

**UNIVERSITY OF UTAH
S.J. QUINNEY COLLEGE OF LAW**

**Crime Victims Rights
Professor Paul Cassell**

**Fall 2005
December 7, 2005**

FINAL EXAMINATION

Instructions

This examination begins at 1:00 p.m. It is designed to be a two-hour examination with two questions of one hour each. Each of the two questions will be given equal weight in determining the final grade. You are given an extra hour to allocate as you see fit. You must turn in your examination by 4:00 p.m.

This is essentially an open-book examination. You may have the following materials with you: your textbook, any supplemental materials distributed during the course, and any outline that you may have prepared by yourself or with other students. You may not have the following materials: any commercial publications, hornbooks, or the like, in either printed or electronic form.

In accordance with standard law school procedure, do not write your name (or any other information that could be used to identify you) anywhere on your exam. Write your exam number on your exam. This permits evaluation without knowledge of your identity. If possible, please do not write in pencil (it is difficult to read).

Page limits: **If you are handwriting this exam, you are limited to a total of two bluebooks, one side of each page, every other line.** The two-bluebook limit is for the whole exam. For example, if you have space left over in the first bluebook after answering Question I, you can use that space for Question II, etc. **If you are using a wordprocessor for this exam, you are limited to a total of 2900 words for the entire exam. (This word limit is roughly 8 and 1/2 pages.) Please double-space. On the last line of the exam, please type in the number of words that your word processing package shows for the test.**

QUESTION I (one hour)

Veronica Victim was murdered on January 1, 2005. The next day, January 2, 2005, defendant Daniel Diabolical was arrested for first degree murder in connection with her death. Victim's mother, Mary Mahoney, is a witness in the case, as she saw her daughter drive away in a car with Diabolical shortly before Victim was found murdered. Mahoney wishes to exercise all possible rights in the process, including any rights that Victim has.

The police were forced to release Diabolical on January 3, 2005, because of lack of sufficient evidence to charge him. They then began a thorough investigation of the case, and on October 1, 2005, they are able to formally file criminal charges against him for first degree capital murder.

Defense counsel then filed a motion to exhume Victim's body to perform various physical tests, which he argues might help to produce exculpatory evidence. In particular, the defense believes that a physical examination of the body will reveal that she died of natural causes, rather than by a gunshot as the government alleges. Defense counsel also wishes to perform a psychiatric examination of Ms. Mahoney, contending that the tragic death of her daughter has rendered her mentally unstable and therefore unable to really remember the events that happened the day of the murder. Defense counsel has also filed a motion to exclude Ms. Mahoney from the courtroom at trial, invoking "the rule" on witnesses.

To avoid dealing with these motions, the prosecution has offered Diabolical a plea bargain, in which he would plead to the lesser included offense of voluntary manslaughter and the government would recommend a sentence of only six months in jail. Ms. Mahoney is not willing to see the case resolved for anything other than first degree murder.

On November 1, 2005, Diabolical, his defense counsel, and the prosecutor appear before Judge Castel for the entry of a plea bargain. The judge, who has a very busy court calendar, quickly ratifies the proposed plea after advising Diabolical of his rights. Sentencing is scheduled for December 1, 2005.

On December 1, 2005, Ms. Mahoney appears for the sentencing hearing, asking the judge if she can be heard on the issue of whether the plea should have been accepted and on the issue of what sentence Diabolical should receive. The judge curtly tells her that he is too busy to hear from her, particularly since the parties have agreed to a six-month sentence. He imposes a six-month sentence and a \$250 fine, without giving Ms. Mahoney a chance to argue for a longer sentence. Ms. Mahoney was also prevented from telling the judge that she had obtained a draft manuscript of the book Diabolical is writing entitled *How to Commit a First Degree Murder – and Get Away With It*. Diabolical has already received a hefty advance payment from a prestigious publishing company for the book.

Discuss the victim-related legal issues that arise under the legal principles discussed

during the course.

QUESTION II (one hour)

Some have suggested that crime victims should be able to file their own criminal charges in cases in which the prosecutor has declined to bring such charges.

From a public policy perspective, discuss the desirable and undesirable features of such a proposal, including any ways in which the proposal could be expanded, limited, or modified to make it more desirable.