

1/18/12

FINAL SUPPLEMENT TO CASE MATERIALS

The Wisawe Chapter of Friends of Bog Turtles v. ZenoPharma, Inc.

The deadline for submitting questions was January 18, 2012. THIS IS THE FINAL 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 materials 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 case materials 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)

Some questions have been edited for the sake of clarity and brevity.

CASE CLARIFICATIONS – Answers Provided:

1/9/12

1. Can we assume that Exhibit 1 would have directional markings (N,S,E,W) that are traditionally affixed to a two dimensional figure? Thus, the top of the exhibit (the part closest to the “Exhibit 1” title) would be North, the town of Wisawe would be East, and so on.

Yes, you can assume that the traditional directional markers are affixed to this two dimensional map. An earlier version of this Exhibit contained such marking, and not including same was an oversight in the creation of the final version of Exhibit 1.

2. Exhibit 8 appears to show Wisawe to the west of the quarry with the aquifer flowing towards it. Exhibit 1 shows Wisawe to the east. Is that intentional? Is it correct?

Wisawe is east by southeast of the quarry as cited on the map at Exhibit 1. Exhibit 8 shows the aquifer flowing north to south as indicated by the “N” and “S” at the top of the graph. There is no inconsistency.

3. Why do the expansion areas in Exhibit 1 and Exhibit 8 differ?

The planned expansion area is south of the existing quarry pit is cited on the map at Exhibit 1. Exhibit 8 shows the expansion area to the south as indicated by the “N” and “S” at the top of the graph. There is no inconsistency. Please note that Exhibit 8 is a cross-section view.

4. Statement of Paz Bobrow – lines 51-52- “I have been in court on environmental matters more than all but a half dozen or so Pennsylvanians, and I knew I could leverage that.” We have no idea what he is trying to say. Is this a typo, or other kind of error?

It is not an error. Paz is saying that in her/his estimation, s/he has been in court on environmental matters more than any but approximately six other residents of Pennsylvania.

5. Just a heads up that Exhibit 11 is labeled as Exhibit 10 in the case materials. There are two Exhibit 10s due to this. I'm sure everyone will realize this I just wanted to let you know.

This was a typographical error. The second Exhibit 10 is really Exhibit 11 and should be referred to as Exhibit 11 for all competition related purposes. The authors apologize for any confusion and beg indulgence for this and other errors. A correctly numbered exhibit will be provided to the participants.

6. We are struggling with the meaning of Stipulation 7 as it applies to Exhibit 2.1. I understand that ZenoPharma agrees that the photo represents a bog turtle. The language “the defendant does not agree that 2.1 represents a true and accurate image of the property or the turtle alleged to

be on the property.” I take that to mean that Z challenges that the background of the photo is not their property; however, the rest of the phrase “accurate image ...of the turtle” mystifies me.

Defendant has stipulated that the image is of a bog turtle. (Stipulation 7.c)

Stipulation 7.b exists because the Mock Trial Rules of Evidence do not contain the 900-series Rules regarding authentication. Accordingly, some agreement must be reached with respect to the authenticity of each exhibit. By way of 7.b, the defendant has stipulated to the bare minimum, that is that Exhibit 2.1 is the photograph that Skylar Cohen claims to have taken and is “authentic” in that respect only. Beyond that, nothing is stipulated in Stipulation 7.b. Defendant does not stipulate that the image depicts its property, and it does not stipulate that the image is of the particular turtle Cohen claims was on the property, or that any turtle was on the property.

Defendant reserves the right to contest whether Exhibit 2.1 is of its property, whether Exhibit 2.1 depicts a turtle that was actually physically present on its property, and whether Exhibit 2.1 depicts a turtle that was actually physically present on the property depicted in Exhibit 2.1, wherever that is.

7. My team has been over and over the Court’s ruling, the jury instructions, and the case, and neither we nor our attorney coach can make heads or tails of the burden of proof in this case. Can you guys clarify who has to prove what?

The answer to this question is most easily found in the jury instructions, at pages 22-24. The following is merely a summary of these instructions and the other materials. It is provided for clarification and ease of reference only. The case materials contain a complete statement of the applicable law. Accordingly, unlike the foregoing and following portions of this supplement, it may not be cited at trial as authoritative.

