1/18/2013

FINAL SUPPLEMENT TO CASE MATERIALS

Commonwealth of Pennsylvania v. Tatum Zillias

The deadline for submitting questions was January 16, 2013. No new questions will be considered. All questions submitted through January 16, 2013 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 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)

PRONUNCIATION KEY

Emerson Turnkin (**ĕm**-ər-sŭn **tŭrn**-kĭn)

Quinn Baxter (**kwin băk**s-tər)

London Packard (**lŭn**-dŭn **păk**-ərd)

Tatum Zillias **(tay**-tĕm **zil**-ē-ăs)

Micah Estratton (**mī**-kăh es-**trăt**-ən)

Reese Dentner (**rēs dĕnt**-nər)

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

CASE CLARIFICATIONS – Answers Provided:

1/3/13

Q: In both London Packard's affidavit (line 173) and Quinn Baxter's affidavit (line 129), it is stated that Tatum caused the deaths of three people. However, Micah Estratton survived, and from reading of the affidavits, only two other people were present and were both killed: Grace Hooper and Arty. Who was the third person whose death Tatum was accused of? He was also not formally charged with the third person's death in the list of charges.

> **A:** *All references of three deaths have been altered, as intended, to two deaths in the November 16th Version of the case. There are many instances of this change in the case, but it is not a material fact. Crossing out, rather than reprinting, will suffice.*

Q: On the verdict slip, we were wondering if it is possible for the jury to find guilty on one count of murder but not the other?

> **A:** *Yes, The Verdict Sheet separates the counts, because, yes, the verdict can be split finding Zillias guilty on one count but not the other.*

Q: Was the judge's signature on the Memorandum and Order intentionally omitted? If it was omitted, we assume the purpose is to allow the teams to question the conclusions of law included in the draft Memorandum and Opinion.

> **A:** *No, it was not intentionally omitted and is not fodder for teams to question the conclusion of law. The lack of a signature on the Memorandum and Opinion was a drafting error.*

Q: Are we to presume that Baxter IS an expert witness - I don't see that in the stipulations & his testimony offers an extensive background. Are we to argue his "expert" status or just assume that he IS an expert?

> **A:** *Yes, Baxter is an expert witness. S/He is identified as an expert on page 19 of the Case Materials, in the witness list, and is therefore an expert.*

1/16/2013

Q: Where is the operator (Micah) physically located on the crane with respect to the Exhibit 1? I believe that Micah's statement at 160 that "Phil came apart beneath me" is misleading because as I understand how this works, Micah is located only a couple of feet off the ground near the place marked "tub" on the diagram. Either way, I request you clarify this. Thanks.

> **A**: *Please note that the diagram in Exhibit 1 is that of the crane in a mobile configuration. The case materials do not specifically or otherwise indicate whether the operator is higher off the ground in a fixed position. As to the remainder, the case materials provide all information available to answer this question.*

<u>CASE CLARIFICATIONS – No Answers Provided</u>

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.

1/3/13

Q: London Packard states in their witness statement that they lived in the trench from 1975, but later refers to their time in the trench as 27 solar years. Should it be 37 years, or am I missing something?

Q: In lines 83 and 84 of his testimony, Emerson Turnkin states that the roof panels came in at "200 tons over the max load limit for the crane." But, in lines 64-67 of Micah Estratton's testimony he says the difference is between 2900 tons and 2750 tons. That's 250 tons and the kids can't figure out a way to get past this. Does this matter, or should we just use one of the figures and forget it?

Q: In lines 141-142 Turnkin says that he brought Zillias "an even worse weather report from the night before that showed winds coming earlier." This exchange takes place before dawn, according to line 143-144, and it implies that there was an earlier report that showed winds wouldn't arrive until later (?). The weather reports in exhibit 7 are from midnight, noon (on Friday) and 3:15 pm on Friday. We don't know if this is intentional or if the "even worse" weather report and the "earlier report" reference is an error. It does say in the stipulations that both of these reports were reviewed by "site personnel" on August 31st. So maybe we can assume that Zillias was aware of them?

