

1/26/09

## **FINAL SUPPLEMENT TO CASE MATERIALS**

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 the January 23, 2009, 12 noon deadline, which does not appear in the supplement, please immediately email David Trevaskis at [david.trevaskis@pabar.org](mailto:david.trevaskis@pabar.org) and inform him of the omission. All questions submitted by the deadline date have been included.

### **THIS IS THE FINAL SUPPLEMENT AND IS THE OFFICIAL MEMO THAT MAY BE USED IN THE COMPETITION. THIS FINAL SUPPLEMENT MAY BE USED 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 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 which 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)

## CASE CLARIFICATIONS:

12/17/08

1. How did Parker Plane and Reilly Blaker get to and from work to their lunch on April 2<sup>nd</sup>? Who drove there and who drove back?

- *Parker Plane drove both ways. (This information is attributable to both Blaker and Plane)*

2. At the time of Reilly Blaker's sworn statement, according to his birth date on the police report (Exhibit 8), s/he would have been 34. The statement says s/he is 33.

- *There is a typo on the statement and his birth date is listed correctly on the police report. Reilly is 34 when s/he makes the statement.*

3. The location of the accident in Exhibit 1 seems to contradict the location of the accident in Exhibit 2. Was this built in to the trial intentionally or is there an error in one of the maps? In Exhibit 2, the map indicates that the accident occurred on the corner of Market Street (off the Market Street Bridge) and Front Street. In Exhibit 1, Front Street is on the opposite side of the river from where the accident site is indicated.

- *There is no inconsistency between the maps. The Front Street labeled in Exhibit 2 (on the West Shore of the Susquehanna River) is in Wormleysburg/ Lemoyne, not Harrisburg. Front Street in Harrisburg (on the East Shore) is depicted in Exhibit 2 but is not labeled. It runs parallel and immediately to the west of Second Street.*

4. On page 8 it refers to Parks Plane and Polish instead of Planes Park and Polish. Is this a typo?

- *Yes.*

5. Can you give me an accurate pronunciation for Drostoveral, the opiate-based drug that was used by Reilly Blaker in this mock trial case?

- *Drostoveral was intended to be pronounced with a long second "o" with all other vowels short – "Dros-toe-ver-al."*

6. In the transcript of Reilly Blaker at p. 24, lines 82-83, the record states that Parker was in Philadelphia on March 30 (the day Brody first came through). Later on p. 25, line: 127 the record states that Parker was in Harrisburg that day. Is there an error in the transcript?

- *Yes, the reference to Harrisburg in line 127 is a typo. It should say Philadelphia. Parker was in Philadelphia that Sunday, as was his/her practice.*

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7. Who wrote the position description for valets in Exhibit 4 within the case? Was it Parker Plane?

- *Yes. (This answer is attributed to Parker Plane and becomes part of her/his Statement.)*

8. In Brody Crisdale's Statement the date of the family reunion ... [is] March of 2007. In Reilly Blaker's Statement the date ... [is] March of 2008. In the Statement of Facts, it says it is February of 2008. Which is it?

- *The family reunion was in March 2008. Reilly Blaker's Statement is correct. The dates in Brody Crisdale's Statement and the Statement of Facts are typos.*

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9. My students would like a confirmation of the pronunciation for Sabien.

- *Say - bee - in*

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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. Exhibit 11 (Employee Manual) under joyriding explains that the insurance for the company covers a range of 20 miles from the main Airport kiosk. Is that linear or driving distance?

2. Which direction was the decedent Jaya Hansbra walking when she was struck by the vehicle driven by Reilly Blaker?

3. Did either Reilly Blaker or Parker Plane drink to the level of intoxication at their power lunch on April 2<sup>nd</sup>?

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4. When Dylan was observing Parker Plane & Reilly Blaker were they standing next to or in the main kiosk?
5. Is Parker still barred as an attorney in PA or elsewhere? If not, was Parker disbarred? Why?
6. Where Reilly and Parker regularly went to lunch: if it was at more than one location is [an area] that would cover all possible lunch locations? (Within 10 miles of airport/within 15 miles of airport, etc.)?
7. The case materials state that the round trip distance to the detailing facility is 5.6 miles. ... Is this a typo?
8. In Exhibit 11, the Employee Manual for PP&P, Section 5.6 [which addresses employee use of company credit account noting that a written authorization certificate will be maintained the employee's personnel file.] ... Does the "written authorization certificate indicating the scope of permission" exist in Reilly's file ... ?
9. Due to gender being in flux between the two teams, will it be beyond bounds to insinuate any relationship between Reilly and Parker beyond business? ...

## RULE and EVIDENTIARY QUESTIONS:

12/17/08

1. The admissibility of Reilly Blaker's [first] DUI will significantly impact either sides' presentation. Can that issue be presented to the Judge by way of a Motion in Limine prior to the opening statements? Obviously, the students will need to be prepared for the ruling either way. It seems if the issue is not dealt with in Limine, the Plaintiffs opening could be subject to much disruption, in that Defense counsel could object during the opening, if brought up by Plaintiffs' counsel, and ask for a ruling.

