



Q & A Report – Case and Rules Questions

This report is updated for all questions received through April 23, 2010 at 5:00 p.m. EDT

THIS IS THE FINAL POSTING OF THE 2010 NATIONAL CASE Q&A REPORT

- Information contained in this Q&A Report is binding on all teams and participants; it is to be considered part of the Case Materials and can be cited at trial where appropriate.
- The FINAL VERSION (clean copy) of the [2010 National Case Materials](#) is posted on the website.
- Amendments have been made to Case Material Pages 12, 21, 27, 39, 46, 64. Make sure to replace these six pages in your Case Materials with the updated pages. No other pages need to be replaced.
- Teams must use clean, up-to-date copies of any amended pages to the Case Materials for all trial rounds.

The fact that a correction, clarification or addition to the Case Materials was made is not relevant during a trial round. The clean, corrected copy of the materials, posted by the end of the day on April 26, is to be considered the first and only version of the materials submitted by any party in this action when trying this case in a competition round.

Changes and Additions to the Case Materials

Corrections or additions are **shaded and in bold**; deleted items are depicted with a ~~strikethrough~~. Please make sure these pages in your Case Materials have been updated.

P. 12 Stipulation ¶ 13 has been clarified to add two sentences at its end, as follows (see discussion below in CQ 2):

13. ... Judge B. Wasik of the Philadelphia Court of Common Pleas accepted the terms of Lee's plea and deferred imposition of the sentence pending Lee's compliance with those terms. **The simple assault charge to which Lee pled guilty was a second degree misdemeanor. Under Pennsylvania law, the maximum sentence for this crime is two years.**

P. 12 Stipulation ¶ 14 has been clarified to add two sentences at its end, as follows (see discussion below in CQ 16):

14. ... On June 15, 2009, following a hearing before a juvenile court judge, Gwinnett was adjudicated delinquent for committing aggravated assault and directed to be placed in a juvenile facility. **The aggravated assault charge asserted against Gwinnett, if charged in adult court, would be classified as a first degree felony. The maximum sentence for this crime is twenty years.**

P. 12 Stipulation ¶ 15 is new and has been added to address an omission in the materials, as follows (see discussion below in RQ 6):

15. To the extent the Commonwealth seeks to present evidence under Rule of Evidence 404(b), it is considered to have complied with the Rule 404(b) requirement that it provide reasonable advance (pre-trial) notice to the defense of the evidence it intends to produce at trial and of the general nature of such evidence.

P. 21 At line 168. The following error has been corrected (see discussion below in CQ 20):

... the weather was worse than predicted and didn't want to chance ~~hyperthermia~~ **hypothermia**.

P. 27 At lines 74-75. The following typographical error has been corrected:

... I wish I had come up with that ~~the~~ idea.

P. 39 Exhibit 1 has been corrected as follows (see discussion below in CQ 15):

*Dec. ~~13~~ **12**, 2008 @ 2:15am from web*

P. 46 Exhibit 6 has been corrected as follows (see discussion below in CQ 3):

Date: February 9th **17th**, 2009

P. 64 The Jury Instructions have been amended to include a new instruction (Direct and Circumstantial Evidence), Numbered as 11. Former Instruction 11 has been renumbered as 12. (See discussion below in CQ 9):

11. Direct and Circumstantial Evidence

Evidence may either be direct evidence or circumstantial evidence. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact.

You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence. You may decide the case solely based on circumstantial evidence, and the Commonwealth may meet its burden of proof solely based on circumstantial evidence.

12. Concluding Instructions

Your decision in this case is a matter of considerable importance. ...

Case Questions/Answers

NOTE: Many of the questions submitted below have been edited for the sake of brevity.

CQ1 *Are the misspellings and/or misuse of numerous words in the Exhibits intentional?*

Yes. This answer applies to these misspellings: permanant (p. 39); fritened (p. 40); essencial (p. 41); atmosfere, clasroom, iresolution, canot (p. 45); heterogenous (p. 47), non-demominational (p. 48), peacably, writen (p. 53); goverment, aggresor, mightyer, spair (p. 54); oposed, corespondence, imortal (p. 55). The incorrect use of the following words is intentional as well: massage (message) (p. 40), principals (principles) (p. 41), brakes (breaks) (p. 53), quale (quail) (p. 53), Principle (Principal) (pp. 54, 55, 56).

CQ2 *(a) For teams and judges to determine whether Rule [of Evidence] 609 applies to Fran Lee's May 26, 2009, conviction for "simple assault," we need to know what the maximum term of imprisonment that can be imposed for such offense is. (b) Fran Lee pled down to simple assault. Is simple assault a misdemeanor?*

The simple assault conviction was a second degree misdemeanor. Under Pennsylvania law, the maximum sentence for this crime is two years. This clarification will be included in the final version of the Case Materials at p. 12, as noted above.

