

PROBLEM QUESTIONS & CONTACT INFORMATION

The deadline for submitting questions was January 18, 2002. No further questions will be posted. If you have any comments about answers provided in this memo, please contact David Trevaskis at the Pennsylvania Bar Association (PBA).

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THIS IS THE FINAL SUPPLEMENT TO THE CASE MATERIALS AND IS THE OFFICIAL SUPPLEMENTAL MEMO WHICH MAY BE USED IN THE COMPETITION, AS PROVIDED BELOW:

Supplemental Materials – Evidentiary Value:

The following 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 B.5)

FINAL SUPPLEMENT TO CASE MATERIALS - 2002

Questions on the Problem Materials:

November 30, 2001

1) Why is there no page 35 in the problem materials?

In the initial printing of the problem, there was no page 35. The problem has been reformatted and now there is a page 35 in the problem materials. If you downloaded the problem before the correction was made, please download the corrected copy from page 35 on or simply change the page numbers on your older copies to reflect one page less than the number shown from page 36 on to the end.

2) Why doesn't the lettering on some of the exhibits match the lettering on the keys to those exhibits?

In the initial posting of the problem, there was a mix-up in the labeling of certain exhibits. That labeling has been corrected on the problem and you should download the revised exhibits since a hand corrected exhibit would not be allowed to be used in competition under the rules.

3) Why am I unable to print out the exhibits?

You need to use a more updated version of Adobe Acrobat. If you are unable to download any exhibit, simply contact Susan Donmoyer at the Pennsylvania Bar Association at (800) 932-0311 ext. 2223 or susan.donmoyer@pabar.org and ask her to mail you a hard copy of the exhibit.

4) In Tracy's statement, p.32, line 38, it says "Morgan and Tracy scanned out at 7:24 p.m., I scanned out at 7:33." Is that a misprint?

Yes. It should read "Morgan and Jesse scanned out at 7:24 p.m."

5) Is the diagram of the second floor of the Fraser Butterworth National Sciences Building (Exhibit D) mislabeled? Are the directions of the door exits incorrect?

No. However, please note that the directional arrow for this exhibit shows North to the left of the page as you view the diagram.

6) Why does it appear that North is, as you face the exhibits, towards the top of the page on Exhibit C and North is towards the left of the page on Exhibit D?

It appears that way because that is how the Exhibits were drawn. Some downloaded problems did not show the North direction arrow; please make sure your exhibits all have directional arrows showing North.

7) What are the dimensions of the building and/or the lab?

Any dimensions given are as stated in the problem or reasonably inferred from the witness statements.

8) Is the entrance and immediate exit of Professor T. Fey on the Student Activity Log (Exhibit I) an error?

The Student Activity Log is a machine generated record that stands as it is presented in the exhibit and through the witness statements.

9) Does the computer that records the exits and entrances into the building that are reflected on the Student Activity Log register if the doors are held open for an extended period of time, such as, if someone jammed the door open for several minutes?

The Student Activity Log (Exhibit I) shows the time a person scans in or out of the building by noting when the door is opened. The log does not register the time the door actually closes. If someone jammed the door open for several minutes, no record of that open door would show on the activity log.

10) In Jesse DeWar's witness statement (page 23, line 34), s/he refers to the West parking lot. There is no West parking lot shown on the diagram of South campus (Exhibit C, page 39). Does a West parking lot exist?

Yes. The West parking lot is far enough west of the area shown on Exhibit C that it does not appear on that exhibit.

11) In Exhibit I (Security Activity Log, page 46), how is off-line defined? Does it mean that the system was malfunctioning, the building was secured or something else? How does this compare to "no-activity"?

"Off-line" means that the system is not working, for whatever reason. "No activity" means that no one scanned in or out during that time period.

12) Does the computer scanner that is reflected in the Student Activity Log (Exhibit I) go off-line every night after all of the people in the building leave?

No. It only goes "off-line" when the system is not working, for whatever reason.

13) The three door logs go off-line at times that appear to correspond to the spreading fire? Is that what happened?

The explanation of why the door logs went off-line rests on what is stated in the problem. The explanation above may be considered a reasonable inference about what happened based upon the factual stipulation that the ignition of the fire began near 7:45 p.m. and that the time differences between the door logs going off-line suggest the spread of the fire. Other reasonable inferences may be possible to make.

14) What does the master switch turn off? Does it turn off all power to the room? Would the electrical outlets still work? Does the master power switch turn off the ventilation to the lab?

There is a master switch in each lab that turns off all of the power, including the electrical outlets, in the lab. It does not turn off the ventilation to the lab.

15) Is it possible for a student to scan their card but not exit the building?

