1/29/07

FINAL SUPPLEMENT TO CASE MATERIALS

Updated through January 26, 2007

The deadline for submitting questions was January 26, 2007 at 12 noon. 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 26, 2007, 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 SUPPLEMENT

Here are the answers to all questions submitted about the 2007 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:

1/4/07

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 practice event before the real competition begins. 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?

   You may not use laptops. The Committee decided in 2006 that the concerns raised by veteran coaches and lawyers requires further reflection on this issue and, after such reflection, the rule is that for the 2007 Competition, no laptops may be used in the mock trials.

4. 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.

5. 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

1/4/07

1. … Exhibit 6, the "M_SPACE" page, has not had all of its "MySpace" elements removed. … There is also a significant error in Exhibit 7. Both the freshman and senior year grades on Jamie Anderson's transcript are designated as "Academic Year Fall 2002/Spring 2003." …

   These errors were corrected within the first week that the case was posted on the PBA website. We additionally note that another correction was made to Exhibit 7 (school transcript); the current

version places back into Exhibit 7 the correct depiction of Jamie's class rank for sophomore and junior years. The updated version has Jamie ranked "T1/223" and "T1/224." The version posted earlier on October 24 omitted the "T" (indicating a tie in the rankings). Please make sure you are using current versions of these exhibits.

2. The complaint, answer and new matter and reply are not signed. Does this have significance? Can we still use them to bolster our case or diminish our opponents?

   The documents were left unsigned by mistake and should be considered signed for the competition. How you use any document is governed by the Mock Trial Rules of Competition.

3. The language which states: "The crossed off word on the inside cover of Plaintiff's eleventh grade text ... depicted in Exhibit 8, is visible upon close inspection" seems to be inaccurate, because we are unable to see, even upon "close inspection" this word in the exhibit …. The stipulation is also inaccurate because the text book belongs to the Defendant, not the Plaintiff.

   That the crossed off word is visible is a STIPULATED FACT. The identification of the textbook as belonging to Plaintiff was a mistake and has since been corrected in the Stipulation, ¶ 10 (p. 17 of case materials). This mistake of identification was repeated in the Table of Contents and Exhibit List (p. 36 of case materials). These pages were corrected as well to identify the textbook as the Defendant's, not Plaintiff Jamie Anderson's. There are no changes to Exhibit 8 (book cover scan) itself, only to how it is described in the Table of Contents and Exhibit list.

4. My students asked a question about the dates on the exhibits. The exhibits regarding the chat room are dated May [in the Table of Contents and Exhibit List] but the statements refer to March. Can this be clarified?

   The reference to May in the Table of Contents listing the exhibits, as well as the Exhibit List (p. 36 of case materials), identifying Exhibits 1 through 5, are wrong. The correct month is March, as indicated throughout the case materials, including in all pleadings, witness statements and exhibits.

5. Please note the following typographical corrections:

   page 8 ¶ 27 should be "part" not party.

   page 20, line 4, should be "Barrister" instead of "Pa."

   page, 20, line 24, "choosing user" should be "choosing a user"

   page 24, line 44 told him "to" forward the email

   page 26, line 104, change M_space to "M_Space" to be consistent

   page 27, line 136, plural of cafe is "cafes" rather than cafe's?

   page 30, line 98, her should be "here"

   page 33, line 67, "since in new the IP address" should be "since I knew the IP address"

   page 33, line 73, delete first of the "filled"s in that line.

6. Is Barrister a county or a State? In the past it's been Barrister, PA.

   Barrister is a state. As noted above, page 20, line 4, should read "Barrister" instead of "Pa."

7. QUESTIONS REGARDING USE OF LHS COMPUTER EMAIL/CHAT ROOM:

   - On page 26, lines 124-126 on the Phoenix Hopp statement, the text says, "Clifford explained that only one computer can be logged on to the school email or chat room at a time and also

only one registered school user can be logged in to the school system at any time." This was confusing to us because of its multiple interpretations. …Does this mean a user name can only be logged on to one computer at a time and that only one instance of that name can be logged on to the e-mail/chat room at a time?

