

FINAL SUPPLEMENT TO CASE MATERIALS

Updated through January 19, 2006

The deadline for submitting questions has passed. No further questions will be considered. If you have any comments about answers provided in this memo, or if you have submitted a question before January 20, 2005, which does not appear in the supplement, please immediately email David Trevaskis at david.trevaskis@pabar.org and inform him of the omission. All questions submitted by the date noted above have been included.

THIS IS THE FINAL SUPPLEMENT AND IS THE OFFICIAL MEMO THAT MAY BE USED IN THE COMPETITION, AS PROVIDED BELOW:

Supplemental Materials – Evidentiary Value:

The supplemental clarifications may be used in all the same ways (including for impeachment and as testimony) that the main body of the case materials are used. Answers clarifying a witness statement are to be treated as follows: Where necessary, information will be attributed to a specific witness in which case the clarifying information becomes part of that witness' statement. If the clarifying information is not attributed to a single witness, assume that all witnesses have this knowledge. The practical implication of this is that if a witness is challenged as to his or her knowledge reflected in the statement, he or she may refer to these supplemental clarifications to show knowledge. (See Rule of Competition 3.3)

NOTE FOR FINAL SUPPLEMENT

1-19-06

Here is the third and final set of answers to all questions submitted about the 2006 mock trial competition. Questions have been divided into case clarifications and rule and evidentiary interpretations. As with the past years' supplements, most case clarification questions have been answered with a general response: ***"The case materials provide all of the information available to answer this question."***

That response sometimes means that there is enough information already in the problem to answer the question asked; more often, the response means that the question was not addressed in the case materials and the answer to the question is unnecessary for purposes of the competition. The problem committee has tried to fill in unintentional gaps in the case materials without creating too much new information that might burden teams preparing for the competition.

Teams should be careful if they try to elicit information by asking questions which the problem does not answer in detail because, on direct, it will often elicit an objection of "unfair extrapolation" and, if asked on cross exam, the questioner is stuck with the answer given. (Rule of Competition 4.6).

MISCELLANY:

11-27-05

1. We are participating in a scrimmage event against other teams in the competition. Is this allowed?

Yes, the Mock Trial Committee encourages teams to scrimmage each other, participate in the mock trial camps certain counties hold, and take advantage of any pre-statewide program competitions offered.

2. Our team wants to watch other teams in a pre-competition event being held in Pittsburgh. Does this violate the "No Scouting Rule"?

No. Teams who participate in camps and other open pre-statewide program competitions allow their teams to be observed by anyone in attendance. The "No Scouting" prohibition refers to the competition itself and these events are outside the competition scope.

3. Our team wants to use our laptop computers to take notes and store documents. Does this violate the rules by giving us an advantage over teams without laptops?

No. Teams who participate can use laptop computers as long as they are using them in accordance with the rules governing the use of notes and the use of documents.

1-10-06

4. We would like the Committee to reconsider its ruling about laptops, because of both the concern for schools without such resources and the fear they might be used to circumvent the rules of the competition.

The Committee has reconsidered the laptop issue and decided to reverse itself and not allow laptops to be used during the actual competition. The Committee decided that the concerns raised by veteran coaches and lawyers requires further reflection on this issue. For the 2006 Competition, no laptops may be used in the mock trials.

1-19-06

5. Are teams allowed to practice in the courthouse that they will be competing in if this gives the other participating teams a disadvantage due to the fact that they are unable or not allowed to do so as well?

There is no prohibition against such a practice under state rules. We do not allow scouting of opposing teams but scoping out the site is allowed. In some cases, teams are coached by courthouse based attorneys and the natural place for them to practice is in a courtroom. The only concern raised by your question is that some teams would be permitted court time and others not. This would be an unfair situation and we would hope the adults working with the team would recognize that and correct the situation immediately. We are unaware of any such situations, however, and thus there is no prohibition against courthouse practices.

6. There is a judge who teaches court transcription in the evening. He has asked to bring one of his transcription students to the mock trial to transcribe the proceedings as a practice. Neither team will get a copy of the transcription until after the competition is completed. Is there a problem with this?

No. As long as teams face the same circumstances, no problem arises. However, the reporter may not be asked to read back testimony since so our rules do not provide for that circumstance.

CASE CLARIFICATIONS

11-27-05

1. As regards Exhibits 3 and 4-- The last line of Exhibit 3 (cc: to Terese and Dani) ended up on the top of Exhibit 4 (the calendar).

That has been corrected on the website. If your exhibit shows this mistake, please print a new copy.

