

**March 13, 2009: The following questions were submitted this week. In italics, you will find the answers. These answers control.**

**1. In the Marshall City Police Department Fiscal Summaries of Issued Tickets, the heading "2006-2007 Fiscal Year Summary" is repeated – when it clearly should be 2007-2008. Is this intentional, or a typo?**

***This was a typo. The Summary clearly should read 2007 - 2008. The city should pay better wages to the typists in the police department; the city would get better clerks. The website will be corrected to reflect an accurate Summary.***

**2. When we review the Pre-trial Order, we find, if it is taken *literally* in regard to newspaper articles, that witnesses are only bound to admit what is found in quotes in the articles. So, for clarity, are witnesses required to admit information about them contained in articles if they are not directly quoted? Newspapers do get things wrong in the real world.**

***Newspapers occasionally get things wrong in the real world. Of course, newspapers get things right most of the time. The Federal Rules of Evidence control.***

**3. The statute (section 1105) speaks in terms of "under the influence," but the Jury Instructions speak to "impairment" – which terminology controls (this will avoid motions to strike, unnecessary argument, etc.)?**

***The jury instruction controls. Assume that this discrepancy has already been thoroughly litigated, and the Marshall Supreme Court has ruled that the Marshall Pattern Jury Instruction controls. The instruction in the case of People v. Dunkirk is taken directly from the State of Marshall Pattern Jury Instructions.***

**4. Are the times on the breathalyzer receipt hand-typed in or are they automatically put in by the machine?**

***The times are put in by the officer using the machine.***

**5. The stipulation says Officer Davis is trained to administer breathalyzers:**

**a. Can he be asked on cross-examination (clearly it would be improper on direct as it is outside the packet) the process of, or the particulars of, administering a breathalyzer test or even how it functions?**

***No.***

**b. If so, can he answer with whatever information he chooses to give, including (as would be required, because there is none in the packet) information from outside the packet?**

***No.***

**c. Lastly on this issue, is the cross-examiner required to take whatever answer s/he gives, being barred from using any source outside the packet to impeach or further cross-examine on this issue?**

***Yes.***

**6. Terry Smith's Sworn Statement of Nov. 25<sup>th</sup> ends with additional transcript pages which follow Smith's signature:**

**a. Is this portion meant to be part of the same document?**

***Yes.***

**b. Re the transcript after Smith's signature -- on what date was the interview reflected in that portion of the transcript obtained (it says it was *transcribed* on Feb. 8, 2009)?**

***Same date.***

**7. If you look at the sample critique ballot, it lists, after "Based on how I believe a Jury would have reacted overall to this case ...", "trafficking" and "conspiracy". This appears to be from last year's case packet.**

***The sample is a sample. The ballots for the 2009 Competition will be prepared and issued to the judges and evaluators at the time of the mock trials, and will correctly reflect the matters before the jury in the Dunkirk case.***

**8. The jury instructions indicate that the defendant is in control of the vehicle if the vehicle is running, the defendant is in the driver's seat, and the keys are in the ignition. The statute indicates that the defendant is in control of the vehicle if the defendant is in the driver's seat when the engine is running or the key is in the ignition. Which is correct?**

***The court rules, on a motion in limine, that the correct instructions to be submitted to the jury are:***

***A person is considered to be operating or in control of a vehicle if: (A) he or she is in the driver's seat of the vehicle, and (B) the vehicle's engine is running, or the key to the vehicle is in the ignition, or the person is otherwise controlling the vehicle.***

***You should not find the defendant guilty unless you find beyond a reasonable doubt that the defendant, while under the influence of alcohol, was in the driver's seat of***

***the vehicle, and (a) the vehicle's engine was running, or (b) the key to the vehicle was in the ignition of that vehicle, or (c) the defendant was otherwise controlling that vehicle.***

**9. Is marijuana possession with intent to distribute punishable by more than one year under Marshall's law on September 12, 2007?**

***Yes. Note that the defendant was placed on three years' probation, which indicates that the defendant was convicted of a felony.***

**10. Where is Volini Drive on the map?**

***Volini Drive is not on the map, but is approximately one-half of a mile east of the police station.***

**11. The address locations on the map and the address locations on the photograph cannot feasibly match up, which is correct?**

