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504 CRIMINAL LAW
Semester I, 2003

UNM School of Law
Final Examination
Three Credits

Professor Norman Bay
Wed., Dec. 10, 2003
1:30 p.m. to 4:30 p.m.

INSTRUCTIONS
(Three Hours)

This is a three-hour, open-book examination with one question designed to be answered in three hours.

In preparing your answer, you may consult your casebook and class handouts, class notes, and any other notes and outlines you have prepared yourself or in collaboration with your classmates. You may not consult treatises or commercial outlines. You should note, however, that it may be a better use of your time to be thinking, rather than researching the materials you bring with you.

Please read the questions carefully and take time to outline your answer before beginning to write. Be sure to answer the question directly. Clear, well-organized and concise expression will be rewarded.

Write on one side of the page only, and write legibly. If I cannot read what you wrote, I cannot give you credit for it.

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

(END OF INSTRUCTIONS)

[EXAMINATION BEGINS ON PAGE 2.]

504 CRIMINAL LAW
Semester I, 2003-04

UNM School of Law
Final Examination
Three Credits

Professor Norman Bay
Wednesday, December 10, 2003
1:30 p.m. to 4:30 p.m.

The Confusion Times
July 15, 2003
Dateline: Justice, Confusion

Justice police yesterday arrested three servicemen in connection with the death of Richard Davis, 24, whose stabbed body was recently found in a wooded area outside of the small community of Justice in the State of Confusion.

The killing has rocked the local community because both the victim and the three men arrested – Jacob Burgoyne, 24, Albert Martin, 23, and Mario Navarrete, 24 – all were in the same U.S. Army infantry unit, which only recently had returned from the war in Iraq. Their infantry unit, based at Fort Victory, led the ground assault on Baghdad and was involved in some of the war's bloodiest fighting.

Investigators believe Davis was murdered July 13, just one day after he and his alleged assailants had returned from their tour of duty in Iraq. Police believe all four men reunited to celebrate the day after they returned to the U.S. They went bar hopping all evening and ended up at the Platinum Club, a strip club frequented by servicemen from Fort Victory.

Davis was stabbed to death after the four men were forced to leave the club because they allegedly caused a disturbance. His body was found in a wooded area not far from the Platinum Club with at least five stab wounds.

Owners of the club would not confirm reports that the men had assaulted one of the strippers. Other club patrons present on the night Davis was killed, however, have confirmed that the four men were ejected from the Platinum Club after a stripper complained. Although our news staff still is trying to piece together events, it appears that the four men were extremely drunk and boisterous during a particular stripper's performance. According to patrons who overheard their conversation, Burgoyne and Martin dared the other two servicemen to go back to her dressing room "for a little fun." Burgoyne said, "I'll bet she'd love to have all of us." Martin said, "Hey, I don't care what *she* wants, let's go."

Two women who worked at the club, who refused to provide their names, verified that the four men had gone back to one stripper's dressing room after her performance. According to them, the woman reported that the men initially asked for autographs, but then "asked if she wanted to have sex with them." When she refused, they crowded around her in what she described as a threatening manner and glared at her. She told her co-workers that she said, "If I do what you want, will you let me live?" The men nodded, but, at that point, Davis said, "This is crazy, I'm not going to be a part of this" and stormed out the door. The woman then screamed for help and the club's bouncers immediately ejected all four men.

Police believe Davis may have been killed in retaliation for his refusal to participate and for getting the group kicked out of the club. Some patrons saw Martin and Davis engaged in an argument in the parking lot shortly after they were kicked out of the club. Within a relatively short time, however, all four men entered Navarette's car and drove away.

