

**Criminal Procedure  
Mid-Term Examination  
Fall 2008  
Professor Temple**

**EXAM # \_\_\_\_\_**

**Instructions:**

You have 90 minutes to complete this mid-term exam. As you know, there are 3 essay questions. I strongly recommend that you spend 30 minutes on each question. Each question is worth 10 points for a total of 30 points. If you are writing your answers to the exam, please use the front side of each page. You should not write on both sides of the page. You can write on each line of the blue book. You must write your exam number on each blue book. I ask that you write in a legible fashion.

If you are answering your exam through use of a laptop, I simply ask that you follow all of the instructions for the use of the laptop. Please make sure that you place your exam number on your answers.

You may use your textbook (Tomkovicz & White) during the exam. You may refer to any marginal notes you have made in your textbook. You may NOT have class notes or any outlines/study aides in the exam.

You do not have to format your answers in a court-type format (i.e. don't write the caption, docket number, etc.). These answers should be in essay form.

**GO RED SOX and good luck!**

**Question #1 (10 points):**

On April 30, 2008, Professor Buzz Scherr was murdered at his home located in Portsmouth, New Hampshire. Professor Chuck Temple was a suspect in the murder of Professor Scherr. The Concord Police Department went to Professor Temple's home at 3:00 a.m. on May 1, 2008. Upon waking Professor Temple, the police told him, "You need to come to the station to talk about Buzz." Professor Temple agreed and did not resist the officers in any way. He was transported to the Concord Police Station. The police and Temple joked about the various cases he had pending in Concord District Court on the ride to the police station. He was brought to the police station wearing his Red Sox pajamas. The police advised Temple he was not under arrest.

Once at the station, Temple agreed to an interview, but only with Detective Joe Smith. He was placed in a holding cell because Detective Smith was not available to interview him. Temple was advised by the police a second time that he was not under arrest. He waited in the holding cell for 4 hours. During the wait, he was told to sit on a bench. The officers insisted that he not move from the bench. Each hour a different officer came into the holding cell and questioned Temple about his whereabouts on April 30, 2008. The officers refused multiple requests by Temple to leave the cell based on harassment by other inmates. Additionally, each officer refused Temple's requests for a drink of water. In response to the last officer's questioning about his whereabouts, Temple simply stated that, "I think I was at Buzz's party in Portsmouth."

Detective Smith arrived at 8:00 a.m. He struck up a casual conversation with Temple about the judges presiding in Concord District Court. The conversation occurred in the holding cell. During the course of the conversation, Detective Smith never asked Temple any direct questions about his whereabouts on April 30, 2008. He then gave Temple the standard Miranda warnings. Temple stated that, "I know my rights, I'm a law professor." Temple refused to sign a Miranda waiver form and requested an attorney. At that point, Detective Smith told Temple that he was not going to question him about Professor Scherr. As he walked out of the holding cell, Detective Smith stated to the other detectives that he was not going to be able to find out where Temple was on the evening of April 30, 2008, because "the big law professor wants his attorney." Temple yelled at Smith from the holding cell that, "I already told those guys I was at Buzz's party." The professor was placed under arrest in the cell after the police interviewed a witness in Portsmouth. The arrest occurred at 8:45 a.m. on May 1, 2008.

Temple was ultimately indicted for the murder of Professor Scherr. During the pretrial stages of the proceeding, his attorneys moved to suppress the statement he made to the officer in the holding cell and the final statement he made from the cell to Detective Smith. You are the judge presiding over the suppression hearing. Please issue a ruling on the admissibility of the statements made by Professor Temple.

**Question #2 (10 points):**

You have been appointed to represent Gina Simon, a law student at Pierce Law. Ms. Simon works in the Jury Box Café. The indictment pending against her in Merrimack County Superior Court accuses her of felony theft. Specifically, Ms. Simon is accused of stealing \$1,200.00 in cash from the Jury Box Café.

