted in the autopsy has been added.

Q: The paragraph starting with “Finally, the location of each...” of exhibit 7 on page 66 states that the chest injury was “on the victim’s right side, and the trajectory was upward and to the left slightly. The second injury to the head was a glancing blow on the left side of the victim’s head.” This contradicts Dr. Rose on page 65 where he clearly states in the fourth paragraph that the trajectory of the bullet “from the individual’s left to right”. Also, in Rose’s witness statement on page 51, line number 71: the location of the wound is “on the left side of the individual’s chest.” Further, on the same page, line number 89, the path of the bullet caused damage “from the left side of the chest slightly inward toward the center of the body, moving from the individual’s left to right as it entered...”

My question: is the paragraph in Exhibit 7 on page 66 a typo, or is the doctor contradicting himself? Is this part of the case as written or will this be fixed?

Q: We're wondering if there is a mistake on p. 66: Frankie Rose writes, “The chest injury was on the victim’s right side ... glancing blow on the left side of the victim’s head” — which seems to be the opposite of what the autopsy indicates. Is that divergence from the autopsy an intentional aspect of the mock trial case?

Q: In exhibit 7 on the last major paragraph starting with “finally” the report notes the gunshot wound on the victim's chest on the right side when the case and exhibit 6 clearly show it is on the left. Just a minor error to possibly fix in case it gets used to attack Dr. Rose's credibility over an error.

A: This was in error and has been corrected. The second to last paragraph of Exhibit 7 now reads:

Finally, the location of each injury is important, especially when aligned with the bullet trajectory. The chest injury was on the victim’s ~~right~~ left side, and the trajectory was upward and to the left slightly. The second injury to the head was a glancing blow on the ~~left~~ right side of the victim’s head. If you draw a line, you begin to develop a timeline of the two injuries—the shooter’s hand rising with the gun firing once causing the fatal blow the chest continuing to move upward and to the left until the second shot which causes the glancing blow to the victim’s head. This demonstrates a rash movement while shooting—not a set and purposeful firing of the gun, at least in a very experienced shooter. The less competent the shooter, the more stress and lack of skill degrade our ability to discern what happened from any shot or shots.

Q: On page 12 of the material, it states “However, circumstantial evidence must be consistent with the guilt of the defendant and inconsistent with any other reasonable conclusion.” This contradicts the usual notion of circumstantial evidence — any evidence that forms a basis for another inference. Is a jury in this case really not allowed to consider any circumstantial evidence inconsistent with a guilty verdict? Can the defense not present circumstantial evidence in its favor?

Q: On page 12 is an instruction regarding “good character” of the defendant. It may be helpful to provide case law or other guidance emphasizing that general “good character” is not rendered admissible in general — and that 404 only permits evidence of the defendant’s character to the extent the character trait is pertinent to the charge.

A: The instructions stand as is. However, we have added a general instruction regarding evidence admitted under Rule 404(b). For reference, all instructions are based on the Arkansas Model Jury Instructions (Criminal).

Q: Regarding Rule 404 and 405 — evidentiary precedent regarding whether the violent character of a victim is “pertinent” or not in a self-defense case is different from state to state. For example, *State v Bass* 819 S.E.2d 322 (2018) in North Carolina asserted that such character is not an essential element in a self-defense case, hence excluded specific instances of conduct via 405(b). While *People v Edwards*, 328 Mich App 29, 37 (2019) in Michigan allowed for specific instances of conduct not for purposes of character but for knowledge of the defendant’s knowledge and reasonable apprehension of harm. In contrast, in California, such specific-conduct evidence is permitted (Evidence Code Section 1103).

Will the committee provide any clarification on what the precedent is in the state of Arkansas?

Q: The 2023 case is replete with potential character evidence issues (from reputation/opinion inferences to numerous specific instances of conduct). The parties have stipulated that proper notice has been given for the admission of character evidence. However, this stipulation only covers one prong of the character evidence rules. The stipulation seems to have been created in acknowledgement of the limited litigation universe that makes up a typical high school mock trial (i.e., no motion practice, etc.). But I fear that the stipulation may not have gone far enough IF the intention is to have both sides use and argue character evidence.

The state is in a bind - technically they are not able to bring up ANY character evidence unless the defense does so first (and since openings aren't evidence, the mere mentioning of character traits isn't enough to allow the state to ask character-based questions in its own case-in-chief). (Nor do we know if, in this mock trial universe, that character for violence/peacefulness is considered a pertinent trait in self-defense cases.)

Because the state cannot recall its witnesses to offer rebuttal testimony if the defense opens the proverbial door, teams are in quite a predicament - prepare prosecution direct examinations with the character evidence (and run the risk of a presiding judge barring the testimony) or prepare them without it (or a mix thereof) and miss out on some of the evidence that the case authors wanted the teams to use.