Yes. Scanning the card opens the door. The Student Activity Log (Exhibit I) reflects that the door opened for either ingress or egress; it does not show if someone actually went through the door.

16) Since Morgan and Tracy end up in the bathroom at the same time, are they going to have to be of the same gender?

No. James State University has several "Ally McBeal" unisex bathrooms and the bathroom used by Morgan and Tracy is one of those that are open to both sexes.

17) What is the definition of "common knowledge" used by Sal on page 19, line 16?

You will have to ask Sal what s/he means by that term.

18) What role does a "teaching assistant" play in the Chemistry class?

The TA (teaching assistant) plays whatever role s/he and the instructor are comfortable with the TA playing.

19) In Sal's statement, page 20, lines 13-14, Sal refers to Morgan's time on campus "as more than 12 hours." Is that correct?

Sal's statement is correct as regards Sal's statement. Whether Sal is correct that Morgan was on campus more than 12 hours is subject to whatever other information is available in the problem.

20) Where is the entrance to the bathroom in Exhibit D?

The open space in the line to the right of the area designated as the restroom as you face the exhibit is the entrance to the bathroom.

21) What is the pronunciation of DeWar?

Just as it appears...D-War.

22) Can a person get into the Fraser Butterworth Natural Science Building with a key and without a scan card?

Yes. There are master keys for security purposes. Those keys are limited to key administrators. For the purposes of this problem, none of the six witnesses possess a master key.

January 7, 2002

23) Did Prof. Bode have an office in the Butterworth building above the lab where the fire originated?

No. Professor Bode's spouse, Professor Vedder, had an office in Butterworth above the lab where the fire originated.

24) What does Prof. T. Fey teach? Is h/she a faculty person with an office near the lab?

Professor T. Fey teaches Organic Chemistry and has an office in Butterworth next to Professor Vedder's office.

25) What is the direction of the camera outside lab 2A? Does the camera rotate or pan the hallway?

The camera faces north and is in a fixed position so that it covers the hallway entering Lab 2A.

26) Can the 2nd floor be accessed by the Central Rear Entrance?

Yes.

27) Is there a commitment/stipulation to the degree at which paper burns?

As Ray Bradbury noted, paper burns at 451 degrees Fahrenheit.

28) How close is the light switch to the master control switch?

The switches are right next to each other.

29) To the expert witness - the affidavit says, "the knob on the burner was at 700 degrees" but does not say whether it was off or on.

Stipulated Fact #6 answers your question--"When the left knob is turned to the extreme right, the hot plate is on and the temperature is approximately 700 degrees Fahrenheit."

30) Can the defendant plead the fifth?

No. If defendant Morgan McGrath is called by the defense as one of its two trial witnesses, the defendant waives his/her Fifth Amendment privilege against self-incrimination and must testify. The defendant may not raise the Fifth Amendment on the stand.

31) Were there other buildings on the campus that would allow students to work on projects when the buildings were not open to the public?

All buildings on campus followed the same procedures as those followed at Butterworth.

32) On the video tape obtained from one of the security cameras at the Butterworth, what was the physical description of the person seen exiting from the lab 2A?

Due to technical difficulties with the video, the only physical description of the person seen exiting the lab is that of "a human figure."

33) Had the marriage of Hemingway Bode and Lillith Vedder ever been acknowledged to Sal?

The problem materials supply all of the information available to answer this question.

34) What type of cigarette was Jesse smoking?

Jesse smokes Marlboro cigarettes.

35) What time did Morgan read the email from his parents?

The problem materials provide all of the information available to answer this question.

36) Are hot plates locked up in the lab?

The problem materials provide all of the information available to answer this question.

37) Is there a sprinkler system in the lab?

No.

38) What are the dimensions of the hallway?

The problem materials provide all of the information available to answer this question.

39) Is the camera time correspondent to the door in/out time?

No. The camera and the door each have their own timing systems.

40) Are there alarms on the windows? And are there windows anywhere in the building?

The windows in Butterworth are alarmed when the building is closed to the public. The problem materials provide all of the information available about the location of windows in the building.

41) What side of the door used by Morgan is the exit card swipe located?

The exit card swipe is located to the right side of all doors in Butterworth.

42) Is the hand written note designated to be by Morgan because of handwriting analysis?

Both sides have stipulated to the authenticity of Exhibit J.

43) Are there any other bathrooms on that particular floor?

The problem materials provide all of the information available to answer this question.

44) Where was the student security person located?

The problem materials provide all of the information available to answer this question.

45) Is there a scale to the building distances?

No scale is provided.

46) What is the proper procedure for Chemistry lab shutdown? Both individual stations and the whole room.

The problem materials provide all of the information available to answer this question.