CQ3 *There is a conflict between the dates when Maddox Hale said s/he hung the campaign posters, Monday Feb. 16, 2009 (p. 28, l. 107-111) and the date when Principal Braxton sent a memo to the faculty (Exhibit 6), which was dated Monday February 9, 2009, explaining why s/he took the posters down the night before. This suggests the impossibility that Braxton had the posters removed eight days before they were put up. Was this unintentional?*

Yes. This is a mistake in the Case Materials. The date of the Braxton memo (Exhibit 6) will be changed to reflect that it was sent on (Tuesday) February 17, 2009, as noted above. It will thus conform with the dates in Hale's witness statement.

CQ4 *In Exhibit 11, p. 5, is the word "quale" an intended misspelling of "quake" or perhaps "quail"?*

It is an intentional misspelling of "quail." Please see the Answer provided above in CQ1.

CQ5 *Some witnesses identify the site of the rally as Independence Mall and others as Independence Hall. Which is it?*

Independence Hall is on Independence Mall. The Case Materials otherwise stand as they are.

CQ6 *Is there a preferred pronunciation of the Children of Liberty acronym COL?*

Yes. It is known by its letters: see-oh-ell.

CQ7 *Is Maddox Hale right handed or left handed?*

The Case Materials stand as they are.

CQ8 *The Q-mail that is Exhibit 11 (p. 53) was sent at 7:04:25. ... Is this 7:04 am or pm?*

It was sent at 7:04 a.m. Q-Mail shows military time. (See Exhibit 5)

CQ9 *Last year's case had some important information about the difference between circumstantial and direct evidence ... will we be getting such information?*

Yes. This was an unintentional omission in the Case Materials. A new Jury Instruction will be included at p. 64 of the Case Materials as noted above.

CQ10 *How do you pronounce Gwinnett?*

It is pronounced \gwi-`net\. Short "i" (ih) and short "e" (eh) sounds, with the accent on the second syllable. Listen to this [audio file](#) for a proper pronunciation.

CQ11 *Stipulation Number 1 is the usual stipulation regarding exhibits (i.e. all exhibits are authentic and accurate, but all other objections are reserved). Stipulation Number 4 says "Once identified by a witness, Exhibits 1, 11 and 13 are admissible without further foundation." Does this mean that these exhibits are "admissible" upon identification by any witness and thus not subject to further objections based on other rules of evidence? In other words, does Stipulation 4 trump Stipulation 1?*

Because those exhibits may be admitted without any additional foundation, they are admissible upon identification by any witness and are not subject to further objections as to admissibility. Thus, Stipulation 4 trumps 1, at least as meant in the question.

CQ12 *How is it possible that Maddox Hale was twice arrested – once on February 27, 2009 according to the witness statements and then later on March 24, 2009 according to the Transcript of Proceedings before Issuing Authority?*

Maddox Hale was arrested on February 27, 2009, immediately following the incident involving the snowballs. S/He was released without being charged, as were Button Gwinnett and Fran Lee. After due consideration and investigation, a decision was later made to charge all three, as described in the Case Materials, and all three were arrested in connection with those charges.

CQ13 *Is the Prosecution limited to arguing the theory put forth in the criminal complaint for how the Defendant is guilty of being an accomplice to aggravated assault?*

No. However, any theory of complicity that the prosecution asserts must comport with the Case Materials as a whole. Thus, in accordance with Jury Instruction 9 (p. 63), the Commonwealth must prove that Maddox Hale intentionally aided, agreed to aid or attempted to aid another person in committing an aggravated assault. Complicity is a specific intent crime. Accordingly, and consistent with the Pre-Trial Memorandum (and as described in greater detail with respect to conspiracy in the Supplemental Pre-Trial Memorandum), the Commonwealth cannot prove Count 1 by demonstrating that Maddox Hale joined the Children of Liberty; that Maddox Hale aided, agreed to aid or attempted to aid the Children of Liberty generally; or that Maddox Hale aided, agreed to aid, or attempted to aid the Children of Liberty in some other activity.

In other words, in order to be convicted, Hale must have knowingly and intentionally aided, agreed to aid, or attempted to aid Fran Lee, Button Gwinnett or some other person in the specific act of committing the aggravated assault upon the ZHS security guards.

CQ14 *Is the difference in the color of Maddox Hale’s (blue-tinged) and Button Gwinnett’s fingerprints as shown on Exhibit 9 intended to be of consequence?*

It is of no consequence.

CQ15 *All the witnesses identify the graffiti tagging date as 12/12/08 in their witness statements. Is the 12/13/08 Jitter post (Exhibit 1) concerning tagging the correct date?*

No. This is a mistake in the Case Materials. As noted above, the date of this Jitter post (Exhibit 1) will be changed to reflect that it was sent on 12/12/08. The date will thus conform to the witness statements.

CQ16 *Stipulation 14 advises that Button Gwinnett ... was adjudicated delinquent for committing aggravated assault. What is the maximum punishment which Button could have received for this crime?*

The aggravated assault charge asserted against Gwinnett, if charged in adult court, would be classified as a first degree felony. (See Case Materials p. 58) Under Pennsylvania law, the maximum sentence for this crime is twenty years. This clarification will be included in the final version of the Case Materials at p. 12, as noted above.