On July 10, 2008, Pam Walsh of the Jury Box Café accompanied by her beloved employee, Chad, reported to the Concord Police Department that they suspected Gina Simon of taking over \$1,000.00 in cash from the Jury Box while she was making nightly deposits at the Bank of New Hampshire. Both Pam and Chad filed detailed statements with the Concord Police Department regarding the theft. Their statements indicated that one deposit bag labeled "Pierce Law Jury Box" was missing after a recent deposit by Ms. Simon. The bag was described as a bright pink Bank of New Hampshire deposit bag.

On July 15, 2008, the police placed Gina under surveillance. After returning from the bank on August 1, 2008, Gina was observed by the police placing a sealed garbage bag at the corner of her front lawn on Washington Street. Waste Management was scheduled to pick up trash on Washington Street the following morning at 7:00 a.m. Officer White of the Concord Police Department approached the bag from the sidewalk off of Washington Street and removed it to an adjacent parking lot. He inspected the trash bag at the parking lot and saw the bright pink bank bag labeled "Pierce Law Jury Box." It was at the bottom of a trash bag covered by juice boxes, discarded credit card bills, Red Sox tickets, health insurance documents, and prescription bottles. Detective White replaced the trash bag onto Ms. Simon's lawn and left the premises. He secured the bank bag and logged it into evidence at the station. He then applied for a search warrant of the premises based on the extensive statements of Pam and Chad, as well as the results of his garbage bag inspection. The Concord District Court issued a search warrant. The Concord Police Department executed the search warrant on August 2, 2008, and seized \$1,200.00 in cash and a computer printout of the various "hits" that Gina had made during deposits for the Jury Box.

The trash bag was not located on public property. It was placed within the boundaries of Ms. Simon's property. She has owned the house and real estate located off of Washington Street for 2 years.

As defense counsel for Gina, you have decided to file a Motion to Suppress in the felony theft case pending in the Merrimack County Superior Court. Please explain the basis of your Motion to Suppress based on the conduct of Officer White.

**Question #3 (10 points):**

On August 30, 2008, a theft occurred at the Pierce Law bookstore. Bookstore manager Donna Garofoli advised the police that she saw someone she recognized as a Professor steal a book entitled The Code of Professional Responsibility from the Pierce Law bookstore at about 1:00 p.m. that day. She gave a description that matched a photo of Professor Simon the police downloaded from the Pierce Law website. The police immediately went to Professor Simon's office and brought him down to the lobby area in handcuffs. Manager Garofoli was then brought to the lobby by a detective. She was told to look at the man in handcuffs and tell the police whether or not he was the person who committed the theft at the bookstore. Upon seeing Professor Simon, Garofoli screamed, "That's the professor who stole the Code!" At the time of the identification in the lobby, Professor Simon was flanked by 2 police officers and law school Dean John Hutson.

Immediately prior to being brought to the lobby by the officers, Professor Simon indicated that he wanted to speak with his attorney. He demanded that his attorney be present for the lobby identification. The Concord police officers told Professor Simon that they had no intention of calling his attorney. They simply brought him down to the lobby for the identification by Manager Garofoli.

Subsequently, Simon was charged with a Class A Misdemeanor of Theft by Unauthorized Taking (maximum sentence of 1 year in jail). He was arraigned in the Concord District Court on September 5, 2008. On September 6, 2008, he was transported from the Merrimack County House of Corrections to the Concord Police Department and placed in a line-up with 4 other individuals. Ms. Garofoli was present at the police station and once again picked Simon as the person who committed the theft at the bookstore. The police did contact Simon's court-appointed attorney prior to the line-up. The attorney indicated that he could not be at the line-up for 30 minutes. Since Ms. Garofoli had to be back to the law school within the 30 minute timeframe, the police proceeded forward with the line-up. The line-up consisted of 4 other men. Three of the men were in their twenties and over six feet tall. None of these men had facial hair. All of these 3 men had blonde hair.

The other man in the line-up was 55 years old with gray hair, a medium build, and a beard. Professor Simon is 50 years old, with gray hair, a medium build, and a beard. Both men are the same height (5 feet 8 inches).

You are the Assistant City Prosecutor handling this theft complaint. You are writing a Memo of Law on the admissibility of the identifications by Ms. Garofoli. Additionally, you are assessing the admissibility of the upcoming in-court identification of Simon by Ms. Garofoli at the trial. Please assess the admissibility of the identifications in your memorandum.