47) Is there no given evidence in reference to room damage to Morgan's room (Sal's statement)?

The problem materials provide all of the information available to answer this question.

48) What kind of glass is in the door Jesse was seeing through?

The problem materials provide all of the information available to answer this question.

49) Was the night a cold night? Was it dark out the night of the fire?

The problem materials provide all of the information available to answer this question. Reasonable extrapolations based on the time of day and time of year are allowed.

50) Can Martalioni testify to the "pre-fire" conditions to the Chemistry building?

Martalioni can attempt to testify to anything; whether her testimony in certain areas will be allowed is a matter of team preparation, knowledge of the rules and strategy.

51) Are there any fire alarms in the building? Any fire suppression systems in the building?

There are alarms and suppression systems in the building. They obviously failed to stop the fire.

52) Why would Morgan try to harm the spouse of the person who gave her the poor grade instead of going after the actual source of the bad grade?

The trial contest turns on such questions.

53) The hot plate goes from 0-700 degrees. But it also says it is at room temperature when turned off. Do we assume that 0 degrees is room temperature?

No. Room temperature in the Chemistry lab is 72 degrees Fahrenheit.

54) Does the time on the email exhibits represent the time the recipient read/opened it or the time the sender sent it?

The time on the email represents the time the sender sent it.

55) Is the camera facing North or South? Is it rotating or stationary? Is it flush against the wall or mounted in the center of the hallway? Is the camera as shown in Exhibit D attached to the line to the right of the letter "E" or in front of the line beside the letter "E"?

See the answer provided to question #25.

56) Exhibit J said it is a handwritten note by Morgan McGrath. Does this mean the Morgan wrote it personally or does it mean that it is a handwritten note attributed to McGrath?

The problem materials, including exhibits, provide all of the information available to answer this question.

57) Is the video camera's time coordinated with the scanner's time?

The two timers are not hooked up to the same computer timing system, but each timer is individually set in coordination with the official time on the James State mainframe.

58) Is the case Judge McGrath heard on March 12, 2001 Bushing vs. Gorey or should it read Gorey vs. Bushing? How is the case in federal court?

The case, on appeal, lists the petitioner first. In that case, Bushing challenged the decision of the trial court in the original case which was listed as Gorey v. Bushing. For that case to be in federal court, there must have been a federal question raised on appeal.

59) How long would it take a hot plate to heat up enough to cause the fire?

The problem materials provide all of the information available to answer this question.

60) What type of material and wiring would be in the walls to cause the fire in this way?

The problem materials provide all of the information available to answer this question.

61) Does it show the position of the hot plate after Morgan supposedly moved it and turned it on, or does it show the position of the hot plate after Jesse had turned it off and unplugged it? And we are meant to assume the documents are prepared by the fire chief? If not who did prepare them?

The problem materials provide all the information available for answering these questions. Anyone using the exhibit should be prepared to lay a foundation for the exhibit explaining its purpose. All exhibits have been stipulated to being authentic.

62) Does the legend match up with the diagram of Exhibit K (hot plate)?

Yes. In the revised exhibits all legends match the exhibits.

63) Does the black lines (bars) on Pg. 40 (Exhibit D) on the second floor represent the steps the Jesse DeWar was standing on with his/her cigarette?

Yes. Those steps are outside the building and lead down to the pathway between buildings that persons leaving the second floor of Butterworth would take on their way to the South Parking Lot.

64) In the activity log (Exhibit I) it mentions Central rear entrance--where is it located on the map of the building (Exhibit D)?

It is not shown on Exhibit D since Exhibit D shows the second floor of Butterworth and the Central Rear Entrance is on the first floor. The Central Rear Exit opens onto the Softball field; it is in the center of the south side of the first floor.

65) Was it possible for other persons to still be inside the building during and after the time of the lab if they entered during open hours and chose not to obey the "honor system" which requires all persons to scan in at 6 pm?

Yes. That would be an honor code violation with serious consequences for the offender.

66) Could a person walk out of the building after hours without scanning out or would the doors be fully locked? Is it possible to prop doors open?

A person could walk out or in without scanning if the door was already open, including if the door was propped open. There is no way to open the door, if the door is shut after hours and the system is on-line, without scanning, using a master key or breaking down the door.

67) Why did Prof. T. Fey exit and enter after 6:30 pm?

No reason is known.

68) Would it be possible for someone to exit the building without being detected if the person exited through a door that was "off-line"?

Yes.

69) Does off-line (referring to doors) mean inaccessible?

No. It means that the computer system has crashed for some reason.

70) Where are the stairs located?

The problem materials provide all of the information available to answer this question.

71) At one point it indicates that students are required to scan in if they remain in the building after 6, if professors are in the building must they also scan?