Burden of Proof Explanation:

In a typical injunction case, a plaintiff would have to show (1) actual success on the merits; (2) irreparably injury to it from the denial of injunctive relief; (3) the granting of the permanent injunction will not result in even greater harm to the defendant; and (4) the injunction would be in the public interest. Case Materials at 10, 19.

In this case, though, the Court has already held that if FBT can show that the land is critical bog turtle habitat, the Endangered Species Act means that irreparable harm to plaintiff is presumed and will outweigh the harm to the

defendant. Case Materials at 11. So the only remaining issues are (1) success on the merits and (2) public interest. Id.

In order to succeed on the merits, FBT needs to show that the Endangered Species Act would be violated if ZenoPharma expands. It does this by showing that the land is “critical habitat” for the bog turtle. Case Materials at 16, 22.

There are two ways to show that the land is critical habitat. First, FBT can show that bog turtles live on the land. If it does that, the land is critical habitat automatically and it succeeds on the merits of its claim, regardless of whether ZenoPharma can show that there would be a negative economic impact to the community. Case Materials at 12, 23.

Alternatively, FBT could show that the land is critical habitat even if there isn’t a bog turtle on it by showing that it “contains physical or biological features essential to the conservation” of bog turtles. Case Materials at 12, 23. If FBT makes this argument, ZenoPharma may argue that there is an economic impact that overrides the bog turtles’ interest in the land. Id. Notably, this argument can only be made if bog turtles are not present on the land. If there are bog turtles actually there, the land is automatically critical habitat. Id.

If FBT shows that the land is critical habitat in either way, it has met its burden. The burden of proof then shifts to ZenoPharma to show that the public interest in allowing the expansion outweighs the Endangered Species Act and any other public interest, such as a threat to public health the expansion allegedly poses. Case Materials at 12, 23-24.

If FBT shows that there were actually bog turtles on the land at issue, ZenoPharma must prove that the public interests in allowing the expansion substantially outweigh the public interests in preventing it, including the harm to the bog turtles. Case Materials at 12, 24.

If FBT does not show that there were actually bog turtles on the land at issue, ZenoPharma must prove only that the public interests in allowing the expansion outweigh the public interests in preventing it, including the harm to bog turtles. Case Materials at 12, 24.

In making its case, either party may make reference to the statutes, regulations and decisions in the Applicable Law section.

In short:

- FBT bears the burden of proving that the land in question is a critical habitat for bog turtles. If it cannot do so, it loses.
- If FBT shows that bog turtles are actually present, then the expansion will be stopped unless ZenoPharma proves that the public interests in the expansion substantially outweigh those against it.
- If FBT cannot show that bog turtles are actually present, but does show that the land is a critical habitat, the expansion will be stopped unless ZenoPharma proves that the public interests in the expansion outweigh those against it.

1/18/12

8. My team had a question regarding Exhibit 2 pictures 2.3 and 2.4. Are these common "painted turtles" the animal species of turtle or is the word "painted" being used as a description to say that the turtles have been painted?

These are painted turtles as in the widespread and common species, scientifically known as *chrysemys picta*, not in the sense that a human took a turtle and physically painted it.

9. In Paz's statement, he writes that the Wisawe's rate for necrotic skin conditions is about twice what it should be. But when doing the math with the numbers provided several lines before (4 in 10,000 and 6 in 100,000), it appears that Wisawe's rate is actually seven times more than average. Typo or mathematical error by Paz?

Neither. The case stands as written, but you are missing an element of the calculation. Re-read lines 148 through 152, and pay attention to every word.

10. Could you clarify exactly what the defense is stipulating to in regard to Exhibit 2? The first supplement stated:

... Defendant does not stipulate that the image depicts its property, and it does not stipulate that the image is of the particular turtle Cohen claims was on the property, or that any turtle was on the property.

Defendant reserves the right to contest whether Exhibit 2.1 is of its property, whether Exhibit 2.1 depicts a turtle that was actually physically present on its property, and whether Exhibit 2.1 depicts a turtle that was actually physically present on the property depicted in Exhibit 2.1, wherever that is. (First Supplement p. 3)

But pursuant to Stipulation 7 e.--GPS readings tagged to the photograph -- shows that the photo depicted in 2.1 was taken at the point indicated on Exhibit 1. As noted above, defendant disputes the authenticity of this photograph. But it does not appear that the defense contests

the GPS readings. That seems to contradict what the supplement says. We would appreciate your clarification in this matter.

