

**1/24/11**

## **FINAL SUPPLEMENT TO CASE MATERIALS**

### ***The Estate of Simone Langston v. Dr. Lefu Harrison***

The deadline for submitting questions was January 19, 2011. No further questions will be considered. If you have any comments about answers provided in this supplement, or if you have submitted a question which does not appear in the supplement, please email David Trevaskis immediately at [david.trevaskis@pabar.org](mailto:david.trevaskis@pabar.org) and inform him of the omission. All questions submitted have been included.

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

**12/22/10**

1. Assuming the mock trial scenario is striving for realism, then here is a correction: On lines 1 and 2 on Page 30 - Squirrel Hill is within the city limits of Pittsburgh, so the second sentence of the affidavit should read: "I currently reside in Squirrel Hill in Pittsburgh with my family."

*The authors, both residents of Philadelphia, apologize for the mistake and accept the correction. They also recognize that the Steelers have won six Super Bowls and the Eagles as yet have none. However, if you want to compare baseball teams ...*

2. Exhibit 4 Figure 2 is showing/measuring a pulmonary artery aneurysm, not a "lung cancer."

*Figure 2 apparently shows an aneurysm and not lung cancer, though the two are similar looking. However, for the purposes of the competition, Figure 2 represents what it purports to be. No challenges to the current exhibit on the grounds that it is not what it purports to be will be entertained. [Our committee wishes to thank the radiologist and mock trial parent who kindly pointed out this error to us and who took the time to discuss the issue with co-author Jon Grode.]*

3. In Exhibit 8, the Mini-Mental State Exam is identified as an "MSSE"; however, in Farley Davis' statement it identified as the "MMSE." Which is correct?

*MMSE*

4. On page 21 of the Jury Interrogatories, Question 3, shouldn't it read \$200,000 instead of \$200?

*Yes.*

5. Line 91 of Gopi Anandganda's witness statement says "I restrained Simone, and Dr. Caget came in and pulled Dr. Lefu out." Is it supposed to read "I restrained Avery," or did Gopi really restrain Simone?

*It should read that Gopi restrained Avery.*

6. On page 18 of the Jury Instructions, the last two paragraphs continuing into page 19 mention stipulations. Are these stipulations that should be included in the Stipulations on pages 11-12?

*Teams can consider these two items as stipulated facts. Stipulation 15 shall be that that Simone Langston was unconscious when cells were taken from her the first time. Stipulation 16 shall be that the second removal of cells from Simone Langston was not for the purpose of diagnosis or medical treatment.*

7. In Farley Davis' affidavit s/he says that s/he performed a full psych examination on Simone Langston on February 16, 2009. In Exhibit 8, the MMSE performed by Farley Davis on Simone Langston was performed/completed on February 22, 2009. Are the two examinations the same examination? If so, why are the dates different?

Dr. Farley Davis states in Line 33 of her/his statement that s/he interviewed Avery Langston on February 16, 2009. However, Avery never mentions meeting with Dr. Davis on that date; s/he only mentions February 22 in Line 80. How can we account for this discrepancy?

*The February 16, 2009 date on line 33 of Dr. Davis's statement is an error. It should read February 22, 2009, consistent with the other dates in the problem and the date of the consent form.*

8. Dr. Harrison's witness statement indicates that there was a fire at the hospital on February 23, while Dr. Caget's statement indicates that it took place on March 3. Is this a typo?

*The February 22 date on line 49 of Dr. Harrison's statement is an error. It should read "March 3," consistent with the other dates in the problem and the date of Exhibit 17.*

9. In Plaintiff's Reply to New Matter, #31, the averments of paragraph 19 are addressed, but are not part of the New Matter. Is this an error or is it relevant to the case?

*It is an error but it is not relevant to trying this case.*

10. Should the religion of Simone (Bokonist) be considered a real religion or the one from Cat's Cradle?

*For the purposes of this mock trial competition, the religion is real, although the case authors note the inspiration that Kurt Vonnegut has provided to generations of mock trial enthusiasts and encourage students to enjoy Cat's Cradle, which Vonnegut viewed as his best novel.*

11. In Gopi Anandganda's statement, Lines 104 and 106, Simone is referred to as "s/he" even though Simone is female. Is this a typo?