If the defense opens the door to character inquiry during defense directs, the state is now limited to impeaching the reputation/opinion testimony during cross. However, many of those impeachments will come from the statements of the prosecution witnesses.

Was this the intent of the authors?

My other concern is that different jurisdictions treat character evidence, well, differently. For some, the victim's/defendant's character for violence may be an essential element which opens certain doors. For others, it is not. We don't have any case law to guide us on how the presiding judges are going to view

the character evidence in this case - nor do we know how the scoring judges are being told how to view attempts to bring in (or keep out) different kinds of character evidence when judging the teams. Some scoring judges may penalize teams based on their understanding of the character rules even though that team is coming from a place that treats it differently.

If the case authors intended for the prosecution to be able to use character evidence, then additional action is required. Either:

1. An additional stipulation stating that the court expects the defendant to offer character evidence, and so in deference to the mock trial's structure, the door is open for the state to do so during the state's case in chief.

Or

2. A stipulation that the state should be permitted to admit character evidence conditionally during its case in chief (I.e., to be stricken without objection in the event that the defendant does not rely on any pertinent trait character evidence).

Thank you for your consideration.

A: A new paragraph section has been added to the pretrial hearing order addressing the admissibility of character evidence. The section provides relevant caselaw as well as the unique circumstances created by mock trial procedure given that prosecution teams do not get the opportunity to present rebuttal testimony.

Q: Exhibit 12 has Goodman referencing an email of Cumberland's. Is there an email we are meant to know something about?

Q: Exhibit 12 Cumberland/Goodman Texts, are the last three texts intentional?

A: Those additional messages were part of the exhibit in error and have been deleted.

Q: The jury instructions set forth that Scout can be guilty of manslaughter under an imperfect self-defense theory (i.e. that Scout recklessly or negligently formed the belief that they were justified in acting in self-defense OR that they recklessly or negligently employed excessive force). May prosecution teams concede murder and proceed on seeking guilt on imperfect self defense? Likewise, may defense teams concede acquittal and instead argue for manslaughter under imperfect self defense? In other words, may prosecution teams state in opening and proceed on their case stating that they are not seeking murder but instead manslaughter? Likewise, may defense teams state in opening and proceed through their case that they are not asking the jury to acquit but instead seeking a manslaughter verdict over murder? Or must the prosecution team argue for murder and the defense team argue for acquittal?

If the answer is that the prosecution team argue for murder and the defense team argue for acquittal, may teams argue for manslaughter in the alternative (e.g. Prosecution in closing: "we have shown murder beyond a reasonable doubt, but if you don't believe so, Scout's actions were still unreasonable and is guilty of manslaughter" or Defense in closing "we have shown that Scout acted in self defense, but even if you don't Scout's actions are not murder but instead manslaughter")

A: Prosecution teams must argue for murder, and defense teams must seek acquittal. However, in closing arguments, both teams may (but are not required to) argue for manslaughter in the alternative.

Q: Is Riley Truman left-handed? The circumstantial evidence regarding surgery to his left hand and actions with his left hand indicate he may be, but nothing definitive.

A: The materials stand as is.

Typos corrected:

Rayburn statement, line 146: "Charlie ~~d~~ spent"

Adren statement, line 182: "started ~~pushed~~ pushing"

Goodman statement, lines 42—44: "Many people in our community would have been good for the board, but Addy suggested that we talk to Riley Truman and Scout Cumberland ~~and to~~ and see if either of them were interested in running.

Exhibit 8: "Cumberland's ~~Knife~~ Gun"

Questions after v. 1.1:

Q: While looking over the case clarifications we noticed a discrepancy. In the 1st copy of Ex. 1 there appears to be an opening near the body that allows for a sightline of the shooting. In the new copy of EX. 1 this opening no longer exists. How is Robin Westin able to see Riley? Is there still an opening that we are misinterpreting?

Q: The new diagram of exhibit 1 is slightly confusing. Is there more than one door in the hallway? It looks like there may be 6 doors on either side of hallway. Could you please clarify where the door is and how many doors there are?

Q: In the revised exhibit 1, is that a door to the right of the blue star indicating Riley's body? In the original exhibit, it seemed like that was the door or at least opening in the wall where Riley apparently walked out, followed by Scout. In the new exhibit, it is not clear — to us at least — if that is meant to be a door, or a window, or an opaque panel. Can you clarify whether that is the door through which Riley and Scout exited the Board Meeting Room?

A: In editing the exhibit previously, the door was inadvertently omitted. It has been replaced. As indicated in Stipulation (g), the star indicates where Truman's body was found when Officer Rayburn arrived.