The defense stipulates only that the GPS readings tagged to the photograph correspond with the location marked on Exhibit 1. The defense does not stipulate that these readings are legitimate or that the photograph is legitimate, as previously explained. It is up to the trier of fact to determine whether the GPS readings tagged to the photograph are legitimate indicia of where the photograph was taken.

11. In Brennan Nellie's statement, line 112, he states: "The unemployment compensation board got it right." Is he actually referring to the Workers' Compensation Appeal Board as shown in Exhibit 4?

Nellie is referring generally to the unemployment compensation process. S/he could be referring specifically to the decision of the Workers' Compensation Judge, the Workers' Compensation Appeal Board, or the Commonwealth Court, to the extent that s/he as a layperson can distinguish among them. Because all three levels of review reached the same conclusion, no additional specificity is required.

12. Is it reasonable to assume that Hadley McAdoo is still teaching at Wisawee High School?

Yes.

CASE CLARIFICATIONS – Answers Not 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.

1/9/12

1. What is the correct year that Paz Bobrow graduated from Oberlin College? The statement says 1972, yet the resume says 1970. Which is correct?
2. In Paz Bobrow's statement on line 22 Paz states that NestFinder does not work yet, and then on line 89 of the same statement Paz is quoted in saying of course "I put the data into Nestfinder." My team is wondering if that was an intentional statement or a small error made by the authors.
3. On Exhibit 13, Paz's Resume, It states that (s)he worked at the PA Dept. of Environmental Protection from 1978-2003, but shortly thereafter it states that (s)he was an Associate Investigator from 1977-1984. Is the 1978/1977 typo intentional?
4. Regarding Steven's infection – Exhibit 4 says happened on or about September 27, but the picture was taken on 25th? On purpose or not?

1/18/12

5. At least one of the affidavits makes reference to the Department of Fishing and Boating, when in Pennsylvania, the agency is the Fish and Boat Commission, which is not part of DEP.
6. It is stated in the case information that Tal is the operations manager. Would "operations manager" be considered an executive level position? Thank you for any information you can provide.

RULE AND EVIDENTIARY QUESTIONS

1/9/12

1. Regarding the previous adjudication of Steven Cohen's workers' compensation claim: there are legal arguments that could be made regarding the admissibility of Exhibit 4—based on collateral estoppel, but those legal principles are not contained in the mock trial rules of evidence. How do you want us to handle that as attorney advisors? Treat it as hearsay? Teach collateral estoppel?

Coaches should not introduce principles of collateral estoppels into the case, because insufficient information is included in the case to determine the resolution of this issue and no decisional or statutory law is provided as a basis for a collateral estoppels claim.

The findings in Cohen's case should be treated as any other evidence and should be objected to as permitted under the mock trial rules of evidence.

2. Our team has researched the bog turtle and discovered significant details about it and its place on the Endangered Species list. Are we permitted to use some of the information in our opening/closing statements and questioning of witnesses?

No. Pursuant to Mock Trial Rule 3.5, students may introduce as evidence only those documents and materials provided and in the form provided. Accordingly, no outside information is admissible.

Any statement by an attorney, including in opening or closing argument, is subject to an objection that the statements assume facts that were not in evidence.

Pursuant to Rule 4.6, "Attorneys should not ask questions calling for information outside the scope of the case materials..."

Pursuant to rule 6.15, no student may use materials or items not included in the case materials.

3. Have Paz Bobrow and Brennan Nellie been stipulated to as expert witnesses for the trial or do the students need to move for their admission?

They have not been stipulated as such but they have been identified in the materials as experts (p. 27 – "Environmental Expert Witness"). As such, the fact of their status as experts is established, under Rule 4.9. Students are not required, but may move for their admission as experts.

4. Regarding Rule 4.9 Expert Witness – the witnesses that ARE identified as expert witnesses, what exactly are they experts in?

Both are experts in environmental assessment.