Q: pg. 39, line 171 - Who is Kate Hooper (did they mean to say Grace Hopper & why bring up the keys?)

Q: Exhibit 5, Attachment A - The crane's accident history is listed as "None", but pg. 36, line 21-22, states "we had out share of smaller mishaps. The worst we had was a snap-drop".

Q: Will Exhibit 10 be allowed to be entered as evidence during a direct examination of Tatum Zillias even if Tatum has not seen this document and is not supposed to be able to recognize or describe it?

1/16/13

Q: Did Project Z need permission from the city in order to legally perform the lift? Or could Estratton Lift Systems, being represented by Micah Estratton, give permission? Exhibits 4 and 5 are not very clear about this.

Q: In London Packards's statement he said he came to the trench in 1975, but made it his home for 27 years. Is this a typo or can we assume there is a lapse in time somewhere?

Q: According to Exhibit 6, Quinn Baxter's report on page one under "Atmospheric Conditions", the weather conditions during the lift are listed as being different from those on the weather report (exhibit 7, page 3). Quinn Baxter had access to the weather report while writing his/her own. Is this discrepancy an intentional mistake, meaning that Quinn couldn't accurately read the weather report? Or, rather, is it a typo?

RULE AND EVIDENTIARY QUESTIONS:

1/3/13

The following two questions will be addressed with one answer.

Q: The rule as amended contradicts itself in the extreme. It says a crossing attny may not ask a question beyond the scope and is bound by the response, and then it says that the witnesses can't say anything not identified in the affidavit. These two things are not possible.

Rules then give examples of what is not permissible. Why not give examples of what the clever witness can do? And don't you folks realize if you can't do this, you are killing the role of witnesses?

Q: We were concerned about the recent change in Rule of Competition 4.6, and were hoping the committee could provide clarification.

Often, cross examination questions go beyond the scope of the witnesses' affidavit because the case packet cannot and does not describe every single action and thought that a witness takes. The new rule "limitation" places an unfair burden on the witness. In past years, an attorney asking a question that was not specifically based on the witness's affidavit would be stuck with the answer given. This was fair, because it placed an equal burden on the attorney and the witness to know the affidavit. However, the new limitation does not allow a witness this latitude. It makes no such limitation on an attorney, who can continue to ask questions as before and use this limitation to force the witness to answer no or deny taking an action.

Furthermore, if a witness violates this new limitation, the cross-examining attorney would be hard-pressed to prove a violation occurred in the allotted time limit. Since the attorney could not point to a specific line number to prove that something is not in the case packet, there would be no way to impeach the witness or make a "Beyond the Scope" objection.

Lastly, we know and understand that many judges and jury members do not have a detailed knowledge of the case materials. During a trial, a cross-examining attorney would be able to "nip around the edges" of the witness's affidavit, force the witness to answer no, and make the witness look foolish without giving the witness a fair opportunity to defend themselves. Since the jury would be unaware of why the witness was answering no, it would give an unfair advantage to the opposing side of the case.

> A: *Thank you for your thoughts regarding Rule 4.6. You may rest assured that your committee is dedicated to keeping the witnesses a vital part of mock trial. Indeed, one member of our rules team was a witness throughout his four year mock trial career. Respectfully, however, we don't think that the change to the rule disadvantages witnesses in the way that you contend. You are quite correct, of course, that no cross examining attorney should ask such a question. In years passed, we simply ended the rule*

there, but that caused some serious problems.

It is helpful to look at an example (one so salient it exists as part of the revised rule). Several years ago, the case involved a murderer who the prosecution alleged moved the deceased's still-bleeding body. The defense wished to argue that the body was never moved, because the "deceased" was actually alive and well. A critical fact in that case was that the lead investigator never checked one of the stairwells for blood. The defense thus wanted to argue that the person could simply have walked out (leaving a distinct dripping pattern), and the investigator would have missed it. The materials established that s/he had not checked the stairwell by having the investigator describe each step that s/he took, and that was not one of them, even though s/he said s/he had done a thorough, first-rate investigation. Naturally, cross-examining attorneys throughout the state asked the witness to confirm that s/he had not checked the stairwell. To our chagrin, many investigators responded that they had, in fact, done so. When there was an attempted impeachment by omission, the direct examining attorney objected that the witness was asked to unfairly extrapolate and did so consistent with her/his statement, which, after all, said that it was a thorough investigation and never expressly said that s/he did not check that stairway.

