

Narrative Answer Questions [total weight is two-thirds of the examination]

Assume the Federal Rules of Evidence apply in all cases unless otherwise indicated.

This section contains two (2) questions. The weight of each is stated below.

Question 1 [three-fourths (75 percent) of the narrative answer portion of the examination]

Following the international elementary school chess championships in New York, controversy surrounds a match in the final round, at which Peter Morphy defeated Juan Capablanca to capture the championship of the kindergarten division. Capablanca said that the match went well for him for a while, whereupon Morphy suddenly executed a brilliant series of moves and won. After the match, Capablanca's mother saw Morphy toss something into the garbage. Suspicious, she examined the garbage can and retrieved a small earpiece. She confronted Morphy, who said he had never seen the earpiece before and that he threw a candy wrapper into the garbage.

Capablanca has sued Morphy and his father, alleging that the excellent comeback was made possible only by cheating. Specifically, Capablanca claims that Morphy's father, Parker, told the younger Morphy what moves to make via a transmitter that sent messages to the earpiece later found in the garbage. Capablanca demands that Morphy return the trophy and prize money that, according to Capablanca, were wrongfully obtained. Morphy denies any wrongdoing and says Capablanca is a sore loser.

You represent the Morphy father and son. Your clients want to know if the following pieces of evidence will be admissible should the case proceed to trial in federal court.

- (1) A piece of paper on which Morphy wrote down his moves (and those of Capablanca), using standard chess notation, during the final match. Capablanca wishes to offer the paper to show what moves the players made during the match.
- (2) The earpiece found by Capablanca's mother in the garbage.
- (3) A manual taken from the package of an identical earpiece (same manufacturer, same model) purchased by Capablanca's investigator. The manual explains how the earpiece can receive radio transmissions.
- (4) Testimony by Capablanca, who will testify that during the match, Morphy scratched his left ear quite often and otherwise acted in a very strange way, causing Capablanca to wonder if something was wrong.

[This question continues on the following page.]

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- (5) Testimony by Ragnus Carlson, the top-ranked player in Sweden, that the moves Morphy made during the second half of the match demonstrate ability well beyond that of even the very best kindergarteners in the world and that, in his opinion, Morphy could not have executed that series of moves without assistance from a chess master. (Carlson consulted the notation sheet discussed above to learn what happened at the match.)
- (6) A print-out from the U.S. Chess Association website showing that Parker Morphy is one of the top-ranked adult chess players in the United States.
- (7) Testimony from Robbie Fisher, a kindergarten classmate of Peter Morphy who has known Morphy for two years and plays chess and other games with him about once a week. Fisher will testify that in his opinion, Morphy cheats at games whenever he can get away with it.
- (8) Testimony from an employee at a Radio Shack store (located a few miles from the location of the chess tournament) who will testify that the earpiece found by Capablanca's mother in the garbage is the same model as an earpiece the employee remembers selling to someone "with a Louisiana accent" during the week of the tournament.
- (9) Testimony from Parker Morphy, whom Capablanca wishes to call as a witness, stating that he was born and raised in New Orleans, Louisiana.
- (10) Testimony by Ivan Spassky, a well-regarded coach of young chess players who is not himself an especially highly-ranked adult player, that in his opinion, Peter Morphy's performance during the second half of the final match is not beyond the abilities of an excellent elementary school player. (Spassky consulted the notation sheet discussed above to learn what happened at the match.)
- (11) Testimony by a teacher at Peter Morphy's school. The teacher will testify that earlier in the school year, Peter wrote a fictional story about two friends (who lived next door to one another) who used Morse Code to communicate chess moves late at night while their parents believed they were asleep.
- (12) Testimony by Morphy that he did not cheat, that he thought of his moves all on his own, and that he was not scratching his ear unusually (or behaving in any other strange way) during the final match.

What do you tell your clients about the evidence?

[The next question begins on the following page.]

Question 2 [one-fourth (25 percent) of the narrative answer portion of the examination]

In the fall of 2017, the U.S. Senate has finally confirmed a new Justice to the Supreme Court of the United States. Fresh from law school, you are a newly-hired clerk for the new Justice.

Today your boss sent you an email message, which reads:

Now that we have nine Justices again, the Court is going to hear oral arguments in *Peña-Rodriguez v. Colorado*, Case No. 15-606, on which the Court granted certiorari on April 4, 2016.

According to my pals at SCOTUSblog, the case grows out of the prosecution of an Aurora, Colo., racetrack worker, Miguel Angel Peña-Rodriguez, for alleged sexual harassment of two teenaged girls. He was found guilty of three misdemeanor charges, sentenced to two years on probation, and required to register as a sex offender.

After the trial was over, two jurors told defense lawyers that one of the other jurors had made a number of racist comments about Mexicans during the jury deliberations. (Peña-Rodriguez is native of Mexico.) Among other points, that juror was said to have told colleagues that Peña-Rodriguez had committed the crime because he was a Mexican “and Mexican men take whatever they want,” that Mexican men had “a bravado that caused them to believe they could do whatever they wanted with women,” and that Mexican men were “physically controlling of women.” That juror, a former police officer, allegedly made additional similar comments based on his experience with Mexican men. The same juror allegedly described a witness, who also was Hispanic, as someone who could not be believed because he was “an illegal.”

Colorado has a rule similar to FRE 606 that would render testimony about the events described above inadmissible if offered to challenge the verdict. Peña-Rodriguez says the rule violates his constitutional rights. Colorado says states may generally enact rules of evidence as they see fit and that the rule at issue in this case is perfectly legitimate.

What do you think we should do? Why? Please address strong potential counterarguments.

Provide the text of your response to the Justice.

[END OF NARRATIVE ANSWER SECTION.]

[END OF EXAMINATION.]