

Updated through January 21, 2005

SUPPLEMENT TO CASE MATERIALS

The deadline for submitting questions was January 14, 2005. No further questions will be posted. If you have any comments about answers provided in this memo, or if you have submitted a question before January 14, 2005, which does not appear in the supplement, please immediately email David Trevaskis at david.trevaskis@pabar.org and inform him of the omission. All questions submitted have been included in this supplement.

THIS IS THE FINAL SUPPLEMENT AND IS THE OFFICIAL SUPPLEMENTAL MEMO WHICH MAY BE USED IN THE COMPETITION, 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 FOR JANUARY 21, 2005 FINAL SUPPLEMENT

Here is the third and final set of answers to all questions about the 2005 mock trial competition received through the question period. Questions have been divided into case clarifications and rule and evidentiary interpretations. As with the past years' supplements, most case clarification questions have been answered with a general response: ***"The case materials provide all of the information available to answer this question."***

That response sometimes means that there is enough information already in the problem to answer the question asked; more often, the response means that the question was not addressed in the case materials and the answer to the question is unnecessary for purposes of the competition. The problem committee has tried to fill in unintentional gaps in the case materials without creating too much new information that might burden teams preparing for the competition.

Teams should be careful if they try to elicit information by asking questions which the problem does not answer in detail because, on direct, it will often elicit an objection of "unfair extrapolation" and, if asked on cross exam, the questioner is stuck with the answer given. (Rule of Competition 4.6).

Miscellany:

12-17-03

1. This year, I am playing the role of D'Arcy Ace. Despite my scrutinizing of my testimony and professional law opinion, I am questioning my status and role in this trial. What exactly is it that I am here for?

How each team uses its witnesses is up to the strategy the team develops with its coaches.

2. We are participating in a scrimmage event against other teams in the competition. Is this allowed?

Yes, the Mock Trial Committee encourages teams to scrimmage each other, participate in the mock trial camps certain counties hold, and take advantage of any pre-statewide program competitions offered.

3. Our team wants to watch other teams in a pre-competition event being held in Pittsburgh. Does this violate the "No Scouting Rule"?

No. Teams who participate in camps and other open pre-statewide program competitions allow their teams to be observed by anyone in attendance. The "No Scouting" prohibition refers to the competition itself and these events are outside the competition scope.

CASE CLARIFICATIONS

12-17-03

1. In lines 130-131 of Chris Zimmerman's witness statement, it is stated that "eyewitnesses indicated that between 100-150 fans successfully ran onto the floor at the time." Previously, on line 129, it was stated that ".one out of three got through." From these two statements, can it be reasonably inferred that 300-450 patrons attempted to get through? Would the use of such an inference be in accordance with the rules of competition?

The ultimate decision about whether an extrapolation is fair and can be reasonably inferred from the witness statement is made by the presiding judge. Rule of Comp 4.6 Although this appears to be a good example of a reasonable inference to the Question and Answer Committee, remember that the presiding judge's ruling is final. If any such inference is key to a team's case, the team must be prepared to cite the rules and persuade the judge. The opinion rendered here that it seems reasonable to the Question and Answer Committee is not an argument that may be presented to the court.

2. Could you please supply us with the lyrics for Gil Scott's Revolution?

Please note that this information may not be used in the trial, but for purposes of sharing the background of the problem, the song is a play on Gil Scott-Heron's poem "The

Revolution Will Not Be Televised". He has been described as one of the "godfathers of rap." (For more, check out <http://www.timesonline.co.uk/article/0,,7948-1181297,00html>)

The answer to all of the following questions (Questions 3 through 6) 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.

3. In Chris Zimmerman's statement, he says that the song "My Revenge" is replaced. What song was My Revenge replaced with?
4. Do we know a weight and height for Cameron Campbell.
5. Was Riley Urbanski (aka Skee Poll) aware of the jump in record sales following the crowd rush incident at Watchoverya Arena?
6. Who hired D'Arcy Ace, and is s/he being paid in his/her testimony? If so, how much is s/he being paid?

1-11-05

7. How does one pronounce the name of the security expert, D'Arcy? One syllable? Two syllables?

The use of either pronunciation - (phonetic) Dar-see or Da-ar-see - is permitted for use in the competition.

The answer to all of the following questions (Questions 8 through 13) 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.