*Yes*

12. What is the correct phonetic pronunciation for SiLa?

*See – la*

13. How should Lefu be addressed in court? Dr. Lefu or Dr. Harrison?

*That is your choice.*

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14. What happened to the money paid by Lefu to Avery (\$200,000)? Is it still in her/his attorney's escrow account, did it get used up to pay medical bills or has something else happened to it? Can Avery actually access the escrow account funds?

*The money is still in the escrow account. Avery has ultimate control over the money because the source of the escrow account was the personal check written to Avery and no one has made a claim against the funds.*

15. In one of the statements, it has documented Simone's age as 72. Another source says 73. How old is she?

*She was born on August 10, 1936.*

16. Should "Bono Valetuda" read "Bona Valetudo"?

Yes.

17. 17. Should Exhibit 2's phrase reading "freely and or sound mind" instead read, "freely and **of** sound mind"?

Yes.

18. Lines 98-99 of Avery Langston's statement read "No amount of money would have changed that I think." Should it be "No amount of money would have changed **what** I think"?

*It is correct as written.*

19. In some of the materials it is noted that Simone died intestate (without a will) but other places we reference Avery as the executrix, indicating there was a will. Which is correct?

*Simone died without a will, i.e. intestate. (Stipulation #9) Where a person dies without a will, a court will appoint a personal representative of the estate. That person, usually a family member, is called the administrator (male) or administratrix (female). Avery should be identified as an administrator/ administratrix and not as an executor, which is the label used to identify the person named in a will to represent an estate.*

### **CASE CLARIFICATIONS – No Answers 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.

**12/22/10**

1. You have concluded that Simone Langston was incompetent on April 11, 2009 and thus unable to provide informed consent for the removal of her cells. Did Avery Langston, acting as her guardian, grant Simone Langston's consent to Dr. Harrison, permitting her/him to remove her cells, in exchange for \$200,000?
2. Dr. Quincy Ebardiar states in her/his affidavit that s/he started a MoCA, which Simone failed, then started it again at Dr. Lefu Harrison's request, which she passed. Why is there no record of the first exam?
3. On what date was Simone Langston buried?
4. At the bottom of Exhibit 5, the "signature" is just Lefu. Should this be the full name of the signatory?
5. Stipulation 9 states that Simone's estate "has no existing debts." Avery's statement in line 164 contradicts this stating there were hidden charges and bigger hospital bills. This would be debt right?
6. Concerning Stipulation #10: Are you saying that Avery was only allowed to make a decision (as guardian) for Simone on April 11th? What about any time before that (ex. April 8th / failed exam)?
7. In Exhibit 10, Simone Langston's name appears as Langstone. Is this intentional?
8. On Exhibit #3, there is no date for the Agreement For Rights to SiLa and Consent to Biopsy. Is this a mistake?
9. Dr. Farley Davis states in line 29 that s/he conducted a full examination of the patient but a record of that examination is not included in the Exhibits. Why not?

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10. How did Dr. Lefu learn of Simone's case? Did he witness it first hand or was he told by someone? If so who?
11. In Exhibit 2 dated February 22, 2009, it is clearly stated that Simone Langston wants NOTHING removed from her body. In Exhibit 5 dated on February 22, 2009, it is stated that a FNA procedure had been completed involving removal of a tissue sample. How was there a tissue sample obtained on the same day she signed a form stating nothing was to be removed from her body?

## **RULE AND EVIDENTIARY QUESTIONS:**

**12/22/10**

1. Are Dr. Davis and Dr. Ebardiar identified as expert witnesses? If so, does that mean that under direct examination a foundation for their expertise does not have to be established?

*Each doctor is identified as a "Competency Expert Witness" in the Case Materials (see page 25). Both doctors are thus "expert witnesses" as that term is 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 new score sheet does not have a comments section. Will the jury be encouraged to give comments for team improvement?

*The new 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 pages 2-14 in court to back up a critical point? I noticed you stated the jury notes were not to be used as evidence but legal concepts could be used.

*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. (For example, if the judicial opinion in the materials cites the Smith case for the proposition that running a red light is negligence per se, that is the only proposition which can be used in a trial).*

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

*Yes. Rule of Competition 6.10.*

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10. Can Dr. Lefu sit at counsel table as a party representative/agent, under Rule 6.9?