- Can several different students be logged on to the e-mail/ chat room using different computers and different user names at the school at a time?
- Can you observe the chat room conversation without appearing in the chat room exhibits 1-4?
- Do you have to login separately to the chat room to view the chat room discussion?
- Can opening separate Internet Explorer windows allow one operator to act as two identities?
- Is it possible to remote login - use one terminal to control the operations of another terminal to appear as two separate users?

A registered user can log on to the LHS system from any school computer, provided another user is not also logged on to the school system at that same computer; i.e., only one registered user may be logged on at any one time on a single school computer. Also, if a user is logged on, that same user cannot logon to the school system (using the same username/password) from another computer until that username is logged out. Thus, for example, if there are thirty working school computers, the maximum number of unique users who can be logged on at any one time at those computers is thirty. There is no remote login for purposes of this case.

In addition, a user can only observe chat room discussions once he or she logs on to the LHS system and then "enters" the chat room. A user's entrance into or exit from a chat room is depicted in the chat room narrative and available for view to all other users who have entered the chat room.

Please refer to Stipulation numbers 4, 5 and 6.

8. QUESTIONS ABOUT CHAT ROOM TRANSCRIPTS:

- Were exhibits 1-4 edited in anyway by Pat Clifford to remove other student logins and logouts?
- Were exhibits 1-4 edited in anyway by Pat Clifford to remove extraneous conversation? If not Pat Clifford, who did?

The use of three asterisks (* *) in the transcripts shown in Exhibits 1 through 4 indicate portions of the transcripts that were omitted for the purposes of trial. The narrative that was removed was extraneous and not necessary to the trial of this case. Both parties had access during discovery to the complete content of all chat room transcripts and have agreed to the final editing of these Exhibits.*

1/21/07

9. Is the senior class chat room limited to only senior students? Thus, [can] other students at the school who have registered usernames and passwords, but are not seniors, … access these chat rooms[?]

Any registered user can enter any chat room.

10. … when a user logs into the LHS chat room, can he/she see previously entered dialogue (statements posted before the user logged in)?

This is addressed in Stipulation #5: "... The contents of any chat room discussion remain viewable for the entire day that they are posted. ..."

1/26/07

11. How do we pronounce the name “Gugel”?

Like Google / googol

12. Stipulation #4 designates that "only registered student users... can access the system. . . ." Stipulation #6 states that "any registered student user who logs onto the school computer network system can not log on again at the same or another computer, using the same username and password, until they log out and cease their current session." However in the Officer's affidavit, lines 125-26, it states that Clifford had explained that "only one registered school user can be logged in to the school system at any time." Is the term "registered user" defined differently from "username," or are they the same thing? We ask this because the Officer's cited statement indicates an apparent discrepancy from the stipulation #6 in that the stipulation states that the same username and password can not be used at the same time, but the Officer states that only one registered user can be logged on at the same time. Is this intentional, or is there confusion as a result of the lack of a definition for registered user?

The Supplemental Materials [question] #7 dated 1/4/07 addresses this issue by stating that the "user cannot log on to the school system (using the same username/password) from another computer until that username is logged out." This appears to conflict with the Officer's cited statement as well.

Officer Hopp’s statements in lines 125-26 do not conflict with the Stipulations or the supplemental answers provided above in question 7. For the purpose of this problem, each registered user is/was an LHS student with an unique username and password. Thus, to some degree, the labels registered user and username are used interchangeably.

13. In Clifford's statement, line 19, it states that ". . . students could access the Internet without needing to log on." Does this mean that they can also enter into a chat without the logon, contrary to the supplemental materials 1/4/07 and the Officer's statement, or is this an intentional conflict?

Stipulation # 5 of the materials clearly states that all students registered to use the computer network system must be logged on to view or participate in live chat room discussions. There is no conflict between the Officer’s statement and the Stipulations on chat room usage.

14. … In the response to "Questions regarding use of LHS computer email/chat room," we are a bit confused about remote login. [Question 7 above] We thought we were clear on this until the last sentence of the response, "There is no remote login for purposes of this case." Jamie Anderson would login to the senior chat room from home, is this not a remote login? Sorry for the confusion on our part.

Your confusion is understandable. The answer you are confused about – “there is no remote login for purposes of this case” – was provided to the following question posed above [question 7]: “Is it possible to remote login - use one terminal to control the operations of another terminal to appear as two separate users?” The answer provided above was meant to address that question only.