*This was the archetypal example of what we came to call the "extrapolation trap." Cross-examiners would ask reasonable questions about things the witness had not done, but had not specifically stated in her/his statement that s/he did not do. (And listing everything that the witness did not do would not only be out of character, and frankly bizarre, but also futile; in our experience, the mock trial teams throughout the state will *always* think of things we did not. It's one of the things we love about you.) Then, when impeachment was quite rightly attempted, there would be an objection.*

*The net results of the growing use of impeachment traps were fourfold: (1) considerable loss of time in cross-examination and on argument; (2) judicial confusion about who was right and who was wrong; (3) resultant inconsistent rulings statewide (or even locally) on identical issues; and (4) distortion of the case balance, as witnesses claimed all manner of things that they didn't actually do and to which the other side had no way to respond. Just as bad, the only way around this was not to raise the missing elements until closing argument, which meant that even those teams that didn't use impeachment traps wound up closing on things about which there had been no testimony. Some judges marked those teams down for that, believing that these were facts not in evidence. Others did not. Ironically, the simple rule we had chosen resulted in *more* confusion about what was allowed, not less.*

To our chagrin, when we looked nationwide, we found that virtually every state was having the same problem. There is simply no language that can uniformly prescribe what is fair and unfair for the variety of cases and the vast creativity of our competitors. So rather than changing the rules markedly, we added a brief coda with examples of unfair actions, designed to maintain case balance. The rule is in our minds the same that it ever

was, but clearer: attorneys should not ask for facts outside the case materials, but may identify steps that a witness did not take or things the witness did not consider. Put another way, when a witness says that s/he included everything material in her/his statement, s/he means it.

The only "new" limitation this year is that the witnesses may feel less free to claim that they did things which appear nowhere in their statements or performed investigations that they never actually mention. We're more comfortable with that as a reflection of the spirit of the rules and the competition than we are with the proposition that a cross-examiner cannot identify holes in a witness's story without providing the witness the opportunity to shift the case balance by plugging those holes on the fly.

We recognize that this is an imperfect rule in an imperfect system of rules designed to make an artificial construct (a world in which all relevant information is provided in only a few dozen pages), but we believe it to be as good or better than any others. We especially believe that it is preferable to penalizing teams that are good at finding flaws in a witness's work by having those flaws eliminated by the act of their interrogation, and having judges throughout the state confused as to which team just did the right thing.

We welcome constructive suggestions on changes to rules that would make the competition fairer or the rules clearer. Any competitor, coach, or friend of mock trial can reach out to us at any time, and we hope that you will.

Q: We have a question about the contents of openings and closings. We understand that it is against the rules to use outside sources, but is it against that rule to use famous quotes or poetry in openings and closings?

I thought it was allowable to use quotes, but at the Monroe Bar Association Tournament this past weekend, it was objected to.

A similar objection was raised to our closing statement in which the student attorney used the statement to the jury, "put yourself in the victim's shoes, what would you do?" One of the attorney judges told us that this was not allowable, but we can't find such a rule. Is it allowable?

A: *The use of quotes, illustrative examples and other thematic elements is in the discretion of the judge. There is no mock trial rule that forbids doing so, and many teams have found it effective. Mock trial rules forbid use of outside sources to conduct research into the facts, history, science or legal structure surrounding the cases. They do not foreclose the use of rhetorical devices.*

Teams should note, however, that certain quotes or themes may be objectionable for other reasons. For example, in opening, a quote could be so argumentative as to be objectionable, or quotes could prejudice the jury or confuse the issues. For example, some

courts have prohibited prosecutors from using biblical passages demanding harsh vengeance, even while other biblical passages are considered appropriate. There is no one-size-fits-all answer to this question, either way.