Q: The issue arose today as to whether Scout Cumberland would have had the duty to retreat before using deadly force, or whether (s)he could "stand his/her ground". The jury charge on the material is silent on this point. Also, a check of Arkansas law seems to indicate that the state enacted a "stand your ground" law, effective 7/18/2021, Ark. Code, sec. 5-2-607(b).

Should the jury charge be amended to address this issue one way or the other?

A: The instructions have been amended.

Q: In order to provide student attorney's the ability to impeach by omission, cases usually have some kind of language like the following from last year's nationals case - this was a stipulation:

"All witnesses had the opportunity to review their statements 30 minutes before trial and had nothing of significance to add."

In our state cases, we often see this kind of language in the Oath/Affirmation just before the witness signature line.

Will such a stipulation be added to this case?

A: No stipulation is necessary. All statements are considered signed on the morning of trial.

Q: I have a follow-up regarding the recently added information about character evidence. The new order says that "it is anticipated that both the prosecution and the defense will rely upon character evidence to establish their respective cases."

What if defense would like to *not* open the door and instead opt to try the case without offering any character evidence of Riley or the defendant? Is defense allowed to stipulate with the prosecution prior to trial, and discuss during pre-trial, that defense will not offer character evidence and thus prosecution would not be able to offer character evidence? Of course, defense would then waive its right to present character evidence during its case in chief.

A: We have added into the pretrial order that the teams may agree and stipulate in advance not offer any character evidence. However, teams must agree to this in advance and notify the Court of this agreement during pretrial matters.

Questions after v. 1.2

Q: Lines 165-166 of Charlie Goodman's statement include this sentence: "Scout just seemed tense and frustrated from the second Scout entered the room and sat down."

Is it supposed to be "from the second Riley entered the room"? If the goal of the sentence is to show that Scout appeared tense and frustrated from the moment they entered the room, a more natural sentence would be "Scout just seemed tense and frustrated from the second they entered the room and sat down." Not using a pronoun makes the sentence sound odd.

A: The statement is correct as is. We attempted to minimize the use of pronouns to reduce confusion, but admittedly, it does produce a few awkward sounding sentences.

Q: I have a simple question about the case. Page 75 of the PDF features a police department incident report concerning Charlie Goodman. It states his occupation as "retired doctor." Is the "retired" part intentional? In his witness statement, he says that he is a highly specialized doctor. On Line 23, he states "I love my job." This of course strongly implies that he is not retired.

A: The police report will be corrected to reflect that he is not retired.

Q: In Ex. 7 (dated July 18, 2022), Dr. Rose reports that she learned the significance of Riley Truman's intoxication and hand wound after reading the witness statements. Specifically, she mentions reading Drew Arden's testimony about a bar fight. The police report does not include any mention of Arden telling Alex Rayburn about the bar fight, and Drew Arden's witness statement is not signed until the day of trial. What statement is Dr. Rose referencing?

A: Both the police report and Rayburn's testimony have been updated to reflect that Arden told Rayburn about the fight.

Questions after v. 1.3

Q: We were reviewing the recent case changes and noticed that stipulation G was changed substantially. The Q/A documents suggests that the stipulation was changed to reflect that it should not suggest that witnesses did not have line-of-sight to see what they said they saw. However, the portion of the stipulation regarding the blue star was changed from "The blue star on the diagram indicates where Riley Truman's body was located when Officer Alex Rayburn arrived at the scene." to "The blue star was added by Officer Rayburn to indicate the location of Riley Truman's body when he arrived at the scene on December 2, 2021."

This change seems to modify the meaning of the stipulation from "this is where the body was" to "this is where Rayburn **says** the body was," which opens the exhibit to hearsay objections that it was not previously susceptible to. Did the committee intend to change this meaning? If not, could the language "to indicate" be changed to "and indicates" to maintain the original meaning and prevent the confusing argument that the body was not located where Rayburn said it was?

A: The language in the stipulation has been changed from "to indicate" to "and indicates."

Q: In the latest update, Alex Rayburns' statement and report were revised to include that Alex asked Drew Arden whether Riley had any history of being violent, and that Drew could recall only a single occasion where Riley had been in a fight...

However, it is inadmissible hearsay unless Drew Arden's statement is also revised and/or s/he testifies to this. On direct, it would be likely considered unfair extrapolation under R. 2.3. Did you intend to also revise Drew's statement to include that he told Rayburn this?

A: Portions of Arden's statement have been revised. Specifically, line 209—10 now read, "Of course, I didn't see what happened the day that Scout shot Riley. I wasn't there, and I only heard about it ~~later~~ when Officer Rayburn questioned me after the shooting. He said that he was looking for some background information on Scout and Riley."