5. Our team would like to be able to use a laptop and projector to present the exhibit photos to the jury once they are admitted; Rule 6.4 seems to prohibit that; is there any way we can have permission to do it?

No. The use of laptops and other electronic equipment is prohibited by Rule 6.4 to ensure that no team can gain a competitive advantage by employing resources that are not available to every team in Pennsylvania.

6. I have a specific question about the usage of impeachment by omission in the context of this year's case.

On the cross examination of McAdoo, would the cross examiner be permitted to ask questions such as "You were unaware of evidence that there may be MU released into the City Aquifer with this expansion, correct?" and "You were unaware of a photographic evidence by Skylar Cohen that documented a bog turtle on the ZenoPharma property?, correct?"

McAdoo's affidavit he never mentions knowledge of either of those facts. My question then is: on cross examination if he claims that he knew about these things and weighed them into his testimony/decisions, could I impeach him by omission?

Impeachment by omission under Rules of Competition 4.6 and Rules of Evidence 611(b)(2) seems to say that witness can make up whatever answer he wants if a cross examiner asks for a question that requires an answer outside of his affidavit. However, is it correct to interpret this rule as this: the above questions do not "require an answer outside of the witnesses statement," as they simply ask him to admit a lack of knowledge, and therefore he has no leverage with making up an answer and must respond that he was unaware of the photograph/MU evidence and if he does not, I can impeach by omission?

I am confused about the wording of these rules, and whether I am bound to his answer if he claims that he knows evidence not stated in his affidavit.

Thank you for any clarification!

Our Rules warn attorneys against asking a witness for information that is not in the witness statement. (Rule 4.6: "Attorneys should not ask questions calling for information outside the scope of the case materials or requesting an unfair extrapolation. An attorney who asks a question on cross or re-cross examination that requires an answer outside the scope of the witness' affidavit is bound by the answer given by the witness.")

The questions you propose above could certainly be interpreted as asking the witness to answer a question s/he does not have an answer to because they are not addressed in the witness statement. You are nevertheless free to ask such a question but you run the risk that the witness will fill in the blanks and make up information helpful to his or her case. Under our rules, assuming your underlying question was held to ask for information outside the scope of the witness statement, then you are bound by the answer given and can not offer impeachment by omission. Rule 4.6; Rule of Evidence 611(b)(2) ("An attorney who asks a cross examination question requiring an answer outside the scope of the witness' affidavit is bound by the response given by the witness.")

Ultimately, your trial judge will make the ruling as to whether your question called for an answer outside the scope of the witness' affidavit, assuming the issue is raised by counsel.

7. There is conflict between the two expert witnesses as to whether or not the cadmium levels are within the EPA and DEP regulations or not. Can the current Pennsylvania EPA levels for cadmium be assumed for the case or is that outside the scope of the materials?

No, that would be outside the scope of the problem.

8. I was a bit confused by rule 6.10 section e. Is it permissible for one student to conduct 2 direct examinations and then one cross?

Yes, so long as every attorney presents at least one examination, and the attorney who does the opening statement does not also perform the closing argument.

9. I have a rules question that I am having trouble finding an answer to. I know that during cross examination, you can ask a witness to read from their statement during the impeachment process. Is this the only time you can ask a witness to read from their statement during cross, or can you do it as a strategy? For example, if a witness said something in their statement that makes them look bad, can you simply ask them to read a direct line from it? For example, "Could you please read lines...to the jury?"

As a general rule, a witness's affidavit is an out of court statement. If it is offered to prove the truth of the matter asserted, it may be objectionable pursuant to Rule 801 et seq. If it is used for some other purpose, such as impeachment, it is generally considered not to be objectionable pursuant to Rule 801.

