

EXAM # _____

**Criminal Law Midterm
Spring 2008
Professor Temple**

Instructions:

You have 90 minutes to complete this midterm 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.

Please write your answer in the blue book. You should use the front side of each page. Please don't write on both sides of a page. You can write on each line of the blue book. You must write your exam number on each blue book. I would ask that you write in a legible fashion.

You may use your textbook (Dressler) 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 aids in the exam. You may bring in copies of any materials Adam has posted on TWEN.

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.

GOOD LUCK!

Question #1 (10 points):

On January 1, 2008, the State of New Hampshire passed a new telephone harassment statute. The telephone harassment statute makes it a Class A misdemeanor crime to make a telephone call to another person with a purpose to alarm that particular person. The statute does not contain a definition of "alarm." The statute does not list any specific circumstances that would represent a purpose to alarm another person.

On February 2, 2008, Jim White called his ex-wife, Linda White. Linda White was not at home to receive the call. Jim White left a message on Mrs. White's answering machine in which he repeatedly screamed "our kid is going to die because you're a horrible mother." Mrs. White returned home on February 2, 2008 and heard Mr. White's message. She became extremely upset and called the Concord Police Department. The Concord Police Department visited Mrs. White at her home. An officer listened to the telephone message from Mr. White. The officer took possession of the voice mail tape with the telephone call on it.

Subsequently, Mr. White agreed to an interview with the Concord Police Department. He waived his Miranda rights at the interview. Mr. White specifically indicated to the police that he left the message on Mrs. White's answering machine because she was allowing their son to travel in her vehicle without using a seatbelt. He stated to the police that he was just trying to shock Mrs. White into compliance with the New Hampshire seatbelt law. Mr. White was clearly frustrated with his ex-wife's conduct.

After the interview, the Concord Police Department arrested Mr. White for a violation of the new telephone harassment statute. The complaint filed against Mr. White alleges that he made a recorded telephone call to Linda White with a purpose to alarm Mrs. White by stating that the parties' son was going to die.

Mr. White has hired you as his defense attorney. The pretrial motion deadline in the case is March 10, 2008. You have decided to file a Motion to Dismiss the telephone harassment complaint filed against your client. Please explain in detail the constitutional arguments supporting a dismissal of the complaint pending against Mr. White.

Question #2 (10 points):

On March 1, 2008, John Smith and Steve Jones were inmates at the New Hampshire State Prison. Mr. Smith and Mr. Jones were watching TV in a day room at the prison. They became engaged in a heated argument over a TV show. Mr. Smith grabbed the remote control from Jones and pushed him onto a couch. He stood over Jones and repeatedly called him a “child molester.” There was a group of 20 other inmates in the day room. Jones was at the New Hampshire State Prison for a drug conviction. The evidence will show that he did not have any sort of sexual assault convictions on his record.

Jones became extremely upset and distraught when Smith continued to call him a “child molester.” He became more agitated when the group of prisoners in the day room began chanting “child molester” over and over again. As Smith began to approach Jones again, Jones pulled out a homemade knife and stabbed Smith 3 times in the chest. One of the stabs severed Smith’s aorta resulting in his immediate death at the scene.

After the stabbing, Jones dropped the knife and curled up in a fetal position on the floor. He began to sob and screamed several times that he had just snapped because Smith was calling him a child molester. Correctional officers had to drag him from the day room. He was placed in an isolation cell at the Secured Psychiatric Unit.

The investigative reports from the prison indicate that Jones had just been released from the Secured Psychiatric Unit at the prison on February 28, 2008. During a 3 month stay at the Secured Psychiatric Unit, Jones was diagnosed with a variety of emotional and mental conditions including depression, anxiety, and borderline personality disorder. He experienced multiple violent outbursts while housed in the Secured Psychiatric Unit.

The reports further show that Jones was released from the Secured Psychiatric Unit with specific instructions that he be placed in segregated isolation for 60 days. The Secured Psychiatric Unit in its release instructions made it clear that Jones was not to be released to the general population. Unfortunately, the classification division at the prison failed to carefully review the Secured Psychiatric Unit’s release order. The classification division placed Jones in general population. As part of the prison general population, Jones was allowed to go to the day room to watch TV on the date of the incident.

You are the prosecutor handling this particular case. You are writing a memorandum evaluating the potential criminal liability of Mr. Jones for First Degree Murder, Second Degree Murder, and Manslaughter. Please review each level of homicide and indicate what level of homicide you will charge Mr. Jones with in view of the circumstances. You should also discuss any other issues that affect your evaluation.

Question #3 (10 points):

Joe Rogers was convicted of Domestic Simple Assault on June 1, 2007. Domestic Simple Assault is a Class A misdemeanor. Specifically, Joe was convicted of grabbing and punching his wife in front of their 3 minor children. The trial judge sentenced Joe to the maximum penalties for this crime: 1 year in jail; a \$2,000.00 fine; and 2 years of probation. You are a judge on a sentencing review panel charged with reviewing Joe's sentence.

Joe is 30 years old. He has been married to his wife for 10 years. Presently, he is a manager at Home Depot. He has worked full-time at Home Depot for 7 years. Employment evaluations submitted at the original sentencing hearing indicate that Joe is a trusted and respected manager with an unblemished personnel record.

The record from the sentencing hearing indicates that between the ages of 17 and 20, Joe was convicted of 5 misdemeanor crimes (2 drug offenses, 1 criminal trespass offense, and 2 criminal threatening offenses). Joe received suspended sentences and probation on all of these convictions. The record clearly shows that Joe fully complied with all of the terms of each of his sentences and probation. He has never been incarcerated as a result of a criminal conviction.

Mr. Rogers is a high school graduate. He obtained an Associate Degree in Business Management from the New Hampshire Technical Institute in 2000. He presently volunteers in a variety of community service programs sponsored by Home Depot.

At the original sentencing hearing, Mrs. Rogers testified that Joe is a very good husband and father to his children. She indicated that this was an isolated incident in their marriage. At his sentencing hearing, Mrs. Rogers urged the trial judge to order Joe into anger management counseling in view of this domestic violence incident. She indicated to the judge that she would attend this counseling with Joe. Joe has never attended individual or group counseling for anger management or domestic violence as a result of any of his prior sentences. Mrs. Rogers testified that a jail sentence would be harmful to the children.

A presentence investigation recommended a sentence of 12 months with all but 30 days of the sentence suspended for 2 years upon good behavior and completion of anger management counseling. The trial judge rejected this recommendation. He indicated that sentencing Joe to the "maximum" was warranted in this case due to Joe's prior criminal record and the violent circumstances of this domestic crime. The judge stated on the record that it was time for Joe to serve significant jail time in view of his prior "lenient" sentences.

As a sentence review judge, please indicate whether you will affirm the trial judge's sentence or reduce it. Please issue an opinion explaining the reasons supporting your decision in this case.

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