Professors and other staff are supposed to also scan in after 6 p.m. as a safety precaution. However, there is no penalty for failure to do this for anyone other than a student.

72) Chief Martalioni, on pg. 26 line 7, refers to the object used to start a fire as a burner. Is this the same as a hot plate?

Yes.

73) What would happen to Morgan's status as a student if s/he is found guilty? Will s/he be expelled from the school?

The school would move to expel Morgan.

74) Could Morgan's scholarship be taken off of him/her if s/he is found guilty?

The scholarship may be revoked for a number of reasons (bad grades, dropping out of school) including being convicted of a crime.

75) If Morgan went to jail would the scholarship go to Sal? If not what would happen to it?

The scholarship, if stripped from Morgan, would be returned to the general scholarship fund and a special award, benefiting a person in the same graduating year as Morgan, would be made if such a qualified student applied for such a special award.

76) What is Morgan's major in college?

The problem materials provide all of the information available to answer this question.

77) In Chief Martalioni's affidavit, page 25, line 14-16, he says that he investigated the case in April. Yet in Sal's statement, page 21, lines 12-15, Sal says he spoke with Chief Martalioni prior to signing the affidavit, which he signed on March 21, 2001. Was the investigation conducted in March, or as printed in the Chief's statement, April?

You'll have to ask Sal and Chief Martalioni to explain the different dates if you want an answer to this question.

78) In reference to Exhibit I: The clock in and clock out of Morgan McGrath at 7:24 PM is listed on two separate lines. The clock in and clock out of Prof. T. Fey is listed on 1 line. Is a new line generated in the computer log every time the door is opened or shut? Is the single line for Prof. T. Fey just a misprint.

The computer log is set up to print a new line every time the door is opened or shut, even if the door is opened and shut at the same time. However, sometimes the computer log misprints and places two events on a single line.

79) Did Sal request Morgan as a roommate. If not, what determined their being assigned as roommates in their freshman years?

James State uses a number of criteria, including county of residence, to select roommates. Students are also allowed to suggest potential roommates and these suggestions often are followed as long as the other party voices no objection. Sal did request Morgan as a potential roommate.

80) What kind of glass door was Jesse looking through into the science building?

The problem materials provide all of the information available to answer this question.

81) Is there a patrol of the building to enforce the 6 PM scan in?

Sometimes. However, the Honor Code is what compels students to follow such rules at James State, not patrols.

82) Why did the building not have proper fire code equipment?

The building had all of the fire equipment required by the local code.

83) Can the Chief testify as to why the building did not have proper fire code equipment, sprinklers and automatic alarms?

No. The Chief clearly has opinions about the value of such modern fire prevention equipment; the Chief might even believe that that equipment might have limited the fire damage to the building. However, the building, built in the 1970s, met the letter of the code for Temple County.

84) How did Learned know that Bode and Vedder were related? Did Learned attend James State at any time?

The problem materials provide all of the information available to answer these questions.

January 25, 2002

85) If you are you walking up the steps to the second floor, as shown on Exhibit D, would you be walking east or west? Would the top of the steps be directly outside of the Northeast exit?

The steps referred to here are the steps leading from the lower level to the northeast exit, shown by the lines on Exhibit D that appear just above that exit, outside of the building. Those stairs rise from the east to the west and the top of them is just east of the northeast exit, as shown in Exhibit D.

86) Should the parking lot on the latest Exhibit C be the East parking lot?

The East Parking Lot on the correct Exhibit C is marked as f.

87) The chief and the stipulated facts claim that the hot plate is on when turned to a certain temperature (700 degrees and it is "on"). The Chief says it was on as well because the temperature knob was turned all the way to the left. Contrary to the stipulated facts, Exhibit K has a power "on/off" switch (labeled C) and a power indicator light (labeled E). Is the diagram right or are the Chief and the stipulated facts right? Does this switch need to be on for the hotplate to work?

First, Chief Martalioni states the hot plate was on because the knob was turned all the way to the right.

Your confusion here is between power and temperature. It is possible for the power switch to be on, the power indicator light showing power, and still have no heat if the temperature knob (labeled b) is turned to the extreme left. The power switch automatically turns on when the temperature knob is adjusted to produce heat. However, the power switch can turn off the heat without the temperature knob being moved, even though that is not the recommended procedure for shutting down the heating unit. The diagram, stipulations and the statements stand as they are presented.

88) Has it been determined that the hot plate that was turned to 700 degrees was the actual cause of the fire?

The problem materials provide all of the information available to answer this question.

89) Were the knobs on the other hot plates melted also?

Yes.

90) Was the "master" power switch in Lab 2A a "breaker" switch or a standard light switch?

