

UNIVERSITY OF UTAH
COLLEGE OF LAW

Rights of Crime Victims
Professor Paul Cassell

Spring, 1999
May 7, 1999

FINAL EXAMINATION

Instructions

This examination begins at 8:30 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 11:30 p.m.

This is essentially an open book examination. You may have the following materials with you: your textbook, my supplemental materials, any materials distributed during the course, 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 accordance with standard law school procedure, do not write your name anywhere on your exam or any other information that could be used to identify you. Write your exam number on your exam. This permits evaluation without knowledge of the exam-taker's 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 a limit 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 typewriting this exam, you are limited to a total of eight pages, one side of each page, double-spaced. (Please use a non-proportionally spaced courier font in 12 point size, with 1" margins top, bottom and sides.)**

If you think that you need more facts for any question, identify the facts you need and state how they would affect your answer.

This examination consists of 4 pages (this is page 1). Please make sure you have all pages.

Question I (one hour)

On January 1, 1999, Officer Olivia Ochoa begins an investigation of three forcible sexual assaults perpetrated within her town against Alice Able, Betty Baker, and Carol Cooper. (Cooper is a racial minority; Able and Baker are not.) Ochoa collects evidence that these attacks were committed by Danny Defendant and, on February 1, 1999, presents the evidence to the local prosecutor, Paul Prosecutor.

Prosecutor is not convinced that the evidence will support any charges arising out of the alleged attack on Cooper, and on March 1, 1999, files charges against Defendant alleging he sexually assaulted (rather than forcibly sexual assaulted) Able and Baker.

Defendant believes that Able, Baker, and Cooper are all emotionally and mentally unstable, which is why they have alleged that something that, he says, he did not do. Defendant's counsel believes that the victims descriptions of how the rapist forcibly broke into their homes sounds "fishy" and are perhaps physically impossible, would like to do what ever he can to investigate their stories before trial.

On April 1, 1999, prosecutor offers a plea bargain to Defendant, through counsel, under which Defendant would pled to two counts of simple assault (a non-sex offense). A deal is ultimately reached between Defendant, through counsel, and Prosecutor in which Defendant will plead guilty to one count of simple assault against Able and all other charges will be dropped. On May 1, 1999, the court accepts the plea agreement.

On May 2, Able, Baker, and Cooper learn for the first time of the plea in the town newspaper and angrily demand that Prosecutor go to trial on all counts. Prosecutors refused to do this, but says he will try to get restitution for all medical expenses that the women incurred because of the assault.

On June 1, 1999, defendant is sentenced to one year in prison and Able, Baker, and Cooper all give victim impact statements. The sentencing judge also orders Defendant to pay \$1,000 to Able and to Baker as restitution for medical expenses, but awards no restitution to Cooper.

On June 1, 2000, Defendant is released from prison and Prosecutor sends numerous public notices to the town in which Defendant plans to reside. (The community has a standard version of "Megan's Law.")

On June 1, 2001 Defendant has made no payments whatsoever on his restitution obligations. The judge who sentenced Defendant enters an order directing Defendant to show cause why he should be cited for criminal contempt for failing to pay restitution. The judge asks a local law professors, who specializes in victims' rights, to prosecute the contempt citation *pro bono* on behalf of Able and Baker.

The victims — Able, Baker, and Cooper — at all points in the process want the sternest possible criminal action taken, either on their behalf or on behalf of the state. At all

points in the process, Defendant wants the most aggressive defense possible to protect all of this interests.

Discuss the **legal** issues involving the victim of the crime that arise under these facts.

Question II (one hour)

Pending before Congress is the proposed Victims' Rights Amendment, an amendment to the United States Constitution that would extend various rights to some victims of crime. A copy of the latest draft proposal is attached below.

From a public policy perspective, discuss the desirable and undesirable features of such a proposal, including any ways in which the proposal could be modified to make it more desirable. In your answer, please concentrate on the substantive issues surrounding giving victims such rights throughout the process rather than procedural issues concerning possible problems (or advantages) that might stem from the constitutional amendment process itself.

Text of Proposed Amendment

Section 1. A victim of a crime of violence, as these terms may be defined by law, shall have the rights:

to reasonable notice of, and not to be excluded from, any public proceedings relating to the crime;

to be heard, if present, and to submit a statement at all such proceedings to determine a conditional release from custody, an acceptance of a negotiated plea, or a sentence;

to the foregoing rights at a parole proceeding that is not public, to the extent those rights are afforded to the convicted offender;

to reasonable notice of a release or escape from custody relating to the crime;

to consideration of the interest of the victim that any trial be free from unreasonable delay;

to an order of restitution from the convicted offender;

to consideration for the safety of the victim in determining any conditional release from custody relating to the crime; and

to reasonable notice of the rights established by this article.

Section 2. Only the victim or the victim's lawful representative shall have standing to assert the rights established by this article. Nothing in this article shall provide grounds to

stay or continue any trial, reopen any proceeding or invalidate any ruling, except with respect to conditional release or restitution or to provide rights guaranteed by this article in future proceedings, without staying or continuing a trial. Nothing in this article shall give rise to or authorize the creation of a claim for damages against the United States, a State, a political subdivision, or a public officer or employee.

Section 3. The Congress shall have the power to enforce this article by appropriate legislation. Exceptions to the rights established by this article may be created only when necessary to achieve a compelling interest.

Section 4. This article shall take effect on the 180th day after the ratification of this article. The right to an order of restitution established by this article shall not apply to crimes committed before the effective date of this article.

Section 5. The rights and immunities established by this article shall apply in Federal and State proceedings, including military proceedings to the extent that the Congress may provide by law, juvenile justice proceedings, and proceedings in the District of Columbia and any commonwealth, territory, or possession of the United States.