

**QUESTION 2 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I
OR IN SOFTEST ANSWER SCREEN 2**

While riding the bus to work, John was injured when the bus driver lost control of the bus going around a corner. To recover for his significant injuries, John must prove in the civil suit against Clarence, the driver, and his employer that Clarence drove negligently. Discovery has revealed many witnesses. When defense counsel learns who John's witnesses are and what they will say, counsel seeks to have the court preclude certain parts of their testimony. The witnesses and testimony, as well as the arguments for and against preclusion, are summarized in defense counsel's motion as follows:

1. Witness Bobby, who was sitting behind the driver, heard Clarence say right before the crash, "I love cornering with this bad devil just to see what she can do when I push her." Defense counsel argues this statement of Clarence's is inadmissible hearsay; John's counsel responds that the statement is not precluded by the hearsay rule.

2. Witness Constable, a police officer who arrived on the scene 55 minutes after the accident, is to testify that he interviewed witness Sam who said, "About time someone questioned me. The bus lost control going around the corner." Defense counsel seeks preclusion of Sam's statement as inadmissible hearsay. John's counsel responds that the statement would be admissible as a present sense impression exception to the hearsay rule.

3. Witness Homer, despite being ready and willing to testify, will not be called by John because John wishes to have his deposition testimony read by an attractive staffer from his counsel's office rather than present the unsightly Homer. Defense counsel seeks preclusion of the deposition testimony, while John's counsel says use of deposition testimony "is perfectly proper" under the rules of evidence.

Please evaluate defense counsel's requests and chances for success. Explain your answers.

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