It was a breaker switch (in this case, it looked like a thicker light switch).

91) Are the small rectangular objects shown directly above the counter in Exhibit E electrical outlets?

Yes.

92) Where are the gas outlets located in the workstation shown in Exhibit E?

The problem materials provide all of the information available to answer this question.

93) On Exhibit D is there a clear line of sight between exits "g" and "f", or are there intervening

shrubbery/trees? In other words, can a person standing outside of either exit see a person going or coming at the other one?

It is a clear sight line and a person could see another person if they were looking for that person.

94) Regarding question 29: Exhibit K (the hot plate) clearly shows a power switch. Does stipulated fact 6 mean that the minute the temperature knob is turned to the extreme right that the power switch is automatically turned on? Or should the stipulated fact be rewritten to read "When the hot plate is turned on and the knob turned to the extreme right, the temperature is approximately 700 degrees F?" Otherwise why have a power switch at all if operating the temperature control turns the hot plate on/off?

See Question #87 above; it is an automatic process.

95) Our initial impression on reading the case is that there were card "scanners" only on the outside of the building. Your answer to questions 9, 15, 41, 66, and 78 suggest that there is a card "scanner" in the inside of the building at each door as well. Is this indeed the case?

Yes.

96) You state that the log only registers each time the door is opened. Then two or more students would each have to wait for the door to fully close after the student before them before scanning in or out themselves. Does the log actually record the card swipes which is an electronic "command" to open the door, whether the door had already closed again or not?

Students waiting in line often swipe their cards without waiting for the doors to fully open or close; the scanners record those swipes. However, the proper procedure is to wait until the door closes again before swiping.

97) The Butterworth Science Building is described as having a "concrete shell". Does that term include the floors, or were those constructed of wood joists with floor board/plywood decking?

The floors are constructed as you describe.

98) The stipulated facts tell us that the dimensions of the heating element on the hot plate is 6"x 6" x 1.5" and is made of steel. Is the heating apparatus solid steel or is it in a U-shape, so that it is only a thin sheet of 6"x6" steel with thin 1.5" sides? If it is a thin sheet of steel, how thick is it?

The heating apparatus is solid steel.

99) Does the hot plate run on 110W of power?

Yes.

100) Is the steel normal steel with a specific heat of 448 J/kg * oC and a density of 7.87 g/cm³? The steel is normal steel.

101) Is the power in the lab instantaneous when turning it on, or is there a period when it "charges up"?

Instantaneous.

102) What time was the fire department notified?

The problem materials provide all of the information available to answer this question.

103) How long did it take them to respond to the call?

The problem materials provide all of the information available to answer this question.

104) Is the fire Chief aware of the code of honor at James State? Was this used when he was a student there?

Yes to both questions.

105) What kind of punishment do honor code violators receive?

Punishment varies, but suspension and expulsion are possibilities.

106) How far is the bathroom where Tracy and Morgan went from the Chemistry lab?

The problem materials provide all of the information available to answer this question.

107) How long does it take for the cigarettes Jesse is smoking to finish? Does Jesse smoke more than one cigarette? Is it a regular cigarette or a long one (king)? Does Jesse light the cigarette with a lighter or a match?

Jesse smokes one cigarette and uses a match to light the smoke. As to time, the problem materials provide all of the information available to answer that question.

108) In the bathroom, do the stalls completely close off, or can you see the person's feet and is it open at the top?

You can see a person's feet if you bend over and look; the top is open. However, the stalls are private.

109) How old were the hot plates that were used?

The problem materials provide all of the information available to answer this question.

110) Is the "TV room" a communal room, or is it in the dorm room of Sal and Morgan?

Communal Room

111) What was the relationship between Morgan and Jesse like before this incident? Were there any major incidents or problems?

The problem materials provide all of the information available to answer this question.

112) How long has Tracy known Morgan?

The problem materials provide all of the information available to answer this question.

113) Sal's statement indicates that, "for the past year and a half, before the fire I lived with Morgan McGrath." Are we to assume that Morgan moved out immediately after the fire?

Yes. Morgan moved out immediately after the fire.

114) Since it is stated in Sal's affidavit that Morgan tried to learn the guitar during their sophomore year but was unsuccessful, can Morgan testify to the incident?

If asked by the opposing attorney, Morgan is free to discuss the guitar. Since it is not part of Morgan's affidavit, Morgan cannot be asked about it on direct. Also, if Sal does not testify, that information is unavailable under the rules.

115) Since Sal states in his/her affidavit how Morgan reacts when s/he finds out about his/her grade, can Morgan be asked?

See the answer to Question 114 above.

