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Fall 2003

**CRIMINAL LAW
FINAL EXAMINATION
December 10, 2003**

This is an essay examination. Listed below are three questions, each of which is worth 250 points. You have three hours to complete the examination.

In answering the questions you can use any inanimate resources, e.g., your casebook, class hand-outs, notes, outlines, commercial outlines and study aids, etc. You cannot obtain advice or assistance from another person.

Write as legibly as possible. **Use a separate bluebook (or separate bluebooks) for each question and label each bluebook to indicate which question is answered in it.**

Remember, the purpose is to test your ability to spot issues and apply the principles we discussed to them. Read the directions presented for answering each question and answer accordingly. Analyze a question in terms of **every issue** you think can pertain to the problem presented. If you believe an issue would not be relevant in resolving the problem, note that and briefly explain why this is your conclusion. Also, in your analysis, remember to address the arguments that can be made by **both** the defendant and the prosecutor.

As you read a question, if you find the facts ambiguous or if you need to assume certain facts to support your answer, assume the facts you need to be able to answer and state that you are doing so (i.e., "I am assuming that . . .").

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QUESTION #1 (250 points):

In 2000, Neva Netupski began a marijuana-growing and –distribution operation near Plymouth, Ohio. Neva and her son Rick Roe grew marijuana near Plymouth and sold it to locals; they used their profits to expand. By 2003, Neva led an operation that involved 116 people: Her nephew Greg Roe supervises 60 people who grow marijuana in forests around Plymouth. Her brother-in-law Sam Roe supervises 20 people who process the marijuana and package it for distribution.

Neva's brother, Ned Netupski, sells it to 20 dealers in 10 states; Ned deals directly with each dealer and has told each he heads the marijuana operation. Ned gives the money the dealers pay him to Neva; she uses it to pay those involved in the operation and buy equipment and supplies.

Neva's niece, Gina Roe, supervises 10 people who protect the operation. They use guns to keep competitors from stealing or burning Neva's plants; sometimes they burn marijuana belonging to competitors. Gina's people chased a man who had stolen some of Neva's plants, caught him, beat him and took the plants back. In 2002, Fred Dassin, a would-be competitor declared "war" on Neva: Six of his people ambushed 2 of Gina's staff, killing one and wounding the other. Gina retaliated by killing Dassin.

Ann Bartin owns a gun shop in Plymouth; Gina buys the guns her staff uses from Bartin. She bought 6 fully automatic M16 rifles from Bartin; since it is illegal to sell fully automatic weapons to civilians, Bartin told her supplier the rifles were for the Plymouth Police Department. It is legal to sell automatic weapons to law enforcement. Bartin told her assistant, Ben, "I don't know what Gina wants them for, but she's my best customer." In the last two years, Gina bought 60 handguns and 35 semi-automatic rifles from Bartin; Gina consistently buys large quantities of ammunition from Bartin. The guns Gina buys are far more expensive models than those Bartin sells her other customers. Over the last 2 years, Gina's purchases have accounted for 62% of Bartin's sales.

As part of an undercover investigation, DEA agents Coy James and Eva Dunn began growing Marijopa, which resembles marijuana but has none of its effects, in a forest Neva does not use. Thinking it was marijuana, Gina's brother Mack, who does not work for Neva, agreed to help them process their crop for \$1,000. Mack brought a trailer to the agents' field and spent a day processing the crop, using equipment he bought at Stan's Hardware Store. Stan supplies all the equipment Neva's group uses to plant, fertilize, harvest and process their crop; they are such good customers he gives them a 10% discount and their purchases account for 72% of his business.

When Mack heard about Dassin's ambush, he left a message on Gina's voicemail telling her where she could find Dassin to kill him. Gina retrieved the message after she killed Dassin.

Ned Netupski heard about the James-Dunn "marijuana" operation and thought this might be his chance to go out on this own. He called Dunn and said, "would you sell part of your crop to me so I can get some seed plants to start my own marijuana growing operation?" Dunn said, "sure – come by tomorrow and we'll have them." Ned said, "Done – I'll be there." Neva heard about the call and told Ned, "you're a dead man if you leave me." Ned never went by to pick up the plants or contacted Dunn again.

You work for a joint state-federal prosecution task force that intends to bring charges based on the above facts. You have been assigned to:

- a) identify the offenses Neva, Ned, Greg, Sam and Gina can be charged with under the legal principles we studied in class, analyzing the viability of each possible charge; and
- b) do the same for Bartin, Mack and Stan.

Write a memo to that effect.

QUESTION #2 (250 points):

Assume the facts given in question #1 and the analysis presented in your answer to question #1.

The prosecutors for whom you work have learned that the potential defendants identified in question #1 may try to raise certain circumstances in a defensive capacity, i.e., as negating criminal liability. Analyze whether any of the following could be raised as viable defenses to charges you identified in your answer to question #1:

- a) Bartin got the illegal weapons for Gina because Gina told her, "we need them, and I'll kill your husband if you don't cooperate."
- b) Stan worked hard to keep the Netupski operation's business because he needed all the money he could get to for his father's heart transplant operation.
- c) Gina claims if she had not killed Dassin he would have killed her and more of the people who worked for her.
- d) Gina and the people who work for her claim their activities were simply the lawful protection of property.
- e) After James and Dunn paid Mack for processing their "marijuana" plants, Mack went to the Plymouth Police Department and turned James and Coy in for producing and distributing marijuana.
- f) Ned claims that, even if he engaged in any criminal activity with regard to his conversation with Dunn, he (i) never went back for the plants and (ii) went to the police and turned them in.

QUESTION #3 (250 points):

Gerald Smith is a convicted child molester who lives in Hobart, Iowa; he has six child molestation convictions. His last conviction was in 1998; he served his sentence and has been out of prison for a year. Smith will always be a pedophile who desires to have sex with children; he cannot change that. Pedophilia is a recognized psychological disorder, one that cannot be cured with current psychiatric techniques. Smith is seeing a psychiatrist in an effort to control his desire to have sexual intercourse with children; he is also taking medication that helps suppress these urges. The psychiatrist told him he must not drink alcohol while he is taking the medication, since "alcohol completely nullifies its effects."

Smith fantasizes about having sexual intercourse with children. Driven by his fantasies, six months ago he drove to Hyde Elementary School to watch children on the playground. As he watched, Smith fantasized about having sexual intercourse with them. Officer Jones of the Hobart Police Department saw him; Jones knows Smith is a pedophile and was concerned about his watching the children. Jones told his supervisor what he had seen; Hobart quickly adopted an ordinance making it a crime knowingly to "frequent schools or areas near schools". The crime is punishable by 30 days in jail. Jones gave Smith a copy of the ordinance and waited while he read it. Smith said, "'frequent' means I don't commit this crime unless I come back to the school three or four times, right?" Jones said, "sounds good to me."

A week later, Smith spent the afternoon in a bar drinking beer with a friend; when he left, he could not resist the urge to watch children and fantasize about sex with them. He drove to Hyde Elementary School and watched children playing. When he had been there for half an hour, Jones arrived and arrested him for violating the ordinance. Smith has retained Clara Darrow, the lawyer you clerk for to defend him. Darrow assigns you to draft a memorandum analyzing the arguments you can make on Smith's behalf, i.e., arguments as to why he cannot be convicted of violating the ordinance. Darrow also wants you to analyze arguments the prosecution can make in response, claiming that Smith can be convicted. Draft that memorandum.