2. Can graphs of the data from the Prime Cuts Meat Company invoices (Exhibit 5) be presented to the court/jury?

No. Teams are limited to the exhibits in the problem.

3. Would it be possible to have a diagram of the café included as an exhibit or at least a detailed description of the floor plan?

No further exhibits will be provided.

4. My team feels that there should be a police report as part of the evidence in this case.

No police report will be provided.

5. There seems to be a misprint on exhibits 5-1 through 5-3. Instead of reading "oz.", they all read "ox." for the Pork Chops. Also confused about how they were priced. The first one, premium ground beef reads in lbs., but the rest do not. Are they the amount of pounds or the amount of pork chops?

There is a typo on the invoices—"ox" should be "oz". Only the ground beef is sold in pounds; the steaks, chicken breasts and pork chops are sold by unit at the preset weight.

6. Is it possible to get a copy of the autopsy report for Terese Jameson?

No further exhibits will be provided.

1-10-06

7. Would it be possible to provide a floor-plan of the Terrible Towel Cafe and the outside area? It would go a long way in clarifying distances, points of view, etc.

As noted in number 6 above, no further exhibits will be provided.

11-27-05

The answer to all of the following questions (Question) is:

"The case materials provide all of the information available to answer this question."

As noted, this response sometimes means there is enough information already in the problem; more often, this response means the question was not addressed in the case materials and the answer to the question is unnecessary for purposes of this competition.

1. In Exhibit 4 (the calendar): On the 5th of October in the exhibit, instead of just the time that Ms. Jameson arrived and left, there is also a "T". It looks like this: "T-8-6". What does this "T" mean?

2. EXHIBIT 4: THE OCTOBER CALENDAR—is this Ms. Jameson's work schedule?

3. Is there a map of the restaurant and the adjacent alley available, showing the position of the dumpster to the "back door"? Is there an alley right next to the restaurant, that connects to one running behind the Terrible Towel, or do people have to walk around a (distant?) corner to get to the alley?

4. Where was the brick found? Was the brick on the body, under the body, or even near the body?

5. Regarding Exhibit 4. It shows that Teresa Jameson worked on Saturday, October 30, 2004 (8a-7p); however, Dani Jameson's statement shows that Teresa was fired on October 29th. Is this a typo or did you intend to have the calendar show that she worked on October 30th?

1-10-06

6. When did Teaberry Olson find out that Therese Jamison was homeless?

7. In exhibit 4 and in Dani Jameson's witness statement (lines 95 and 96) it implies that the Terrible Towel opens at 8:00 on Saturdays, but when Dani and her mom go to visit on November 20, which is a Saturday, they get there at 9:00 and the doors are locked and it's closed. Is there a typo?

8 . What kind of dumpster was Terese Jameson thrown into?

9. What was the size of the dumpster?

10 Is there a picture of the dumpster?

11. Is there a diagram of the ally?

12. What is the height, and weight of Terese Jameson?

13. What is the height, and weight of Teaberry Olson?

14. Was there an indentation in Terese Jameson forehead where the brick hit?

15. Can you provide us with a map showing the relative position of the dumpster, the back of the Terrible Towel and the meat truck?

16. Can the defense argue that if Tee committed this crime he would have to have blood on him and none is mentioned?

17. Were there any other bricks in the dumpster and if so were they tested for blood or fingerprints?

18. Is Big Dog's sordid history relevant to the case against TEE ?

19. On Exhibit 1, the brick, are we to assume the lighter shaded area is blood and the bright pieces are skull fragments?

20. In Exhibit 6, the Community Hero Nomination Letter, it says the award would be presented on December 1, 2004. In Teaberry Olson's affidavit she says in lines 190-191, "Not to mention the fact that I would never get that Community Hero award if it got around..." Are we to assume that she did NOT get the Community Hero Award?

21. The dumpster in the alley behind the cafe, is it a high, thin dumpster or a low, wide dumpster? We are asking this to see how hard it would be to place a body into the dumpster, and if Teaberry had to THROW the brick UP, into the dumpster or simply tossed it over the side.

22. Is it possible to find out the location of the 6 fingerprints on that brick, because it is pertinent to establishing how the brick was held and by whom.

1-19-06

23. It states in the case that Exhibit One is a depiction of the brick found with the victim's body. Where would the actual brick be located?
24. Where on the brick were the fingerprints of Olsen located?
25. Is the 'back alley' where the body was found in the actual back of the building or to its side?
26. What time does Teaberry finish making the meat patties?
27. Did Officer Moats take the statements of the witnesses besides the defendant? (The case seems to imply that he did.)
28. Are we allowed to describe the alleyway, since it is the crime scene, and can the opposing council contradict our description?
29. Was a police report filed in this case?