The attorney judge is correct regarding the "what would you do" quote, at least in regular practice. That is thought to be a violation of the rules of the courtroom and/or the rules of professional responsibility. There is no express prohibition on doing so in the mock trial rules, but teams should be aware that attorneys and judges serving as scorers are cautioned against rhetoric that asks the jury to put themselves into the case. Although local practice may differ from county to county, many scoring judges may react negatively to the use of such devices.

1/16/2013

Q: I have a question regarding the Mock Trial Competition rule 6.22. This rule states that there is to be "no communication among team members, other than the six students participating as attorneys or witnesses in that trial." I am unclear as to whether this means that the witnesses in the active trial are allowed to communicate with the attorneys and vice versa. I have always been under the impression that the attorneys were allowed to communicate with one another, but they were not allowed to communicate with the witnesses. If I could have clarification on this rule, it would be much appreciated.

***A**: Teams have 6 members--three lawyers and three witnesses-in each trial. Those six can communicate in ways that are non-disruptive and that do not violate the rules (i.e., no one but the examining lawyer can question, respond to objections, etc.). There may also be communication, about time issues only, allowed under the timing rules with a 7th member of the team, the student timekeeper.*

In those districts and regions that allow more than three attorneys, all attorneys actively participating in the trial of a round (i.e. who have a role in the round in question, whether it be opening, closing, direct or cross) may participate in such discussions.

Teams are advised that scoring judges may observe witness behavior throughout a trial and score it as they see fit. Accordingly, students who are portraying witnesses with no legal training who appear to be repeatedly feeding objections to an examining attorney may not be felt to have remained in their role. Teams may therefore wish to be especially judicious or circumspect in their communications with their witnesses, even those such communications are permitted under the rules.

Q: Can teams object to the content inside the exhibits? Particularly the Reese Detner Philly.com article?

> ***A:*** *There is nothing sacred about exhibits or about the factual material contained in them. Except to the extent that it is otherwise stipulated, every exhibit is subject to objection in whole or in part on any grounds. Notably, however, Stipulation 1 excludes authenticity as a grounds of objection with respect to all exhibits.*

Q: The stipulation reads, "The weather reports found in Exhibit 7 are authentic and accurate, and they may be admitted without further foundation. The readings in those reports were taken by SAS's instruments at Philadelphia International Airport." Can we object to the weather report on other evidentiary grounds such as hearsay?

> ***A:*** *No. The parties have stipulated that the weather reports may be admitted without further foundation. Typically, in a real trial, these exhibits could be admitted as business records upon a sworn, out-of-court declaration by their custodian (e.g. an executive of super-accu-sat-weather responsible for keeping the company's records). See, e.g. Federal Rule of Evidence 902(11). Notice is given to the opposing party, who can object and force the custodian to testify live. In this case, the parties have elected not to require such a declaration or such testimony and have instead agreed to admit the exhibit without further foundation.*

Q: If a witness is proved to be unavailable (Arty Dent) are we allowed to introduce his/her hearsay statements?

> ***A:*** *The introduction of hearsay statements by unavailable witnesses is governed by Rule of Evidence 804. To the extent that Rule 804 provides an exception for the statements that you are attempting to introduce, they may be admitted. Otherwise, unavailability of witness does not allow a statement to be admitted that otherwise would be inadmissible. However, if a statement would otherwise be admissible, e.g. because it is not hearsay pursuant to Rule 801 or because it is an exception to hearsay pursuant to Rule 803, the fact that the witness is unavailable will not prevent that statement from being admitted.*

Q: The rule of hearsay and its exceptions confuses us. If the speaker is dead and told a witness or a witness heard something they said, is that an exception?

> ***A:*** *You are not alone. Hearsay is a challenging rule, and it often fools even experienced attorneys. If a statement is admissible pursuant to Rules 801 or 803, the fact that the declarant is dead (or otherwise unavailable) will not make it inadmissible. Rule 804 provides additional hearsay exceptions for unavailable witnesses. If a statement does not fall within the exclusions in Rule 801 or the exceptions in Rules 803 and 804, however, the fact that its declarant is dead does not provide a special basis for its admission.*

Q: Can the defense attorney defer making his/her opening statement until after prosecuting witnesses have testified?