CQ17 *Can you read the COL Jitter page without joining as member?*

The COL Jitter page could only have been read by someone who opened an account in Jitter by creating a Jitter pseudonym (www.Jitter.com/“pseudonym”). (See Stipulation 9(a)) Accordingly, one must have a Jitter account in order to read any Jitter posts, including those of the COL. However, one would not necessarily have to have signed up to "Track" the COL (see Exhibit 1) in order to read the posts at www.Jitter.com/COLiberty. One could, instead, log in using one's Jitter pseudonym and search manually for COL. In order to receive messages to one's email account or cell (smart) phone , however, one would have to "Track" COLiberty. (Stipulation 9(d))

CQ18 *The Jitter website – www.Jitter.com/COLiberty - is also referred to in the Case Materials as www.jitter.COLiberty. Is this a typo?*

Yes. Please consider any references in the materials to www.Jitter.COLiberty to mean www.Jitter.com/COLiberty.

CQ19 *The jury instruction that the Court promised it would provide in the Pre-Trial Memorandum (p. 7 of the Case Materials) is not included in the Jury Instructions. (The promised charge reads as follows: "[t]o the extent the Commonwealth is able to prove only that the Defendant threw snowballs with no foreign objects and is not able to prove that the Defendant directly aided or abetted others in throwing snowballs with foreign objects, [the Commonwealth] cannot obtain a verdict for aggravated assault.") Should this language be included in the charge?*

You may consider the Judge’s statement in page 7 as incorporated into the Judge’s Jury Instructions.

CQ20 *Should the use of the word "hyperthermia" in Jo Bartlett's statement be changed to "hypothermia" instead?*

Yes. This is a mistake in the Case Materials (p. 21, l. 168) which will be corrected in the final version.

Rules Questions/Answers

RQ1 *Rule of Competition 2.5 says “Voir dire examination of a witness is not permitted.” Does that prohibit questions [posed by objecting counsel] in aid of objection?*

Yes, it is a violation of that rule to ask for questions in aid of objection.

RQ2 *The Case Summary by its terms is "not to be considered evidence." Rule of Competition 2.2 says witnesses are bound by "his/her own witness statement, the Statement of Facts, if present, and/or any necessary documentation relevant to his/her testimony." May a witness testify and be cross-examined concerning the facts in the Case Summary?*

No. The limiting language on the Case Summary (Case Materials pp. i-ii) - that it is not to be considered evidence – prevails. This Case Summary should not be considered as a “Statement of Facts” for the purposes of Rule 2.2.

RQ3 *Rule of Competition 4.6(b) provides that time stops for, inter alia, objections. Does this include objections to the introduction of an exhibit pursuant to Rule 4.20.8, and/or objections to the Court’s recognizing of a witness as an expert, pursuant to Stipulation #5?*

Time stops for all objections, whether to a question, to testimony, to introduction of an exhibit or to the tendering of an expert.

RQ4 *I saw where the Tournament Handbook said only attorneys and judges may be on panels, but the Rules of Competition say non-attorneys with substantial experience can score? A non-attorney from my state would like to score but isn’t sure if she is permitted to do so. Can you clarify?*

If the non-attorney qualifies to score under Rule 5.2, then she will be permitted on a scoring panel. Every effort has been made to recruit and place as many attorneys as possible on each scoring panel; however, as Rule 5.2 recognizes, a law degree is not required to be an excellent mock trial judge. Qualified individuals including educators, paralegals, and even law school and college students with considerable mock trial experience may be used, as has been the case at past National High School Mock Trial Championships.

RQ5 *Rule of Competition 4.8 states that "no motions may be made." Does this preclude us from moving to strike testimony given after winning an objection?*

A motion to strike is not a substantive motion within the meaning of Rule 4.8. Accordingly, if an objection to testimony is sustained, the objecting party may move to strike the testimony to which the objection was sustained.

RQ6 *May we assume that any questioning or argument concerning whether the prosecution gave notice of intent to use prior bad acts against defendant under Rule of Evidence 404(b) is off limits?*

Yes. New Stipulation 15 will be added to the Case Materials to clarify that the Commonwealth has complied with the requirement in Rule 404(b) of providing pre-trial notice to the defense that it may present evidence of prior bad acts under this Rule against any or all of the witnesses. This clarification will be included in the final version of the Case Materials at p. 12, as noted above.

RQ7 *Competition Rules 5.5 and 5.6 differ slightly on the method for ranking for power matching and advancement. Rule 5.5 uses as a criterion for ranking “total points” while Rule 5.6(3) uses “speaker points.” Can you clarify if there is a separate tabulation for "speaker points"?*

The terms "total points" and "speaker points" as used in Rules 5.5 and 5.6 are interchangeable. All ranking, whether for the purpose of overall team advancement (Rule 5.5) or of sorting within brackets (Rule 5.6) is done based upon win-loss record, ballots won, total accumulated points and total point spread against opponents.