116) Since Morgan never mentions putting a hole in his/her bedroom wall or drinking on the evening of March 11, can it be assumed that she doesn't remember the incident?

The problem materials provide all of the information available to answer this question.

117) It is never mentioned in Morgan's affidavit why s/he missed classes on March 12th, but Sal does give a reason; so is Morgan also aware of the reason or will the witness be permitted to "invent" the facts if questioned on this topic?

See the answer to Question 114 above and the Rule E.2 of the Rules of Competition for how to treat this situation.

118) Since it is the Chemistry department's procedure to allow all hot plates to cool for 15 minutes, can it be determined how long it takes for a hot plate to heat to its maximum temperature?

The problem materials provide all of the information available to answer this question.

119) Is one of the standard books for Morgan's Chemistry class a book on using hot plates? This should be a matter of school record.

The problem materials provide all of the information available to answer this question.

120) Sal claims that Morgan missed all of her classes the day after the fire, but no one else mentions this, and Morgan contradicts it outright. Did she miss these classes? Again, this would probably be a matter of school record.

Attendance records are not available. The problem materials provide all of the information available to answer this question. See Questions 114 to 117 above.

121) Which professor taught the inorganic chemistry class that Tracy, Jesse, and Morgan were taking?

Professor Meyer.

122) What is the correct pronunciation for Prof. Bode's name?

Like Toad.

123) What is the pronunciation for Learned McGrath?

Lern-id.

124) On Exhibit E, there is a notation that states "X indicates where the hot plate that started the fire was"? What importance does that statement have?

The statement merely reflects the Fire Chief's investigative report and should say "According to Chief Martaloni, X indicates the spot where the hot plate that started the fire was."

125) As Fire Chief, does Chris have the authority to investigate motive and facets of the case beyond the investigation of the cause of the fire?

The Fire Chief may investigate any factors of a suspected case of arson.

126) Is Jesse physically on the steps or in an area at the top of the steps?

Jesse is in an area at the top of the steps.

127) Does the main power switch also control the lights?

It controls everything except the lights.

128) What time does the camera show three persons leaving lab 2A?

That part of the tape was unreadable.

129) When was the last time the camera clock was reset?

The problem materials provide all of the information available to answer this question.

130) When was the last time the door clock was reset?

The problem materials provide all of the information available to answer this question.

131) The Chief says, "Last April" was the investigation. Since his affidavit is being given April 4, 2001 that would mean that he is referring to April 2000, almost a year before the fire. It would make more sense to say he just completed the investigation.

See Question #77 above and Question # 18 to the Questions about the Rules / Miscellaneous Questions, below. You'll have to ask the Chief to explain his/her statement.

132) Will there be a new Exhibit J to fix the fact that Bode and Vedder genders are determined whereas the written note has his/her provision?

No. That is how the note was written despite the genders of the characters.

133) How far from Sal's and Morgan's hometowns is James State U?

The problem materials provide all of the information available to answer this question.

134) Are there warnings in the lab manual as to fire hazards at high temperatures?

The problem materials provide all of the information available to answer this question.

135) Re: Activity Log, Exhibit I, is anyone who uses the entry system able to speak to that log?

Yes. See Question #20 to Questions about the Rules / Miscellaneous Questions, below.

136) Was the camera outside lab 2A a time-lapse camera, recording intermittently, or did it record continuously?

Continuously.

137) Other than the fire reported by the school safety officer, was/were there any light(s) detected in the Fraser Butterworth building by any witnesses on the evening of March 14, 2001?

The problem materials provide all of the information available to answer this question.

138) In Morgan's affidavit it states that the card scanner for the door is mounted on the wall about a foot to the right of the door as you exit. Is it reasonable to infer then that Jesse and Tracy also know this is true?

Yes. Please also note the information provided at the beginning of this memo regarding the evidentiary value to give the answers provided herein.

139) After 6 pm can the door open from the inside without the use of a card scan? Wouldn't the doors open for fire safety reasons? Otherwise one that happened to forget their card would be trapped in the building in the case of an emergency.

Any use of the fire safety door releases that are on every door would both sound an alarm and be captured as a emergency exit on the door log.

140) Do the doors to the Butterworth building have to be closed in order for the scanning system to register that someone entered or left?

The doors could be open and registration would still occur if the card scanner is used. However, this would not be proper door operation.

141) Are there emergency exits in the Butterworth building?

Every exit has emergency potential--see Question # 139.

142) Are the doors in sync with each other, and do the separate exits' times coincide?

Yes.

143) Are there windows located in the West wall of lab 2A?

The problem materials provide all of the information available to answer this question.

144) Are the parking lots lighted?

Yes.

145) Are Morgan and Tracy's Affidavits supposed to contradict about who left first or is this just a typo?

