

Sultan

CONSTITUTIONAL LAW II

Fall 1997

INSTRUCTIONS

The proctor will first distribute the essay question and scrap paper. One hour and fifteen minutes later you will receive the blue books. You will then have forty 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 IS POSSIBLE. ANSWER THE QUESTION.

DO NOT SURVEY AN AREA OF THE COURSE. RATHER APPLY THE LAW TO THE FACTS. DO NOT REPEAT YOURSELF. No materials of any kind are allowed with you. All question sheets must be handed in with your blue book(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

[50 points]

The year is 1930 in the small city of Athens, Georgia. In the city park located west of the City Hall stands a 250 year oak tree that has become an integral part of the life of many generations of inhabitants. Its great symbolic significance can be seen in the fact that over these many generations, couples agree to marriage, and in nice weather have marriage, baptism and family gatherings under what the people call "the old oak tree." Rallies in support of next day sports competitions take place under the tree. Even short prayer ceremonies for departing service men during the Spanish American War and World War I have taken place under the tree.

Swift Goldgrab (SG) is the City's most successful local business

man. Born and raised in Athens, he has numerous holdings and a net worth of two million dollars. Ever the enterprising entrepreneur, he realizes that the nations most successful fast-food chain has not yet located in Athens, and decides that the best location by far for the franchise is in the area of "the old oak tree." To be able to build he must first have the park area containing the tree rezoned for commercial purposes.

Under the municipal code of Athens, the city government consists of a Mayor and five elected councilmen. All ordinances and zoning variances must be approved by at least three members of the council and by the Mayor. (Should the Mayor veto the decision, his veto can be overridden by all five councilpersons.)

SG, who has been most friendly with all of these politicians over the years, knows that the Mayor wants to be the Governor of Georgia, and that one of the councilmen would like to be the next Mayor and that two others aspire to be members of the state legislature in Atlanta. Privately, he promises to fully fund their campaigns if they would vote for the zoning variance permitting him to build the franchise, and they agree. Without any prior notice the variance passes at a regular meeting of the council, with only a reporter of the local newspaper and two regulars (citizens who always attend) present.

Headlined in the next issue of the local paper, a citizens group is immediately formed to "Save the Old Oak Tree" (SOOT). SOOT is led by Mary Smith, a local widow, who accepted her late husbands proposal for marriage and was married under the tree thirty-five years earlier, and by John Jones, a local mailman, who, after a prayer service under the tree seventeen years earlier, went on to be awarded two citations for bravery for service in the trenches of World War I.

The two conduct a well publicized and consequently well attended rally under the tree where all present agree to do "whatever may be necessary" to have the zoning variance revoked or overturned, if possible, by a higher authority. They also agree that, should those efforts fail, and workmen appear to cut down the tree in the future, they will take turns as 24 hour human shields to block the destruction of the tree.

Four days later both Smith and Jones are arrested and charged

with the Georgia crime of "insurrection." Due to the heavy publicity and "perceived bias" of any local jury pool, the case is tried in the city of Macon some 100 miles away. The verdict is "guilty". The punishment, under then existing Georgia law at the discretion of the jury, is death.

(IN YOUR RESPONSE TO BOTH QUESTIONS BELOW DO NOT DISCUSS GRAFT AND/OR CORRUPTION OR THE EIGHTH AMENDMENT PROVISION AGAINST CRUEL AND UNUSUAL PUNISHMENT.)

A. (Twenty-five Points) Are the above convictions valid in 1930? If so, why? If not, why not? What prior U.S. Supreme Court materials (cases, holdings, and/or policies) lead you to your conclusion.

B. (Twenty-five Points) If all the above events occurred 50 years later, in 1980, would the convictions have been valid. If so, why? If not, why not? What prior U.S. Supreme Court materials (cases, holdings and/or policies) lead you to your conclusion.