

1/25/08

FINAL SUPPLEMENT TO CASE MATERIALS

Updated through January 22, 2008

The deadline for submitting questions was January 22, 2008 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 noon January 22, 2008 that does not appear in this supplement please contact David Trevaskis immediately at david.trevaskis@pabar.org. All questions submitted by the date noted above have been included in this memo.

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

Supplement Materials – Evidentiary Value:

The supplemental clarifications may be used in all the same ways that the main body of the case materials are used (including for impeachment and as testimony). 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 TO THE SUPPLEMENT

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 at trial if they ask questions that the problem does not answer in detail because, on direct examination, such answers might elicit an "unfair extrapolation" objection and, if asked on cross exam, the questioner is stuck with the answer given. (Rule of Competition 4.6)

MISCELLANY:

1. Many teams noted the math errors in Exhibit 2 (Bank Statement). This Exhibit has now been revised for a third time and hopefully all math errors have been corrected. The errors were not substantive to the case; nevertheless, please make sure you are using the most up-to-date version of Exhibit 2 (the date in the lower right hand corner should say "revised 12/5/07.") We apologize for our errors; there is a very good reason we are attorneys and not accountants.
2. May we assume that the fonts used as handwriting for the different witness personalities are consistent throughout the case, and may we derive conclusions from these differences in "handwriting"?

Assume that all handwriting is consistent for each witness. The handwriting/signatures of witnesses are not an issue in the case.

3. Question concerning gender: The ransom note (Exhibit 1) uses the line "\$250,000 to be wired off-shore or **s/he** will be off'd." Can a team make an issue or take advantage of the unspecified gender in the ransom note as a defense argument.

No.

4. [Regarding the handwriting/fonts], you stated in the second supplement, under miscellany 2 [above], that the handwriting/signature of the witnesses is not an issue in the case and that they are consistent for each witness. [Can you clarify this for us]?

The different fonts used for witness signatures and other examples of witness writing in the exhibits were intended to be consistent across witnesses. Any inconsistencies are unintentional and as such, teams may not raise the issue of consistent/inconsistent signatures/writings (via the fonts used) as evidence.

5. Are we to assume that Jaden finds out about the ransom email from the police after s/he has been arrested and before her/his statement is taken?

Though the materials do not indicate from whom Jaden found out about the ransom email, Jaden clearly came to know about it at some point in time early in the proceedings since it is mentioned in the criminal complaint and Jaden's attorneys would have had access to it prior to the date of her/his witness statement.

CASE CLARIFICATIONS (Answers Provided):

1. Can you give us a phonetic pronunciation of *Kiran Taufique*?

Kear - in Tau – feek

2. Stipulations at #7 it says Exhibit 7 is a photo of an amulet but Exhibit 7 is a letter.

Stipulation 7 should identify Exhibit 9 as depicting the amulet.

3. Witness statement of Shae Reynolds. Page 18 line 16 states, "Cleo explained that the after-prom party was supposed to be at the home of Kiran's fiend, Morgan Kincaid." Is this supposed to say Fiend or friend?

Friend

4. Is Morgan Kincaid's gender female?

The case materials indicate Morgan is female.

5. Should LEX be referred to phonetically ("lex") or by its initials ("el-ee-ex")?

Phonetically.

6. [When Kiran and Cleo refer to "a blank check" for the limo], is this blank check with \$1,500 as the amount and no pay to the order of or indeed a blank check with nothing other than a signature of Cleo?

As gleaned from various witness statements, the "Pay to the Order Of" portion of the check was blank when Cleo gave the check to Kiran. The check was (necessarily) signed by Cleo for the "entire amount." (Cleo lines 98-99; Kiran line 110; Shae lines 188-89).