8. How did D'Arcy, the expert, know what (s)he knew about the concert as (s)he was not at the concert?
9. Is the diagram drawn to scale?
10. In her deposition, D'Arcy Ace states that her Suggested Concert Crowd Safety Guidelines have been adopted by approximately fifteen municipalities. Has the implementation of these guidelines resulted in a decrease in concert injuries? If that statistic is not available, do we have any sort of information regarding the success of the guidelines thus far?

11. What is Chris Zimmerman's current occupation/employment?

12. What exactly is a martial beat?

13. During Skee's four, full-house sell outs during the 2000 debut tour, and his two full-house sell outs, during the 2002 Black Diamond Tour – in which security at these events was managed by Chris Zimmerman – did the respective venues for these six sold-out shows allow festival seating?

1-21-05

14. May we know what amount the settlement against the arena was in the first lawsuit? (They settled that out of court.) May we have the dollar amount?

No.

15. I noticed that exhibit 2 is a ticket for section 110, row 1, seat 1. Shouldn't this be section 110, row A, seat 1?

You are correct. There is a typographical error on Exhibit 2. It should indicate that the seat is in Row A, Seat 1.

The answer to all of the following questions (Questions 16 through 30) 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.

16. What are the dimensions of the barriers that Pink Security erected before the concert?

17. Could the stage extend outward into the festival seating area so that if Pink Security wanted to before the concert they could eliminate festival seating?

18. Would the cost of the concert tickets be considered general knowledge?

19. The information in the testimonial of D'Arcy Ace gives numbers to how and why the festival seating would not work. All the numbers are given, may we calculate them to show the dangers of fitting the ticket goers in festival seating? For example, he/she said that there should be 7ft per person so 7×748 (the number of ticket holders that showed up) would equal 5,236 people in festival seating, and the limit is 3,600.

20. The agreement listed on the back of the ticket states: “Holder voluntarily agrees that the management, facility, league, participants, participating clubs, Meyer USA Tickets, and all of their respective agents, officers, directors, owners and employees are expressly released by holder from any claims arising from such cases.” What does the term participants refer to? Additionally, are Riley Urbanski and Thugs and Skees considered an employee or agent of Meyer USA Tickets?

21. Are the National Fire Association's guidelines sanctioned by the Federal Government?
22. In what has up until now been submitted in the supplemental case materials a question was asked regarding whether or not D'Arcy Ace was being paid for his/her testimony, and you have said that the answer to this question was already stated in the information provided. In lines 14-15 Ace states that s/he received between \$150-300 depending on the services offered without specifying whether or not s/he was receiving payment for his/her testimony in this case in particular. Are we to assume that s/he is being paid for the testimony in court in addition to any fees collected during his/her investigation?
23. When Chris Zimmerman requested from Thugs and Skees that "My Revenge" be dropped from the concert playlist, was Skee Poll involved in the decision process?
24. Was "My Revenge" performed in Richmond and Baltimore?
25. Did Skee Poll's album, Rap Mogul, have a "parental advisory" on its label?
26. As to the Security Guards at the arena: Are they all from one company? Do they undergo a specific and adequate training program? Are they of sufficient height and weight to deter a surging crowd? Were they distributed evenly throughout the arena?
27. How long are the songs "Beat You Down", "Riot 2", "Fire It Up", and "Gil Scott's Revolution"?
28. Who made the playlist (the order in which the songs were played) for Skee Poll's concert?
29. Does Skee Poll get paid a flat rate for his performance, or does he get paid for the ticket sales?
30. What is meant when said that Keith Gallo was "Brain Dead"?

RULE and EVIDENTIARY QUESTIONS

12-17-03

1. Can a single teacher [or attorney] coach two teams?

Under the Rules of Competition, A4 and A5, multiple teams from the same school are viewed as distinct. They may not communicate with each other about other teams once the competition begins since that would invoke our anti-scouting prohibition. Thus, for practical purposes, a single teacher and a single lawyer might train and prepare two teams together, having them go through the same exercises and even scrimmage each other or scrimmage other teams. However, once either of those coaches took the team to a competition trial, they could not take the other team to another competition, since they might either see the team their other team competed with or a team their other team might play in the future. Even if the coaches didn't share any information between the

two teams about the opponent, the appearance would be otherwise and this would directly violate the no scouting rules.

It seems possible that a school with one primary teacher coach and two teams might enlist another teacher to basically chaperone for one team while the primary teacher coach takes care of the other team. Perhaps the lawyer coach would fill the main support role at the competition for that other team. But that lawyer coach would then be unavailable to accompany any other team in future matches, just as the teacher coach would be unavailable to that team.