QUESTIONS FROM PREVIOUS COMPETITIONS

Team Issues: Team Composition, Scouting, Scrimmaging and Outside Tournaments

1. 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.*
2. May an 8th grader compete on a team? May a post graduate student compete?
 - *Rule 2.1 limits teams to 9th-12th graders. If a team doesn't have enough students in those grades to field a team and seeks to use others, such as an 8th grader or a student who has graduated but may be earning additional credits at the school or is in some sort of post high school exchange program, to create a team, that team can seek special permission from the local coordinator to compete locally. However, if permitted, a team that includes others besides 9th to 12th graders cannot advance beyond the local competition to district or regional playoffs.*
3. 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 district and regional coordinators. However, the combined team may not advance beyond the local competition to district or regional playoffs.*
4. May students from one school sit in the court room and watch other schools' 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*
5. 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 those students does not compete on a second team from their school.*
6. If a school has more than one team, and if the second team is knocked out of the competition, can the advisor from team knocked out help coach the team still in (the advisor has not seen any of the other teams we would compete against)?
 - *If there is absolutely no chance the still competing team will compete against a team that the advisor previously observed as an advisor of the knocked out team, then the knocked out team advisor may help with the team still in the competition.*
7. Our team wants to watch other teams in a practice event before the real competition begins. Does this violate the "No Scouting Rule"?
 - *It is not a violation under our Competition Rules. 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.*

8. 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.*
9. 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 that will be held this coming January by Drexel University, LaSalle University and University of Pittsburgh.*
10. 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.*
11. Can a single teacher [or attorney] coach two teams?
- *Under Rule of Competition 2.5, 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).

Trial Issues

1. May we laminate the exhibits to better preserve them?
- *No. This violates Rule of Competition 5.1*
2. 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 its original form when used during the proceedings.*
3. 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 prohibits enlarging exhibits. Creating and presenting a timeline as a physical reference for the jury is also prohibited.*
 4. Can we take to trial and use our laptop computers?
 - *You may not use laptops at trial unless the use of a laptop is a specifically required accommodation for a disability covered under the ADA. If needed under ADA compliance, the laptop must have no internet access and contain only the materials of competition otherwise available in paper form to all other competing students. Rule of Competition 6.4.*
 5. Can we write on a white board, blackboard or flip chart during closing arguments?
 - *No – these are props. Rule 6.14.*
 6. 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.*
 7. Can a previously introduced exhibit be re-shown to the jury during closing arguments?
 - *Yes, assuming the exhibit was admitted into evidence.*
 8. Clock Issues: When entering in exhibits, does the clock stop when counsel says "Your honor, May I approach the witness?" Does it start again when counsel asks the next question such as "Can you identify this?" Or after counsel actually has the exhibit entered? Second, when counsel is impeaching a witness, does the clock stop when handing opposing counsel and the witness an affidavit? And when does it begin again?
 - *Please review Rule of Competition 6.26. Generally, the clock runs at all times when an attorney is examining a witness concerning an exhibit. The clock stops during the marking of exhibits and when exhibit is being shown to opposing counsel except when the examining attorney continues to question the witness.*
 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. 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.

11. 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*

12. 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).*

13. 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.*

14. Based upon your past answers, if we impeach by omission we are we are bound by the witness's answer under Rule of Evidence 611(b). [Question 13 above] However, if the witness just makes up something supporting their side, is there really anything stopping us from just doing a normal impeachment proving they just lied about the prior statement?

- *There is no express rule that precludes a team from doing so. However, consistent with the mock trial rules, a witness might respond that the question asked for an answer that was not in the witness statement and that s/he was just answering the question asked. Alternatively, her/his attorney might object to the impeachment on the grounds that it is improper, because the witness answered a question that was not in her/his statement and that pursuant to Rule of Competition 4.6 and Rule of Evidence 611(b)(2) the questioner is bound by the answer given. In either case, the impeachment would be contrary to both the rules and the spirit of the competition.*

15. When a witness is identified as an expert witness, does that mean that under direct examination a foundation for their expertise does not have to be established?

- *Please refer to Rule 4.9, which states:*

Some witnesses in the case materials may be identified as expert witnesses. In such a case, the fact of the witness' expertise may not be questioned; however, the expert's credibility may be otherwise impeached on cross examination. Witnesses not specifically identified as experts may be qualified as such if the proper foundation is laid. In either case, the expert's qualifications, credibility, biases and the scope and depth of her/his expertise may be otherwise raised on cross examination.

Technically, under this Rule, since "the fact of the witness' expertise may not be questioned" a team could elect to forego laying a foundation on its expert's expertise, although the other team would remain free to impeach the expert.

16. 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.*
17. 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.*