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Examination No. _____

504 CRIMINAL LAW
Semester I, 1999-2000

UNM School of Law
Final Examination
Three Hours

Professors James Ellis and April Land
Wednesday, December 8, 1999
1:30 p.m. to 5:00 p.m.

INSTRUCTIONS

This is a 3-1/2 hour in-class examination. The question is designed to be answered in three hours. There is an additional one-half hour for reading the question carefully, and for organizing and preparing your answer.

In preparing your answer, you may consult your casebook, class handouts, class notes, and any outlines you have prepared yourself or in collaboration with your classmates. You may not consult commercial outlines or treatises.

This exam contains one question and includes a statutory appendix. Be sure to use the correct statutes, citing to the relevant section where appropriate. Assume that the facts set forth in the question are uncontested.

Check to see that there are five pages in your copy of the exam including this page.

Please write in ink, legibly, and only one **one side** of each page of the bluebook, leaving a margin at the left side of each page. If you are typing your answer, please identify each page (e.g. "1 of 5;" "2 of 5;" etc.). If you are hand writing your answer, please identify your bluebooks similarly. Make sure your exam number is on every bluebook or every typed page.

GOOD LUCK!

[All essay exams will be filed in the library.]

QUESTION

Things got a little out of hand when the Surprise Party and Real 'Rassling Federation (RRF) both held their annual conventions in Chaos City at the end of December in 1999.

The Surprise Party aspires to emulate the success of previous third parties like the Prohibition Party and the Know-Nothing Party in influencing American politics, and will receive 15 million dollars in Federal money to aid in its quest. The availability of those funds and the television coverage that is certain to be generated drew a somewhat eclectic set of candidates for its presidential nomination. Grump is an eccentric billionaire who has made a career out of placing his name prominently on some of the most tasteless monstrosities ever seen in American architecture. Raw Sparrow is an eccentric billionaire who was the party's nominee in the last election. "Boo" Cannon is an eccentric retread from another party who often speaks wistfully of "riding to the sound of the guns," although no one has been able to figure out quite what that means (and many would prefer not to know). And Jeffy "The Physique" Oxnard is a former 'rassler who somehow got himself elected Governor of a state previously admired for its civic rationality.

Grump, seeking a competitive edge in the contest for the party's highly coveted presidential nomination, heard rumors that the manuscript of Cannon's latest book contained embarrassing passages on the subject of Vlad the Impaler, a fifteenth century Transylvanian despot whom Cannon believed to be misunderstood and unfairly reviled in history. Grump had heard reports that the manuscript contained a potentially explosive suggestion calling for a national dialogue on the decriminalization of impaling, although these reports later proved to have been mistaken. Grump resolved to get his hands on a copy of the manuscript (with the hope of "persuading" Cannon to withdraw from the race), and toward that end set out to hire a "world class team of burglars." The first person recruited was "Sober" Steve Boston, a professional 'rassler known for his fearsome demeanor, who was in town for the RRF convention, and who thought the caper sounded like fun and a way to pick up a little extra income. Boston solicited a fellow 'rassler, Sulk Rogaine, to help him with the job, but he didn't tell him that this was connected in any way to Grump, because he knew Rogaine to be an architectural purist. Without disclosing Rogaine's identity, Boston informed Grump that he and his partner could handle the job by themselves, but Grump decided that he wanted to participate directly as well.

Boston informed Grump that he (Boston) and his unnamed "confederate" would pilfer an electronic passkey from the cleaning crew, "let themselves in" to Cannon's 13th floor hotel suite in Chaos City on December 31st, and make a photocopy of the manuscript. Grump's job would be to wait in the hotel lobby and signal the others by pager if Cannon or the police were coming up in the elevator. But having been distracted by the opportunity to speak with a group of reporters, Grump never assumed his position in the lobby. Instead, unbeknownst to Boston and Rogaine, he entrusted the pager to his latest supermodel girlfriend, Anne R. Xia, instructing her to watch the elevators and to signal on it if Cannon or the cops entered an elevator (explaining falsely that he wanted to know