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 across the two 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 goes up against a team that the eliminated team played. The teacher or lawyer coach could observe (teams out of the competition may observe without violating the no scouting rules) but could not coach.

2. Can information, cases, opinions cited in the dismissal of the defendant's summary judgment motion (pages 12-14) be used in the trial?

Our Rules clearly state which materials may be used in the competition. Teams are welcome to study anything, and the Mock Trial Committee hopes students branch out and learn much more about the issues involved in this case than what is narrowly used for the competition purposes, but they are limited to only what is in the problem package for the actual competition. Thus, if an opinion is given and a case is cited in the case materials, that opinion and even the case citation might be used during trial if the Rules of Evidence allow such action. HOWEVER, teams are restricted by the Rules of Competition from researching the cited opinions for use during the trial and any reference to the fruits of such resource would be a rule violation.

3. Can Cameron Campbell invoke his/her Fifth Amendment rights when asked questions pertaining to alcohol consumption (self-incrimination)?

Fifth Amendment protections in civil trials are handled very differently since there is only money, not freedom as in a criminal trial, at issue. It would be possible under our rules for any witness to invoke the Fifth Amendment, but the opposing attorneys may use that invocation against the witness in closing argument. Thus, whatever harm might occur to the witness' side by an admission is probably magnified by the invocation of the Fifth Amendment.

4. Under the rules of competition, can Chris Zimmerman be entered as an expert witness in the field of security control?

Zimmerman can testify as an expert if so qualified under the Mock Trial Rules of Evidence. However, Rule 702 says "generally, experts will be specifically identified in the case materials." There is nothing in that rule that keeps a team from attempting to qualify a witness as an expert; the full rule is below:

*Rule 702. Testimony by Experts
(generally, experts will be specifically identified in the case materials)*

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify in the form of an opinion or otherwise.

The answer to all of the following questions (Question 5) 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.

5. The Amended Complaint states defendant knew "or should have known" that his incitements (conduct) would cause imminent lawless conduct. Brandenburg states plaintiff has the burden of proving that the speech (conduct) was directed or intended toward the goal of producing imminent lawless conduct. Do the students have to prove that it was defendant's deliberate intention to have fans rush the stage, or do they only have to prove that there was a substantial likelihood (knew or should have known) that his incitements would cause them to do so (negligence vs. intentional tort).

1-11-05

6. Can schools wear uniforms from their school?

Uniforms are allowed as long as the uniform does not particularly identify the school itself. For example, a military type uniform, without the name of the school, is fine.

7. Every mock trial team has a plaintiff side and a defense side. Suppose the defense side of the team is competing. Is it considered "scouting" when the students on the plaintiff side sit in the courtroom and watch their teammates' competition? These students are all on the same "team" from one school?

In this instance, no scouting is involved. This is allowed. All members of one team may always watch their team in action.

8. The Defendant has an expert witness pointing the finger at the arena, but the jury verdict form does not mention the arena. Question 6 on the jury verdict form does not mention the arena. Question 6 on the jury verdict form directs the jury to allocate liability between Gallo and the rapper, totaling 100%. This leaves no room for any liability apportioned to the arena.

You are correct that the jury verdict form / special jury interrogatories (pages 18-19 of the Case Materials) do not address Watchoverya Arena's potential liability for causing Keith Gallo's death, which is a defense raised by defendant. This verdict form is not meant to limit the defendant from raising this argument at trial. In fact, to correct this omission, we have created an alternative verdict form that encompasses Watchoverya Arena's potential liability, posted on the Mock Trial website. You may access the new form by visiting the link below:

<http://www.pabar.org/pdf/MockTrialAlternativeJuryForm.pdf>

Please note that the settlement reached prior to trial between Watchoverya Arena and the plaintiffs does not preclude the defendant from raising Watchoverya Arena's potential liability. Evidence of the settlement is still prohibited, however.

1-21-05

9. Could I ask Skee Poll what he did in his concert and when even though it is not in his affidavit?

No. Please see Rule of Competition 4.6.

10. Can I use Chris Zimmerman's testimony to help my Cross Examination of Skee Poll?

No. Please see Rule of Competition 4.5.