***The correct addresses are 4540 and 4544 N. Dover. The corrected photos appear on the website.***

**12. Officer Davis mentions an arrest report but it is not present in the packet. Is it missing on purpose?**

***An arrest report will be provided, by court order.***

**13. The statute and jury instructions do not provide units for the 0.08 BAC whereas the BAC report uses g/21/L. Should we use the same units for the statute and jury instructions?**

***Yes.***

**14. Did you purposely change the newspaper name in Smith's statement from the Sun to the Star?**

***Yes. Good eye.***

**15. Where does Robbie Hughes work?**

***Robbie Hughes, according to our records, is unemployed. Robbie sometimes does odd jobs in the neighborhood, probably for cash which the IRS never learns about. Even so, Robbie usually has enough cash on hand to make ends meet, i.e., pay a modest rent (\$350/month) at a local SRO [single room occupancy] building, and eat at an inexpensive soup and sandwich shop ("The Yankee Diner"). Robbie does not own a car, computer, cell or land-line phone; Robbie uses a pay phone in the SRO building or borrows phones from friends.***

**16. Can we argue case law?**

***Not really. This is a trial competition. Of course, references to a Rule or a case may be appropriate during the motions in limine. The judges are instructed not to engage in discussions of law, but to rule as promptly as possible once the issue has been identified.***

**17. Is the presumption that a driver is impaired by alcohol in the State of Marshall if their BAC is greater than 0.08 a rebuttable presumption?**

***Yes.***

**18. What is Terry Smith's background?**

***Terry Smith was born and raised in Toonerville, a suburb of Marshall City, and attended local public grammar school and secondary school. Terry graduated in the upper third of the Toonerville High School Class of 1996, and***

**thereafter earned a Bachelor of Science in General Studies at Ambergris College in downstate Marshall. Terry was a member of the debate team in 1997, the drama society in 1998, and the college's "Pep" club ["The Whales"] in 1999 – 2000. Terry has remained active in the college's alumni society, and is president-elect of the Class of 2000 Alumni.**

**After graduating with a B+ average, Terry went into the family business, a stationery supply store in downtown Marshall City. Terry's late father (Ahab, 1942 – 2004) owned 50% of the business until 2003 when a fire of suspicious origins gutted the large building in which the store and warehouse were located. When Terry's father died, the business was suing the insurers for \$13,000,000 to cover the losses caused by the fire. The insurance company claims that the fire was set by an arsonist, and the stationery business's inventory and equipment were either non-existent or were grossly inflated in value. Terry's mother died in 2005. Terry's older brother, Charlie, moved away from Marshall City in 1999, and is probably living in Europe somewhere.**

**Terry entered law school as an evening student at Marshall State University in 2002, but dropped out after a year. Married in September 2003 to Gerry Temple (a law student classmate), Terry has two children, Michael and Matthew, born in May 2005 and October 2006, respectively.**

**Terry inherited a little over \$250,000 when Ahab died, and another 250,000 from an insurance policy when Ahab's widow died (Terry's mother Rita died in 1980, and Ahab remarried within two years). Terry's spouse Gerry earns about \$30,000 a year working at home as a computer programmer, and Terry works as a sales person at Seagull Press, which specializes in business and law book distribution and sales. Terry earned \$65,000 in 2008, including a bonus of \$10,000 at the end of the year. Terry and spouse bought the house at 4544 N. Dover for**

***\$350,000 in 2007 and moved in sometime not long afterwards. The amount owing on the mortgage as of March 1, 2009, was \$275,444. They have no other major debts, and they pay all their credit card bills on time. While much of the money Terry inherited was invested in either real estate mutual funds or the stock market, no information is available on the value of those assets as of March 1, 2009. They own a 1996 Volvo station wagon that has 110,000 miles on it. Terry says, "We are still just breaking it in." An inoperative 1999 Harley-Davidson motorcycle sits unused in the garage.***

***The younger child, Matthew, has been plagued by earaches since shortly after birth, and has difficulty sleeping at night. Matthew tends to wake up crying when he hears loud noises. The doctors say that Matthew will grow out of this condition when he reaches four or five years of age. The older son, Michael, becomes impatient, moody, and angry when his parents spend so much time attending to Matthew's 'round-the-clock need for attention because of his earaches.***

***Terry has no criminal history and investigators have never suggested that Terry had anything to do with the supposed arson of the family business.***

***Both Terry and Gerry belong to the Marshall City library's book club. Otherwise, they participate in no other civic or social activities.***