

Sultan

CONSTITUTIONAL LAW II

Fall 1991

INSTRUCTIONS

The proctor will first distribute the essay question and scrap paper. Thirty minutes later you will receive the blue books. You will then have thirty minutes to answer the question.

Read the entire examination carefully before you write. Plan your answers. WRITE IN INK. WRITE CLEARLY ON ONE SIDE OF THE PAGE ONLY. DO NOT REPEAT THE QUESTION. BE AS DETAILED AND SPECIFIC AS POSSIBLE. ANSWER THE QUESTION. DO NOT SURVEY. DO NOT REPEAT YOURSELF. No materials of any kind are allowed with you. All question sheets must be handed in with your bluebook(s).

Please make sure you have your examination number on each blue book and that they are sequentially numbered before you submit them to the proctor.

GOOD LUCK

ASSUME THE FOLLOWING FACTS TO BE TRUE:

On the evening of October 15, 1991, at the end of an interview by Ted Koppel on ABC's Nightline news program, David Duke, a former Nazi and Grand Klu of the KKK, (who now rejects those "youthful indiscretions" and claims to be "born again") predicts that he will win 50.5 percent of the votes in the runoff election the next day, and be elected the Republican Governor of Louisiana. The next day receives 50.4 percent of the vote. His opponent, former Democratic Governor Edward Edwards, receives 49.5 percent of the vote and demands a recount.

In his victory statement, Duke, who will take office on January 2, 1992, promises to be a Governor of all the citizens of the State, showing no preference to any individual or group. He also promises to do all he can to foster business activities in the state.

Within two weeks of that November 16th statement, seventy percent of already booked future conventions (mostly in New Orleans) indicate their intention to meet elsewhere. In addition ninety percent of the negotiations for conventions immediately terminate their possible intention to meet in the state.

On December 5, 1991, a broad range coalition of minority, religious, business and political groups indicate their intention to have a joint demonstration in front of the Statehouse and Legislature in Baton Rouge, the State capitol. With more than a million demonstrators present, the lame duck Governor, Buddy Roemer, calls out the National Guard to assist local police in crowd control. Unknown to the Governor, the Guard (who have never had any training in crowd control techniques) are issued live ammunition.

During the demonstrations, some of the onlookers become unruly, throwing bottles and stones at the demonstrators. When the National Guard does not respond to requests that they stop such attacks, some of the demonstrators scream "fascist pigs" and "hooded murderers," as they make angry gestures at members of the guard. In instinctive reactions some guardsmen independently fire their rifles into the crowd, resulting in a general panic that leaves ten demonstrators dead and fifteen wounded from rifle fire, and two demonstrators dead and two wounded from the resulting panic.

During the two weeks following this tragedy an additional five percent of booked conventions and three

percent of negotiations for possible future conventions decide not to meet in Louisiana.

At subsequent congressional hearings investigating the tragedy, the Commander of the Louisiana Guard is asked why his troops did not at least first fire over the heads of the demonstrators. His reply was, "Quite frankly Congressman Jones, we never have had training in crowd control. I know that one of the main duties of the Guard is to control crowds, but the sad truth of the matter is that the funds were never there for such training."

Two months later Congress passes a bill (over the President's veto) that requires all newly appointed members of the National Guard, the state police and local police forces of every state to be trained in crowd control techniques at the FBI School in Quantico, Virginia, at state expense. Failure to have this training will result in the automatic termination of all Federal funds granted the states in support of crime control and criminal justice.

A recent graduate of the University of Dayton Law School, you are employed on the staff of the Attorney General of Ohio in Columbus. Your supervisor informs you that the Governor has requested a legal memo on the constitutionality of the recent legislation as he wishes to decide if he should join Governors of other states who plan to challenge it in court.

1. What legal issue(s) does the legislation raise?
2. How will it (or they) probably be decided?
3. Why would it (or they) be decided in that manner?