CASE CLARIFICATIONS (No Answer Provided):

The answer to all of the following questions 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. Does Jaden have any present employment, or is s/he unemployed?
2. In Officer Shae Reynolds' statement on page 19, s/he says that the email from Exhibit 1 "did not have a subject line" (78). He/she also says that the email was sent at 11:07 am (79). However, Exhibit 1 shows an email with a subject line and a time of 11:04:23 am. Is this a mistake or intentional?
3. In Detective Reynolds' statement, he/she says the ransom email from Openhandemptytree@kmail.com was sent at 11.07 am. In Exhibit 1, the sent time appears as 11.04 am. Which is correct?
4. In Cleo's statement, s/he refers to LEX as "Lessons" Eternally Extolled. Everywhere else the name of the club appears as "Learning" Eternally Extolled. Which is it or is this a deliberate misnomer?
5. Can you supply Kiran's body weight as well as whether or not Sinclair's vehicle remote control opens the trunk?
6. Could you supply additional information on the interaction between GHB and alcohol when both consumed, specifically the rate of metabolization and synergistic effects?
7. As regards "Exhibit 3" ...: Is Sinclair left or right-handed, and are the fingerprints on the bumper from his left or right hand?
8. Hello, our team noticed that in Shae Reynolds' statement on lines 78 and 79 it was stated that the email did not have a subject line and was sent at 11:07 AM but the exhibit does have a subject line and it's timed at 11:04:23 AM. Is this an intended inconsistency or an error?
9. In Cleo's statement s/he says that when she woke up and saw that Kiran was not home, Kiran's car was also not there. Where was the car? ...

10. Does the last line of the e-mail contained a type-o error? Saying that Kiran would be blamed doesn't make sense. Does this need to be corrected?
11. In Exhibit 4, Kiran's blood alcohol content at 2:06 pm the day after the kidnapping is stated to be at .01. Given that it has been at least 12 hours since Kiran had had alcohol, and the rate of elimination, he/she should not have had this much alcohol show up in the lab report. Could we have a clarification please?
12. The TV schedule shows the Rocky Marathon starting at 11:30, what was showing before that – more Rocky or another program?
13. How old was Morgan Kincaid on the day of the Prom?
14. What happened to Kiran's car? – It was driven from Kiran's house, not parked at Morgan's but not identified at Jaden's.
15. What is the value of Jaden's primary mortgage?
16. Where are the bank wire transfers going in the bank statement exhibit?
17. On page 13, line 33 shouldn't the word "lessons" be "learning"; on page 23, line 26 shouldn't the word "boon" be "boom"; on page 19, line 79 shouldn't "11:07pm" be "11:04pm"?
18. Map of Jaden's house as seen by Cleo through the window?
19. Distance from Cleo's house to Jaden's house, Morgan's house to Jaden's house and Cleo's house to Morgan's house, in time or mileage?
20. Are the fingerprints found on the car the ONLY prints found on the car?

RULE and EVIDENTIARY QUESTIONS:

1. The e-mail ransom note [Exhibit 1] seems to be essential to the [Commonwealth's] case, yet it is obviously hearsay. Last year, the State Committee decided to state that the e-mail must be admitted by the court, in spite of its hearsay issues. Is this going to be done again?

You are correct that the issue of hearsay in the email raises the same issue that arose last year; that is, a vital piece of evidence may be held inadmissible at trial by the presiding judge on hearsay grounds. Due to the importance of the evidence at issue to the Commonwealth's case, and the potential inconsistency of presiding judge rulings on the hearsay issue, the Committee has decided to take this issue out of play by including the following language to the parties' Stipulation::

STIPULATION

8. EXHIBIT 1 (RANSOM EMAIL) IS A "RECORD OF REGULARLY CONDUCTED ACTIVITY" AS THAT TERM IS USED UNDER RULE OF EVIDENCE (PA MOCK TRIAL VERSION) 803(6).

2. The ransom note is [discussed] in the statement of facts. Does that mean that witnesses may testify about the e-mail?

No. Witnesses may only testify about what is mentioned in her/his witness statement. In addition, to the extent the witness statement demonstrates or implies that the witness has knowledge about an exhibit, then that witness could testify about that exhibit. Please consult Rule of Competition 4.4.