> ***A:*** *No. Pursuant to Rule 6.23, the sequence of the trial is: Opening Statements [plural], then Evidence Presentation, then Closing Arguments. This Rule is designed to assist the scoring judges in making a direct, like-to-like comparison between the performances of the students presenting the opening statements. It also mediates the impact of not allowing the prosecution to make a rebuttal case by allowing the prosecution to anticipate to some degree the defense case, based on its opening statement.*

Q: Is the team allowed to demur (because prosecution hasn't proven the case beyond a reasonable doubt)?

> ***A:*** *No. A demur requests the court to rule that the prosecution has not proven its case beyond a reasonable doubt. If the demur is denied, the defense typically presents a case. Accordingly, the demur (or its federal counterpart, the motion for a judgment of acquittal pursuant to Fed. R. Crim. P. 29) is a motion. Pursuant to Rule 6.20, all motions are prohibited, and judges are instructed to tell the scoring judges that fact if one is raised.*
>
> *A defense team could in theory, of course, feel so strongly as to not put on a defense case at all. However, since the defense has twice as many points at stake in its case (because both its attorneys and witnesses are being scored, while only the prosecuting attorneys are scored), this option has rarely, if ever, been pursued.*

Q: Can the defendant choose not to testify pursuant to the Fifth Amendment? Can the prosecution discuss the defendant's failure to make a case in its opening? Its closing?

> ***A:*** *See Stipulation 5. Zillias' waiver is knowing, voluntary, and complete, and all parties should therefore treat the Fifth Amendment as wholly inapplicable to this matter, providing no limits on their actions. However, as many scoring judges may have a residual feeling that some areas are "off limits" to a prosecutor, regardless of this waiver, teams are advised to be judicious in their approach to opening statements and closing arguments.*

QUESTIONS ADDRESSED FROM LAST YEAR'S COMPETITION

1. Are any of the witnesses identified as expert witnesses? If so, does that mean that under direct examination a foundation for their expertise does not have to be established?

> *"expert witnesses" as that term in used in Rule 4.9, which states:*
>
> *4.9 Expert Witnesses*

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 ("competency"), although the other team would remain free to impeach the expert as noted above.

2. 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). [see Question 23 below, in the Previous Competition Question section] 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.

3. Must all jury members be provided a copy of the Guidelines for Jurors (Scoring Judges)?

   Jurors (scoring judges) may or may not be provided with a copy of the Guidelines. Generally, trial coordinators are encouraged to provide such copies to jurors. In addition, jurors at all levels of the competition are normally provided with a pre-trial orientation by the trial coordinator which generally includes a discussion of scoring issues.

4. The current score sheet does not have a comments section. Will the jury be encouraged to give comments for team improvement?

   The score sheet specifically states that comments can be made by jurors on the back of the score sheet. Jurors may comment as they wish.

5. Can we write on a white board, blackboard or flip chart during their closing arguments?

   No – it is a prop. Rule of Competition 6.14.

6. Can the defendant be asked questions about what other witnesses say at trial since this witness is not considered sequestered under Rule 4.7?

   No. Such questioning is explicitly prohibited by Rule of Competition 4.5.

7. Can the student presenting the opening also present two cross examinations?

Yes. Rule of Competition 6.10.

8. Can we use cases we find in the materials during the trial?
   Please read the Answers provided below to Questions 19 and 20 in the "Questions From Previous Competitions" Section which should answer your question. With regard to citing legal opinions, we add the caveat to Answer 20 that only those parts of cases specifically cited in the materials can be used.

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 <u>not</u> 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

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

    - *No. This violates Rule of Competition 5.1*

13. 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.*

14. 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.*

15. 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.*

16. 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.*

17. Can a previously introduced exhibit be re-shown to the jury during closing arguments?

    - *Yes, assuming the exhibit was admitted into evidence.*

18. 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.*

19. 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.*

20. 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.

21. 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*

22. 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).*

23. 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.*

24. 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.*

25. 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.*