RULE and EVIDENTIARY QUESTIONS

11-27-05

1. Can a single teacher [or attorney] coach two teams?

Under the Rules of Competition, A4 and A5, multiple teams from the same school are viewed as distinct. They may not communicate with each other about other teams once the competition begins since that would invoke our anti-scouting prohibition. Thus, for practical purposes, a single teacher and a single lawyer might train and prepare two teams together, having them go through the same exercises and even scrimmage each other or scrimmage other teams. However, once either of those coaches took the team to a competition trial, they could not take the other team to another competition, since they might either see the team their other team competed with or a team their other team might play in the future. Even if the coaches didn't share any information between the two teams about the opponent, the appearance would be otherwise and this would directly violate the no scouting rules.

It seems possible that a school with one primary teacher coach and two teams might enlist another teacher to basically chaperone for one team while the primary teacher coach takes care of the other team. Perhaps the lawyer coach would fill the main support role at the competition for that other team. But that lawyer coach would then be unavailable to accompany any other team in future matches, just as the teacher coach would be unavailable to that team.

Once the two teams from the same school have had their first trials, they need to be reminded that they cannot share information about opposing teams across the two teams. A difficult situation would arise for a teacher coach or lawyer coach who works with one team that is eliminated and then has an interest in a remaining team that goes up against a team that the eliminated team played. The teacher or lawyer coach could observe (teams out of the competition may observe without violating the no scouting rules) but could not coach.

2. Can information, cases, opinions cited in the problem be used in the trial?

Our Rules clearly state which materials may be used in the competition. Teams are welcome to study anything, and the Mock Trial Committee hopes students branch out and learn much more about the issues involved in this case than what is narrowly used for the competition purposes, but they are limited to only what is in the problem package for the actual competition. Thus, if an opinion is given and a case is cited in the case materials, that opinion and even the case citation might be used during trial if the Rules of Evidence allow such action. HOWEVER, teams are restricted by the Rules of Competition from researching the cited opinions for use during the trial and any reference to the fruits of such resource would be a rule violation.

1-10-06

3. Can you file a Motion to Pre-admit in which you inform the court of your desire to use certain items of tangible evidence (exhibits in the case materials) during your opening statement ?

No. Rule of Competition 6.20 explicitly prohibits pretrial motions.

4. Are teams permitted to make the objection: "Objection, Narrative" during the opposing team's direct examination? If this is not permitted, should a sidebar be called?

Technically, this objection is not specifically prohibited under our Rules (See Rule of Evidence 611(e)). However, an objection that the witness is providing a narrative answer may be more appropriately objected to as being non-responsive, irrelevant and/or an unfair extrapolation. These are all objections specifically permitted under Rule 611(e).

5. Are the Statement of Facts on page 1 agreed to and have the evidentiary value as the Stipulations? If not, how may the Statement of Facts be used in competition?

The Statement of Facts has no evidentiary value; it is neither an exhibit, a witness statement nor has it been stipulated to. The Statement of Facts is merely a summary of the case narrative created to introduce the reader to the case. To the extent you want to introduce any information included in the Statement of Facts, such information must independently derive from a witness statement, exhibit or stipulation.

6. My attorney would like to know whether witnesses are allowed to plead the fifth.

No. As for the defendant, where s/he chooses to testify, s/he waives her/his Fifth Amendment privilege against self-incrimination. As to the other witnesses called to testify, they are not exonerated from answering questions merely upon the declaration that in so doing it would be self-incriminating. The trial judge makes that decision after evaluating the claim. For the purposes of this case, presume that the trial judge will not permit any witnesses to invoke their Fifth Amendment rights and the witnesses are forbidden from raising their Fifth Amendment rights during the trials.

7. We would like to show Exhibit 1 to the jury during our opening statement. It is commonplace for a party to show a jury key pieces of evidence that will later be authenticated. In this case, the parties have stipulated that all exhibits are authentic; however, we are prohibited from reading stipulations to the jury until after our opening. We are not permitted to file a pretrial motion so we can not get a ruling prior to our opening.

Exhibits may not be shown to the jury unless they have been admitted into evidence. However, the brick itself (exhibit 1) is not admitted. It is the findings of the autopsy report that are admitted, not the brick. No foundation has been laid at the opening for how the brick was discovered, tested or any other issue of concern. Thus, exhibits may not be shown to the jury during the opening statements.