Registered users can use a remote login, as Jamie did from her/his home, to access the LHS school system (email and chat rooms), just not in the manner asked in Question 7..

1/4/07

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. On Exhibit 2, should it be FF2005, not FF2002?
2. Referring to exhibit 2, Near the end Southernbell says "Fatalflaw been resurrected from last year, apparently. Hey shockwave, you know FF2002? Is FF2002 in error. Should it be FF*2005* for the year the name was used?
3. Jamie Anderson - Line 123 - mentions 8th grade Taylor Williams - Line 65 - mentions 7th grade for the same incident. Which grade is it?
4. We have a question about the case materials, specifically about the M_Space subscriber in Exhibit 6: Is s/he jammin or jamming? That is, jammin, we are associating with the plaintiff, but jamming could be anyone.
5. Do the librarians stay in the Library lab ordinarily?
6. Were the librarians in the Lab on March 6th?
7. How much did Jamie Anderson weigh between the 2005-2006 school year?
8. When Jamie Anderson and Taylor Williams were friends, were there any times when Williams went over to Anderson's house to play or something to that nature?
9. How tall was Anderson between the 2005-2006 school year?

1/21/07

10. There is the issue of who did the spilling of the liquid upon Jamie, Jamie claims it was Taylor while Taylor claims it was his/her friend. [Who did it?]

1/26/07

11. It says in the packet that Jamie was told by her doctor to attend therapy sessions twice a week and to take medication (Lamaprox). In Jamie's statement she said that because of problems with her parents insurance she had to stop therapy. Did she also stop taking her prescribed medication? …

RULE and EVIDENTIARY QUESTIONS

1/4/07

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.

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. Since this is bifurcated, will arguments on damages be subject to a motion to strike?

   Rule 611 (f) states that a motion to strike may be made after a successful objection. Permitted objections are listed in Rule 611 (e).

6. The judge uses the wrong standard for civil case - s/he says "beyond a preponderance of the evidence" (p.12, line 5). Is this a mistake or can we use that standard?

   The statute states the standard for the case.

7. Are attorneys permitted to take exhibits found within the case materials and enlarge them? Also, given the complexities of the case, are we permitted to develop a timeline of the events in question, enlarge it, and use it during opening statements and closing arguments? I suspect we would not be able to use it within the questioning of witnesses, but I would like to know if that is a possibility as well.

   Rule of Competition 5.1 specifically prohibits enlarging exhibits. Creating and presenting a timeline as a physical reference for the jury is also prohibited.

1/21/07

NOTE: The following question and answer was posted on the mock trial listserv January 10, 2007 and is reproduced here for the convenience of the teams.

8. We just finished the Pitt tournament and it seems that there is a disagreement about hearsay issues and the [admission] of exhibits 1-6. It seemed as if the cases turned on whether the exhibits were considered hearsay or not, and while they were universally considered hearsay, sometimes they were admitted and sometimes not. Is there anything you can do to make this process less random?

   YES. THE STATEMENTS ALLEGEDLY MADE BY DEFENDANT IN THESE ELECTRONICALLY STORED RECORDS (EXHIBITS 1 THROUGH 6) MIGHT BE CONSIDERED OUTSIDE THE HEARSAY RULE AS ADMISSIONS BY A PARTY OPPONENT. Rule of Evidence 801(d)(2). ALTERNATIVELY, TO THE EXTENT THE STATEMENTS ARE CONSIDERED HEARSAY, THEY FALL WITHIN THE BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE. Rule of Evidence 803(6). [fn]

   SINCE THE PARTIES STIPULATE AS TO THE AUTHENTICITY OF THESE EXHIBITS (Stipulation No. 2), THE EFFECT OF THIS FINDING BY THE MOCK TRIAL PROBLEM COMMITTEE IS THAT NO HEARSAY OBJECTION CAN BE RAISED TO THESE EXHIBITS AND THEY MUST BE ADMITTED IN TO EVIDENCE.

   Though the Committee is reluctant to take this interesting evidentiary issue out of the hands of the presiding judge, the consequence of a ruling precluding this evidence would be that the plaintiff would be unable to present his/her case; i.e. cyberstalking via electronic communication.