3. In reviewing the materials, I noticed a clear search and seizure issue in connection with searching Kiran's room. An argument can be made that he/she had an expectation of privacy in her own room. ... In spite of this, the stipulations state that all evidence was "constitutionally obtained." [D]oes this mean that no objection can be raised to the admission of the ransom note because it was the product of an illegal search?

The defendant is a party to the Stipulation and explicitly agreed in item 3 that all evidence was constitutionally obtained. Any objection by the defense (or Commonwealth) to any evidence submitted at trial on grounds that it was unconstitutionally obtained would clearly violate the parties' stipulation.

4. Can a previously introduced exhibit be re-shown [to the jury] during closing arguments? Please clarify.

Yes, assuming the exhibit was admitted into evidence.

5. Can a defense team argue [or make a motion] for a mistrial during the case? ...

No. Rule of Evidence 611(f) and Rule of Competition 6.20.

6. Can a hearsay objection be raised on exhibits 1-12?

Yes. Hearsay is a permitted objection under Rule of Evidence 611(e)(4).

7. Pursuant to Rules of Competition 5.1 and 5.7: Can the exhibits to be entered into evidence be placed in plastic slip-cover page protectors to protect them from accidental spills?

A team may keep its exhibits in plastic slip covers at their attorney table but each exhibit must be removed from any cover and submitted in their original form when used during the proceedings.

FYI: ATTACHED BELOW ARE ANSWERS FROM PAST COMPETITIONS THAT MIGHT ANTICIPATE CURRENT QUESTIONS YOU HAVE

MISCELLANY- PAST COMPETITIONS:

1. Can we scrimmage other teams in the competition?

Yes. We encourage 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, subject to the rules of that competition. Our "No Scouting" prohibition refers only to our competition.

3. Are teams allowed to practice in the courthouse in which they will be competing?

There is no prohibition against such a practice under state rules.

4. May we bring transcription students to a mock trial to transcribe proceedings? Neither team will get a copy of the transcription until after the competition is completed.

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.

5. What happens when teams drop out?

The local coordinator will reschedule trials and may have to create byes for some teams depending upon how late into the competition the drop out occurs. Teams are urged to contact their coordinator ASAP if they think they might not be able to follow through on their commitment. Late drop outs are a great inconvenience to other teams and volunteers working for the program. In the case of repeat offenders, teams may be banned from the competition for a period of time.

RULE and EVIDENTIARY QUESTIONS - - PAST COMPETITIONS

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 violate our anti-scouting prohibition. Thus, for practical purposes, a single teacher and a single lawyer might train and prepare two teams together; however, once either of those coaches takes a team to competition, they could not take the other team to another competition since they might meet common opponents in the future.

Even if coaches don't share information between their two teams, the appearance would be otherwise and this would directly violate the no scouting rules. It is possible for a school with one primary teacher coach and two teams to enlist another teacher or a lawyer coach to basically chaperone for one team while the primary teacher coach leads the other team. Once a teacher or attorney attaches him or herself to one team that person is then unavailable to accompany the school's other team in future matches.

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. 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 would compete against a team that the eliminated team competed against. The teacher or lawyer coach could observe but could not coach (teams out of the competition may observe without violating the no scouting rules).

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

Students are permitted to read other cases and materials in preparation for the mock trial. However, they may cite only the cases and statutes given and may introduce as evidence only those documents and materials provided and in the form provided. (Rule of Competition 3.5)

Teams are welcome, nevertheless, to study anything they wish to study in preparation for the competition, and the Mock Trial Committee hopes students branch out and learn much more about the issues involved in the case.

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. Can we enlarge case materials or exhibits? Also, can we develop a timeline, enlarge it, and use it during opening statements and closing arguments?

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

6. Can we take to trial and use our laptop computers?

You may not use laptops at trial. Rule of Competition 5.1.