That is not a typo.

146) Is it safe to assume that the scanning device can be compared to a credit card being scanned through a credit card machine?

Yes.

147) Is there a distinction between the outside doors to the Butterworth building being open and being locked?

Yes. When locked, the doors must be opened by using the card scanner.

148) Does one need to scan his card for those doors to be locked? Is it that way only if one wants to enter? Exit? Both?

The doors, when locked, re-lock whenever the door is shut. See additional Questions # 15, 22, 66, 139, 140 above.

149) Was it Jesse's right side that Morgan exited from the building or Morgan's right?

Morgan was to the right of Jesse as they exited from the building.

150) Is Chief Martalioni's job a paid job?

Yes.

151) Are the bathroom and the lab on the same floor?

Yes.

152) How does the diagram of the building show two levels?

Exhibit D shows stairs outside the northeast exit leading down from the second floor level to the pathway between buildings on the ground level (see Question # 63 above).

153) Which switch did Jesse turn off first?

The problem materials provide all of the information available to answer this question.

154) How many feet is it to the northeast exit to the bathroom?

The problem materials provide all of the information available to answer this question.

155) Does the video camera show what time the person left lab?

The problem materials provide all of the information available to answer this question.

156) What time was the evening news on the 14th?

The problem materials provide all of the information available to answer this question.

157) Is it the same distance from the door to the lab as from the door to the bathroom?

The problem materials provide all of the information available to answer this question.

Questions About the Rules / Miscellaneous Questions

November 30, 2001

1) The instructions note that 12 teams will go to the state finals in Harrisburg this year, the 8 regional finalists and a second team from the larger regions. Which are the larger regions among the 8 regions?

The four regions that will send two teams will be determined once the competition begins and the number of teams actually participating is finalized. That information will be shared as soon as it is determined.

2) Can a male play a witness as a female or a female play a witness as a male?

Nothing in the rules precludes assuming opposite gender roles, but please note that such a switch might be very confusing for the judges and might unintentionally hurt a team's scoring. Such a gender switch cannot be explained in any manner (i.e., "We are doing this because we are an all boys school and we thought a girl would play better as this character...") since such an explanation might reveal the identity of the participating school. Also, please remember that no costuming is allowed.

January 7, 2002

3) Can we object to the fact or suggest that the equipment may not have been working properly that evening?

The strategy your team takes in making its case is up to you. Obviously, any witness is bound by his or her statement in providing testimony at the trial and attorneys are allowed to make any of the appropriate objections they wish to make.

4) Who took the witness statements?

The statements were made in the course of the fire investigation and the witnesses are bound, under mock trial rules, to their statements. Who took the statements is of no concern for purposes of the mock trial.

5) Can the defendant's statement come in if he does not testify?

The rules of competition clearly state that testimony of an uncalled witness may not be introduced at trial.

6) Will the "beyond the scope of the affidavit" objection be enforced?

Please note Rule E.2 in the Rules of Competition to see that the correct objection is "Unfair Extrapolation." Also, please note that a local competition, such as the Philadelphia program, may decide not to allow this objection. As to enforcement of the objection, the process of enforcement requires a team to object and the other team to respond, before the judge makes his or her decision. Possible rulings are outlined in E.2; the judge's ruling, as noted in E.2, is final.

7) Where can my students send their questions about Mock Trial this year?

Please send all questions to David Trevaskis at the PBA, 100 South Street, PO Box 186, Harrisburg, PA 17108-0186, david.trevaskis@pabar.org.

8) When will the questions and answers be posted to the website?

The final Question and Answer memo, the one that will be the official set for the competition, will be posted by January 25, 2002.

9) Can I still ask questions about the problem for this year?

Yes, until January 18, 2002.

10) My niece is participating in Mock Trial run by the PA bar, is there anyway I can help or participate?

Yes. Family members, as well as friends of family, are all encouraged to help with the mock trial in any way that supports the student participants. Please check with the teacher coach to see how you can help.

11) We understand that props aren't allowed but can we use enlarged versions of the maps and diagrams placed on easels so that all people in the courtroom may see placements and movements?

No. Rule of Competition E.6 specifically excludes "enlargements, color reproductions, etc."

12) Are the answers to the problem questions considered evidentiary stipulations?

Please note Rule of Competition B.5 (it is explained at the top of the Question and Answer memo) to see the evidentiary value of these supplemental materials.

13) Can we establish genders of Prof. Bode and Vedder since they aren't witnesses from teams?

No. Hemingway Bode is referred to in the materials as male. Lillith Vedder is his wife.

14) Can it be explained outside the teams designated times that persons of opposite gender being in the same bathroom cannot penalize a team for less credibility?