   [fn] For additional discussion on the hearsay issue in the context of electronic records, see the following sources: Ohlbaum on the Pennsylvania Rules of Evidence § 803.6(18); Commonwealth v. Corradino, 588 A.2d 936 (Pa. Super. 1991); Adam Wolfson, Electronic Fingerprints, 104 Mich. L. Rev. 151, 159 (2005); J. Shane Givens, The Admissibility of Electronic Evidence at Trial, 34 Cumb. L. Rev. 95 (2003); Anthony J. Dreyer, The Admissibility of Electronic Mail under the Business Records Exception of the Federal Rules of Evidence, 64 Fordham L. Rev. 2285 (1996).

9. In the new clarification on the hearsay in exhibits 1-6 [question 8 above], does this mean that we CAN NOT raise [an] objection on other grounds than hearsay? Also, can we object to specific statements in the exhibits including Fatalflaw's, statements of other persons, and notations on the page both/either before and/or after being admitted into evidence?

   Question 8 refers only to hearsay objections.

   As to your other question, the clear spirit and intent of the Committee's answer to Question 8 is to avoid a situation where the content of Exhibits 1-6 are not permitted at trial. The Committee has concluded that the Plaintiff will be unable to present a case if these exhibits are not admitted into evidence since plaintiff's cause of action (cyberstalking) is based upon their existence.

10. Should exhibit 6 (M_SPACE) also be considered hearsay because the author of it is untraceable?

    Please refer to questions 8 and 9 above. As to traceability, we note that the M_Space page (Exhibit 6) was created by a person named Jammin Gugel with an email address at user94040@KZMail.com. Whether that user name and email address can be linked/traced to any one person is a question of fact and an issue in the case.

11. Can Phoenix Hopp be entered [qualified] as an expert witness?

You may attempt to qualify a witness as an expert as permitted under Rule of Competition 4.9. If the other side does not object to the witness' 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 the witness as an expert in whatever field you believe the witness has expertise.

The other side may challenge expert status by arguing lack of foundation under Rule 4.9, or that the foundation laid is not sufficient to show that Hopp has the required knowledge, skill, experience, training, or education required to qualify as an expert under Rule of Evidence 702.

Where the opposing party objects, the judge may decide that the witness does have sufficient qualifications to testify as an expert without additional questioning. Alternatively, the judge may ask the side offering the expert to lay a foundation to show why the witness is an expert; that is, the judge is directing the presenting side to ask its witness 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 side offering the witness would first lay foundation explaining the witness' knowledge, skill, experience, training, or education. The judge would then give the other side 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 any team from laying foundation to prove a witness' expertise, nor to prohibit the other side from challenging that witness' credentials.

Thus, if the judge directs the offering side to lay a foundation, the judge might thereafter rule on whether or not the witness is an expert, without additional questioning by the other side. If the judge rules that the witness is an expert, the other side may still attack his/her credentials on cross examination. (The other side may also do this even if the judge qualified the witness as an expert without the offering side 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 other side conduct a short voir dire on expert credentials and then make a decision as to whether the witness qualifies as an expert.

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

1/26/07

12. Your explanation at the end of the last supplement [question 11 above] regarding expert witness qualification is confusing. If a judge orders "voir dire" the way we actually do it in real court and for example plaintiff takes 3 minutes on its voir dire and defense takes two minutes each side has three or two minutes respectively subtracted from its OWN time, right? In other words there is never a situation where the questioning by one side counts on the other team's clock right? …

    By the way if a judge makes this mistake it might be better to suggest that the kids tell the judge that this is done differently in mock trial rather than just let the judge do it differently than all the other trials.

You are correct that any questioning by an attorney during voir dire of a witness is counted against the time of the questioning attorney's team. So you are correct that there is never a situation when the questioning by one side counts on the other team's clock.

If a judge commences voir dire in the incorrect manner, it is appropriate for a team's attorney to inform the judge of the mock trial procedure, citing to the Rules of Competition and/or this Supplement.

13. Is it an issue that some communications are "intranet" and some are e-mail via "internet" connections?

    Without knowing the precise "issue" you are raising, we are unable provide a blanket yes or no answer; however, the Committee will state that generally, it was not meant to be an issue.

14. Can you have separate plaintiff and defense teams within the same school?

    Yes. Please refer to Rules of Competition 6.7 and 6.10. Please note that any team advancing to the State Finals, however, will have to reduce its roster to no more than 8 students.