- *The Mock Trial Executive Committee will consider this question more fully and issue an answer in a later memo.*

*[Note – this question is answered below in #13.]*

2. May residents of other states compete in the competition (the situation involves a cyber school student who resides in New Jersey).

- *The competition is for students attending Pennsylvania schools. As long as a student is a properly registered student in a Pennsylvania school of any type, that student may compete. With regard to the eligibility of students home schooled in Pennsylvania, their eligibility is addressed in Rule of Competition 2.1.2.*

3. May a student present two direct examinations during the same competition round?

- *Rule 6.10 (e) allows this as long as the other rules in 6.10 are followed.*

4. May an 8<sup>th</sup> grader compete on a team?

- *Rule 2.1 limits teams to 9<sup>th</sup>-12<sup>th</sup> graders. If a team doesn't have enough students in those grades to field a team and seeks to use 8<sup>th</sup> graders to create a team, that team can seek special permission from the local coordinator. However, if permitted, a team that includes 8<sup>th</sup> graders can not advance beyond the local competition to district or regional playoffs.*

5. Can two schools combine to field one team?

- *If the only way the two schools can compete is by creating a single team, then a combined team may compete only with special permission of the local coordinator. However, the combined team may not advance beyond the local competition to district or regional playoffs.*

6. May students from one school sit in the court room and watch other school teams compete?

- *No, if that student's school has a team in the mock trial competition. Yes, if that student's school has no team in the MT competition and the student has no other conflicts, and also if that student's school did have a team in the competition but the team is done competing.*

7. Is it okay that students from one school sit in the courtroom and watch their fellow students compete against another school?

- *Yes, so long as that student does not compete on a second team from their school.*

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8. May a judge preside over the district playoff if he/she was already a judge for one of the earlier district trials?

- *Yes. A presiding judge who has participated in an earlier trial is not disqualified from presiding in a later trial involving the same team, absent some other basis for disqualification.*

9. May the information in the Statement of Facts, Complaint and Answer be used during the trial as credible sources of evidence?

- *No. All evidence must come in through witnesses, via their statements and exhibits, or through stipulations between the parties. The statement of facts, the complaint and the answer are not evidence.*

10. May we laminate the exhibits to better preserve them?

- *No. This violates Rule of Competition 5.1*

11. How and when should we use the affirmative defense?

- *The use of the affirmative defense is a strategy matter for each defense team. To use it, the team should reference it in its opening and closing and bring out evidence during its examination of witnesses.*

12. Is Parker to be considered a "party witness"? Parker owns 100% of the business, but the suit specifically names Plane's Park and Polish, not Parker.

- *Parker is not technically a party to this action but is an officer and agent of PP&P.*

13. [This question is repeated from #1 above]

The admissibility of Reilly Blaker's [first] DUI will significantly impact either sides' presentation. Can that issue be presented to the Judge by way of a Motion in Limine prior to the opening statements? Obviously, the students will need to be prepared for the ruling either way. It seems if the issue is not dealt with in Limine, the Plaintiffs opening could be subject to much disruption, in that Defense counsel could object during the opening, if brought up by Plaintiffs' counsel, and ask for a ruling.

- *The DUI issue can not be raised by a motion in limine prior to opening statements since our rules prohibit pre-trial motions. (Rule 6.20) Teams are also prohibited from making any objections during the opening statements so the opening statements should not be subject to disruption. (Rule 6.19)*

*The committee has otherwise concluded that the admissibility of the prior DUI is a decision that can be handled by the trial judge during the trial, assuming an objection is raised.*

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14. [Regarding] Question 4 in the Jury Interrogatories. It is worded "Has the Defendant proven to you that Reilly Blaker's actions were not reasonably foreseeable to the Defendant?" Are you placing the burden of proof on the defendant? Asking the defendant to prove a negative?

- *To the extent the defendant seeks to raise an affirmative defense, it is the defendant's burden to prove that defense.*

15. Can we ask the witness to step down for a demonstrative purpose?

- *There is nothing in the Rules that prohibit an attempt to do this. The trial judge will determine whether it is permitted.*

16. If Parker is an agent of Park's Plane and Polish and treated as a Party Witness, would he be not sequestered as a Party Witness?

- *Non-party witnesses are considered sequestered but may remain in the courtroom. (Rule 4.7)*

17. If a school has more than one team & if the second team is knocked out of the competition can the advisor from team #2 help coach; the advisor has not seen any of the other teams we would compete against?

- *If there is absolutely no chance the still competing team (Team 1) will compete against a team that the advisor previously observed as an advisor of Team 2, then the Team 2 advisor could help with Team 1.*

18. Can we impeach by omission?

- *The Rules warn attorneys against asking a question of a witness for information that is not in the witness' statement. If you do so, the witness is free to make up information. Rule of Competition 4.6 addresses this issue.*

**For Your Information: 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 such as those offered on January 10-11 at Drexel University and University of Pittsburgh, respectively. See the state mock trial website for more information.*

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 that 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 6.4.*
7. Can a previously introduced exhibit be re-shown to the jury during closing arguments?
  - *Yes, assuming the exhibit was admitted into evidence.*
8. 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 their 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.*