11. We understand the Special Jury Interrogatories may not be submitted as evidence during the trial, but will the judge have a copy? Is our team permitted to supply the presiding judge with a copy of the original and/or Alternative Special Jury Interrogatories form(s) prior to the opening of the trial? Will these interrogatories definitely be given to the jury by the judge? And if this is the case, which form will they be given?

The trial judge will have a copy only if supplied by the coordinator/bailiff. Otherwise, your team should not supply the presiding judge with the Special Jury Interrogatories (or the Alternative Form). The presiding judge should not be supplying or reading the Interrogatories to the jury since the jury is not ruling on the merits of the case.

12. We think we know the answer is yes. But in case it comes up in trial – Rule of Competition 5.1, states no color reproductions may be used, but we are allowed to use the colored exhibits as they are printed – specifically the ticket and arena seating chart aren't we?

Yes. You may use colored copies of colored exhibits.

13. As our team was studying the information a question was raised...We were wondering if we could bring up situations that occurred in the arena for the purposes of comparative negligence since they already settled with the arena.

If I understand your question correctly, you were wondering whether Watchoverya Arena's potential negligence can be raised. Please refer to the Answer to Question 8 above.

14. May an "empty chair" scenario be used as long as the settlement with the arena is not mentioned?

Please refer to the answer to Question 8, above, which should answer your question concerning the potential liability of Watchoverya Arena, the "empty chair" in this case.

15. If a team makes a motion to admit Chris Zimmerman as an expert, what options are available to opposing counsel? Can we simply state our objection or do we have an opportunity to cross-examine Chris about his/her credentials before the judge makes a ruling? How do these options affect our time?

Please see the answer to Question 16 below.

16. There seems to be conflict between rule 4.3, Voir Dire and rule 4.9 Expert Witnesses and Comments in Supplement #1. In order to qualify Zimmerman as an expert he would have to be "voir dired", which is not permitted under rule 4.3.

The answer to both of the above questions (Questions 15-16) is:

Under the Answer to Question 4 above, we clarified that the plaintiffs may seek to qualify Chris Zimmerman as an expert witness so that s/he can provide an expert opinion in some field related to his or her profession (for example, crowd safety, safety standards, safety staffing, music). If the defendants do not object to Chris Zimmerman's expert status, s/he will be permitted to offer an expert opinion.

The defendants may object, however, and argue that the plaintiff is not an expert in the field at issue because the plaintiffs have failed to lay any foundation supporting expert opinion under Rule of Competition 4.9, or that the foundation laid is not sufficient to show that Chris Zimmerman has the required knowledge, skill, experience, training, or education required to qualify as an expert under Rule of Evidence 702.

Where the defendants object, the judge may decide that Chris Zimmerman does have sufficient qualifications to testify as an expert without additional questioning. Alternatively, the judge may ask the plaintiffs to lay a foundation to show why Chris Zimmerman is an expert; that is, the judge is directing the plaintiffs to ask Chris some more questions to show how s/he has the necessary knowledge, skill, experience, training, or education to testify as an expert in the field at issue.

In a real trial, the plaintiffs would first lay foundation explaining the witness' knowledge, skill, experience, training, or education. The judge would then give the defendants the opportunity to "voir dire" the witness as to his or her expert credentials. Thereafter, the judge would decide whether the witness is an expert.

Our Mock Trial Rules provide a slightly different scenario. Under Rule of Competition 4.3, we prohibit voir dire by the challenging party in the technical sense of the word only. This Rule does permit the opposing team to challenge expert qualifications on cross examination. 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' qualifications handled on cross examination. It is important to note that Rule 4.3 is not meant to prohibit the plaintiffs in this case from laying foundation to prove expertise of Chris Zimmerman, nor to prohibit the defendants from challenging Chris Zimmerman's credentials.

Thus, if the judge directs the plaintiffs to lay a foundation, the judge might thereafter rule on whether or not Chris Zimmerman is an expert, without additional questioning by the defendants. If the judge rules that Chris Zimmerman is an expert, the defendants may

still attack his/her credentials on cross examination. (The defendants may also do this even if the judge qualified Chris Zimmerman as an expert without the plaintiff having been directed to lay a foundation.)

Teams should be prepared, however, should the presiding judge handle the issue in the traditional manner; that is, the judge might direct the defendants to conduct voir dire on expert credentials and then makes a decision as to whether Chris Zimmerman qualifies as an expert.

Finally, all testimony relating to the qualification of Chris Zimmerman as an expert will be counted against a team's time allotment.