*Yes.*

11. Can a witness statement be admitted into evidence?

*A witness statement is an out of court statement, and thus it cannot be entered into evidence for the truth of the matter asserted consistent with Rules of Evidence 801 et seq. However, like other out of court statements, it may be used for other purposes. For example, witness statements may be used to impeach testimony without being marked or admitted into evidence (see rule 5.4). If there is some other purpose for which a statement could be introduced into evidence other than to prove the truth of the matter asserted, it may be.*

12. Would it be fair and admissible for an attorney to question the expert witnesses on general facts about the MMSE and MoCA tests, considering that they are real, commonly used tests (i.e. dates that tests were developed, and their accepted uses and/or limitations?)

*Under Rule 4.6, attorneys may not ask questions of a witness calling for an answer that includes information outside the scope of the case materials. Similarly, a witness is limited to testifying to information contained in his/her statement (and relevant exhibits (Rule 4.4)). The purpose of these rules is to provide a fair playing field where no team will be advantaged or disadvantaged by its ability or willingness to do research outside the problem. A witness may make fair extrapolations of information contained in the statement; a fair extrapolation is one that is neutral and can be reasonably inferred from the witness statement. An unfair extrapolation is one that strengthens the witness' testimony. Any information you seek to introduce that does not have the case materials as its source is subject to objection by the opposing team and a ruling by the trial judge.*

13. Can we ask a witness to sign two pieces of paper?

*No. This would be a violation of Rule 5.1 whereby you would be presenting evidence of a signature that is not in the form provided in the materials.*

14. Rule 4.5 states that "A witness may not be asked questions about information contained in another witness' statement/affidavit. Nor may a witness be asked questions about what another witness testified to at the trial." With regard to cross examinations, does this rule imply that it would be inappropriate to address something written in Witness A's statement about Witness B, even though Witness B did not address it in their own statement?

*Not necessarily. If you limit your questioning of Witness A to what is contained within Witness A's statement, then you should be in compliance with Rule 4.5.*

15. Rule 4.3 states that "Voir dire examination of a witness is not permitted. This does not preclude a team from challenging an expert witness' credentials on cross examination." Isn't this Rule composed of two inconsistent sentences? We read this Rule as saying that we can't present the credentials of our expert witness on direct, but it doesn't prevent the other side from challenging those credentials during cross examination. Is this correct?

*We assume that you are referring to the application of Rule 4.3 as it concerns Drs. Davis and Ebardiar, who are identified in the materials as "Competency Expert Witnesses." As discussed above, under Rule 4.9, "the fact of the[se] witness' expertise may not be questioned."<sup>1</sup> (See Q. #1 in this Section)*

*Rule 4.3, in conjunction with Rule 4.9, permits a team to offer its own foundational evidence on direct examination with respect to the expert's credentials. This is specifically permitted so that any countervailing evidence raised on cross-examination does not prejudice the jury. Thus, Rule 4.3 is not meant to prohibit any team from laying foundation on direct to show the credentials*

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<sup>1</sup> The purpose of identifying Drs. Davis and Ebardiar as experts in this year's case is to prevent a situation where a trial judge would rule that either or both of these doctors are not qualified to render an expert opinion on competency, thereby fatally hampering the ability to of one or both sides to try the case.



*which inform the finding of expertise, nor to prohibit the other side from challenging that witness' credentials on cross for impeachment purposes.*

*In many courtrooms in Pennsylvania, voir dire interrupts direct examination and results in an immediate cross examination before direct examination continues, essentially resulting in a "mini trial" on the witness's qualifications before direct examination can proceed. Rule 4.3 is meant to prohibit voir dire only in this sense of the phrase; the purpose of this Rule is to avoid the mini trial of voir dire on credentials and have all of the opposing party's questions related to the witness' credentials/qualifications handled on cross examination. This allows the direct examining team to complete its examination before cross time is expended, which simplifies timekeeping and scoring, which otherwise would have to account for discontinuous cross and direct examinations.*

*In sum, consistent with Rule 4.3, the direct examining attorney may introduce evidence of a witness's qualifications on direct or re-direct examination, but is not obligated to. The cross examining attorney may attack the witness's credentials and degree of expertise or relevant expertise on cross examination, but is not obligated to. However, each side may only question during its own examination.*

## **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 8<sup>th</sup> grader compete on a team? May a post graduate student compete?
  - *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 others, such as an 8<sup>th</sup> 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 9<sup>th</sup> to 12<sup>th</sup> 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

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.*