8. Can we certify D.J Moats as an expert witness?

You may attempt to qualify Officer Moats as an expert as permitted under Rule of Competition 4.9 . If the defendant does not object to Moats' expert status, s/he will be permitted to offer an expert opinion. If the defendant objects, It is up to the trial judge whether to accept Officer Moats as an expert in whatever field you believe Officer Moats has expertise.

The defendant in this case can challenge expert status, arguing lack of foundation under Rule 4.9, or that the foundation laid is not sufficient to show that Officer Moats has the required knowledge, skill, experience, training, or education required to qualify as an expert under Rule of Evidence 702.

Where the defendants object, the judge may decide that Officer Moats does have sufficient qualifications to testify as an expert without additional questioning. Alternatively, the judge may ask the prosecution to lay a foundation to show why Officer Moats is an expert; that is, the judge is directing the prosecution to ask Officer Moats some more questions to show how s/he has the necessary knowledge, skill, experience, training, or education to testify as an expert in the field at issue.

In a real trial, the prosecution would first lay foundation explaining the witness' knowledge, skill, experience, training, or education. The judge would then give the defendant the opportunity to "voir dire" the witness as to his or her expert credentials. Thereafter, the judge would decide whether the witness is an expert.

Our Mock Trial Rules provide a slightly different scenario. Under Rule of Competition 4.3, we prohibit voir dire by the challenging party in the technical sense of the word only. This Rule does permit the opposing team to challenge expert qualifications on cross examination. The purpose of this Rule is to avoid the mini trial of voir dire on credentials and have all of the opposing party's questions related to the witness' qualifications handled on cross examination. It is important to note that Rule 4.3 is not meant to prohibit the Prosecution from laying foundation to prove Officer Moats' expertise, nor to prohibit the defendant from challenging Officer Moats' credentials.

Thus, if the judge directs the prosecution to lay a foundation, the judge might thereafter rule on whether or not Officer Moats is an expert, without additional questioning by the defendant. If the judge rules that Officer Moats is an expert, the defendants may still attack his/her credentials on cross examination. (The defendant may also do this even if the judge qualified Officer Moats as an expert without the prosecution having been directed to lay a foundation.)

Teams should be prepared for the presiding judge to handle the issue in the traditional manner; that is, the judge might direct that the defendant conduct voir dire on expert credentials and then make a decision as to whether Officer Moats qualifies as an expert.

All testimony relating to the qualification of Officer Moats as an expert will be counted against a team's time allotment.

1-19-06

9. In the answer to Rule & Evidentiary Question #8 ... it was stated that although the rules do not permit voir dire questions except on cross, teams should be prepared for some judges unfamiliar with the rules of competition to permit voir dire by opposing counsel before cross. That same answer later stated that all testimony concerning the qualification of an expert witness will be counted against "a team's time allotment." To which team were you referring? Will all time be charged to the team offering the expert, regardless of which team is doing the questioning, or will time be charged against each team according to the length of their own questioning? Additionally, does the answer change depending on whether the voir dire is permitted before cross (seemingly on the clock of the team offering the expert) or whether the rules are followed and the voir dire is not permitted until cross (seemingly on the clock of the team conducting cross)?

Time will be charged against whichever team is conducting the questioning regardless of the particular order that the questioning might occur.

10. Rule 602 states that a witness cannot testify to a matter of which he or she has no personal knowledge. In this rule, would "personal knowledge" be the same thing as "first-hand knowledge" or is there a wider scope to "personal knowledge?"

You seem to be wondering whether someone can have personal knowledge of a fact even if they don't have first-hand knowledge. Without providing a specific example, it is impossible to provide an answer

to your question. Ultimately, should your team raise an objection to testimony under Rule 602, the trial judge will decide the scope of "personal knowledge."

11. Does the "Dead Man's Statute" apply in this case? If so the witnesses can't testify to anything said by Terese Jameson.

No. The Dead Man's Act applies only to certain types of civil actions. Our Mock Trial Rules of Evidence fully address issues of hearsay and any possible exceptions that may arise.

12. Can Officer Moats be cross-examined about the statements of other witnesses, since he presumably interviewed the witnesses and took their statements?

If you are asking whether Officer Moats can be asked about the content of the other witnesses' statements/affidavits, the answer is no. Rule of Competition 4.5 is explicit: "A witness may not be asked questions about information contained in another witness' statement/affidavit." Officer Moats is limited to testifying to information contained in his/her statement/affidavit.