if either might be ascending to the 35th floor Grump penthouse suite, for fear that they would find evidence that Grump was the person responsible for defacing Cannon's election posters). As midnight approached, Anne saw a person she believed to be a plainclothes policeman entering the elevator, and signaled on the pager, "Cop on the way up." As luck would have it, the person she misidentified as a policeman was actually Sparrow, who was on his way up to his own 13th floor room. When they received the pager warning, Boston and Rogaine decided to knock the policeman out and continue quickly with their caper. But our miscreants were expecting a somewhat taller individual, and Rogaine's intended knockout punch merely grazed Sparrow causing a minor eight-inch scratch on his ear. Sparrow sensed immediately that these must be political operatives intent upon disrupting his daughter's wedding, and committed to doing everything necessary to preserve the peaceful sanctity of that joyous event in his beloved daughter's life (and hoping to ward off another punch from his larger assailants), drew a .45 magnum from his briefcase and fired two shots. The first shot missed Boston, but the second killed Rogaine. Since Boston and Rogaine had undertaken this caper unarmed ("We don't need no stinking weapons," Boston had responded when Grump had recommended that he and his confederate arm themselves), Boston now decided that it would be a propitious time to make his getaway and ran into the elevator. But it was, alas, now just after midnight on December 31st, and the elevator's power had shut down and the car plummeted to the lobby, killing both Boston and Governor Oxnard, who had reached the sixth floor in his attempt to pull himself up the elevator cable by hand, bowie knife clenched in his teeth, to "deal with" the report of gunfire on the 13th floor. (An autopsy revealed that Oxnard had a congenital heart defect that would have killed him before he reached the 13th floor, and that probably would have resulted in his death within a week even if he had not been engaged in the strenuous activity of climbing the cable.) The same Y2K computer glitch that caused the elevator to fail would have prevented Boston and Humanity from entering Cannon's hotel suite at their planned moment of entry, since it also disabled the electronic key system (although the battery-powered photocopier they had brought would have been able to copy the manuscript if they had managed to get in).

The real police arrived and arrested Grump, Anne, and Sparrow. They also arrested Paul Portals, who as proprietor of Chaotic Computer Systems had, for a fee of \$5,000.00, certified the hotel's computers to be Y2K compliant, but who had only pretended to analyze the hotel's system. All were taken to jail, except Sparrow who had begun muttering incoherently ("Just let me go up and join my aunt in the attic") and was taken to the local community mental health center for observation and psychiatric evaluation.

You are a hotshot assistant to the District Attorney, who has asked you for a memorandum on the likelihood of success in prosecuting these four defendants. Please limit your analysis to statutes contained in the appendix to this examination and make citations to the appropriate statutory sections. All issues that are not directly resolved by the text of the statutes should be treated as cases of first impression in Chaos. Please also note that your boss is known to prize clear and concise expression. You should know that Chaotic law is sometimes influenced by the Model Penal Code.

APPENDIX

STATE OF CHAOS CRIMINAL CODE (portions)

Section 22. Murder. Murder is the killing of a human being with malice, and without adequate provocation. Murder that is committed with premeditation or by means of poison, torture, impaling, or lying in wait is murder in the first degree. Murder committed in the perpetration of, or attempt to perpetrate, arson, rape, robbery, carjacking, or train wrecking is also murder in the first degree. All other murders are murder in the second degree. Murder in the first degree is punishable by life imprisonment without possibility of parole. Murder in the second degree is punishable by imprisonment for a term of 25 years to life.

Section 23. Manslaughter. Manslaughter is the felonious killing of a human being without malice or with adequate provocation. Manslaughter is punishable by imprisonment for a term of ten to fifteen years.

Section 35. Burglary. Burglary is the unlawful breaking and entering of a dwelling place of another at night with intent to commit a felony therein. Burglary is a felony punishable by a term of imprisonment of ten to fifteen years.

Section 36. Unlawful Entry. Unlawful entry is the unconsented entering of a dwelling place of another. Unlawful entry is a misdemeanor punishable by a term of imprisonment from 90 days to one year.

Section 47. Blackmail. Blackmail is an unlawful threat to expose damaging information about another for the purpose of financial gain. Blackmail is a felony punishable by a term of imprisonment of ten to fifteen years.

Section 48. Consumer Fraud. Any person who receives money or any other compensation worth more than \$1,000.00 for performing services, but then fails to perform those services is guilty of the misdemeanor of consumer fraud. Consumer fraud is punishable by a fine of up to \$10,000.00, or imprisonment for a term of 90 days to one year, or both.

Section 49. Assault on a Police Officer. A person who attacks a law enforcement officer with the purpose of causing bodily injury is guilty of assault on a police officer. Assault on a police officer is a felony punishable by imprisonment for a term of one to five years.

Section 58. Complicity. An accomplice is a person who aids and abets another in committing a criminal act. Accomplices may be punished at the same level as principal perpetrators of crimes.

Section 62. Conspiracy. Conspiracy is the agreement of two or more persons to commit an unlawful act. Conspiracy to commit a felony is a felony punishable at the same level as the offense that is the object of the conspiracy. Conspiracy to commit a misdemeanor is a misdemeanor punishable at the same level as the offense that is the object of the conspiracy.

Section 71. Attempt. A person who unsuccessfully tries to commit any offense included in this Code is guilty of the crime of attempt. Attempt is punishable at a level that shall not exceed imprisonment for a period of half of the time that could be imposed for the offense the defendant attempted.

[END OF EXAMINATION]