No. An earlier question established the existence of single sex bathrooms at James State. If teams wish to explore that status, they do so on the clock.

15) Are the activity log and the emails (Exhibits A, B, and H) admissible or are they hearsay?

The rules of competition and evidence provide the answer to this question. Teams should be prepared to respond to objections about evidence they wish to present.

16) Can one argue that they did not write the emails?

One is free to argue anything. Whether or not that argument, or any argument, is a winning one or not depends on how carefully and thoughtfully a team has prepared for trial.

17) Does the stipulation about the access cards mean that the log cards are admissible without verification or authentication?

The rules of competition and evidence provide the answer to this question. Teams should be prepared to respond to objections about evidence they wish to present.

18) If a team asks a question for which there is no known answer provided (i.e., asking Chief Martalioni why s/he said the investigation was conducted in April when Sal says s/he talked with the Chief before March 21st), may the witness make up an answer?

Rule of Competition E.2 (Unfair extrapolations) addresses this situation. Under that Rule, if the witness is asked a question on *direct* examination, the witness must try to answer within the four corners of his/her affidavit. In your example, the Chief could try to make a reasonable extrapolation from the facts of the case and respond "I made a mistake" or "I conducted the bulk of interviews in April." Of course, such an answer is subject to an objection if the opposing team believes the extrapolation was unfair (non-neutral).

If the witness is asked a question on *cross* examination for which no answer is provided in the affidavit, the witness may "make up" an answer. The cross examining team is stuck with the answer.

19) Can exhibits be mentioned in the opening statement, even though they have not yet been entered into evidence?

Lawyers, during opening statements, may reference exhibits that will later be shown to the jury to help the members decide the case. The actual exhibits may not be presented during the opening statements. Exhibits discussed during the trial may be used in closing argument.

January 25, 2002

20) Rule of Competition E.5(k) states: "The case materials will identify exhibits with which a witness is familiar. It is presumed, unless otherwise noted, that a witness does not have knowledge of any other exhibits." My question is, most of the exhibits are not specifically identified in the witness statements. Does this mean none of the witnesses may testify about those exhibits?

No. The Rule referenced above should be read to mean that any witness whose statement/testimony demonstrates knowledge of what an exhibit represents may testify about that exhibit. This is consistent with Evidentiary Stipulation #3, for example, which states: "Any witness who demonstrates knowledge of the James State University Natural Sciences Building may testify to the diagrams of the building. Teams may object if a proper foundation is not made to demonstrate a witness' knowledge with the diagrams."

21) All the exhibits have been stipulated as authentic, so all the attorney needs to do is to make sure the witness is familiar with the exhibit - not to establish that it is what it claims to be. Is that correct?

See question #20, above. The parties have reserved the right to dispute any legal or factual conclusions based on the exhibits and to make objections other than authenticity.

22) Are witness allowed to give their opinion of other people in the case?

Opinion testimony is covered in the rules of evidence. Please refer to those rules to answer this question.

23) During our direct examinations, cross examinations, and closing statements, are we allowed to use the witness statements of the witnesses not used by the other team?

No. See Question #5. The rules of competition state that the testimony of an uncalled witness may not be introduced at trial.

24) In opening statements, can exhibits, such as the diagrams, be used in a demonstrative way by counsel?

No. Please see Question # 19 above in this section.

25) Please clarify that participants are not allowed to draw, create diagrams, et cetera, outside of using those exhibits provided; is that correct?

Yes. Please see Question # 11 above.

26) I am requesting a list of objections for my team to use in competition.

Please refer to Rule of Evidence 611(e).

27) How are the facts given in the internet questions presented in court?

See Question #12 above this section for how the Question and Answer memo should be used; those facts would be presented as you would present those facts were they part of the original problem as described in the rules.

28) If the evidence is not presentable through a witness can the counsel state it in the opening or closing?

Counsel are free to make whatever statements they deem appropriate but the opposing side may object at the conclusion of your opening or closing (Rule of Competition E.4) . It is likely that certain statements may be deemed inappropriate by the judges and may cause a team to score poorly, so the strategy a team pursues should be guided by the rules of the program.

29) Please clarify when teams are allowed to object after an opening or closing. Can the objection occur after each opening/closing or does the objection have to be held until after all the openings/closings have been completed?

The objection should be made after the conclusion of the statement of the other side against which the objection is being raised.

29) Is another defense witness permitted to admit to starting the Butterworth fire in order to help the defense's case?

This could not be done on direct.

30) Is it necessary for counsel to ask a judge to recognize the Chief as an expert, or will laying foundation be sufficient?

Fact Stipulation #7 states that the Chief is an expert. That can be stated in court by either side.