They stopped at a nearby liquor store to get more booze, and Burgoyne challenged Davis to go in and steal some whiskey. Davis expressed reluctance, but all of the others encouraged

him to do it. Davis entered the liquor store but the others could see through the window that he was just talking to the clerk. Burgoyne then entered the store, and while Davis was talking to the clerk, put three bottles of Scotch whiskey (good single malt Scotch, aged 20 years, worth \$45.00 each) in his coat. He told Davis it was time to go, and as they were leaving, the owner, I. M. Bierman, who on his video monitor in the back room had seen Burgoyne take the whiskey, confronted Burgoyne with a pistol. The owner told the clerk to call the police, and at that moment, Burgoyne lunged for the gun trying to disarm the owner. The owner shot at Burgoyne, missing him, but hitting the clerk who later died from the bullet wound. Burgoyne and Davis ran out, and the group drove off with Navarette driving. Leaving the parking lot of the liquor store in a rush and without the headlights on, Navarette almost hit a car coming down the road.

The driver of the other car, P. J. Foight, upon seeing the Navarette car, swerved to avoid a collision and lost control. The car rolled over several times before coming to rest on its top. The passenger in P.J.'s car, his mother, suffered serious internal injuries and later died. According to the medical examiner, P.J.'s mother would have survived if medical attention had been provided within an hour of the crash. Unfortunately, the police did not learn of the crash until they came upon it about 45 minutes later. The police immediately called an ambulance, but by the time it arrived, half an hour later, P.J.'s mother had died. Fortunately, P.J. survived with only minor injuries. The police found him sitting near the crash site talking to his girlfriend on his cell phone. P.J. told the police he thought his mother was killed in the crash when she did not answer him, but he never checked to see if she was alive and never called 911 or asked his girlfriend to call 911.

Unaware of the rollover, the soldiers drove to a wooded area some ten minutes away. In the car, Burgoyne cursed at Davis for not helping him in the liquor store.

Precisely what occurred in the woods is uncertain, but we have been able to piece together the following facts. Sitting on a log together, and while consuming the first bottle of single malt Scotch, Burgoyne told everyone that that they could thank him, and not Davis, for the good Scotch they were drinking. Martin then accused Davis of being a wimp with the stripper and at the liquor store. Davis responded that he didn't have to prove anything and especially not to Martin. Davis got really upset and said, "You are so dumb, Martin, and so crazy that we are lucky you didn't get us all killed in Iraq. You are so dumb, drunk dumb." Enraged, Martin immediately jumped on Davis and started punching him. Davis managed to push Martin off of him, pulled out a knife he always carried, and lunged at Martin. Missing Martin, Davis stumbled and fell to the ground. Martin put his foot on Davis' hand with the knife, took the knife from Davis, and stabbed Davis at least five times in the face and upper body.

According to Navarette, during the attack on Davis, Burgoyne said, "Teach that smart ass a lesson." Navarette claims he turned his back during the fight; he remained at the scene and later left with the others. Navarette also told the police about the conversation that occurred in Burgoyne's car after they left the parking lot of the Platinum Club. According to Navarette, Burgoyne and Martin said Davis made them sick, that he was a coward in the war and at home, and that they would shut him up "for good."

Martin's step-father, Leonard White, said he's not surprised things got out of hand when the infantry unit returned from Iraq. "People don't realize how war affects people. You teach somebody how to kill someone else, that's got to affect them mentally." White said Martin told

him that his unit killed "at least 2,000 people" and that "it must not have been easy to cool off from that intensity." He said Martin had been in Kosovo before being sent to Iraq, where he was a gunner on a Bradley Fighting Machine. "He had a nice tight scope to see everyone he blew away. I can't imagine what he's going through; he knows exactly who he killed back in Iraq."

Martin's mother, Linda Martin, said that her son had written harrowing letters from Iraq. In one letter, she said, he wrote that he "had lost [his] fear and [his] identity. He said that in Iraq, he felt as if he were on auto pilot, in a trance, and nothing but a killing machine." Dr. Matthew Friedman, who directs the National Center for Post-Traumatic Stress Disorder at the Veterans' Administration, said, "an acute stress reaction can occur immediately or it can happen years later. Maybe the lid was off when they were at the bar, they had to keep things together over in Iraq. Get some alcohol into the belly and get disinhibited and all the feelings come to the fore." Martin's mother said that Martin was borderline retarded, had flunked out of tenth grade, and was very sensitive about his low I.Q.

You are the clerk to prosecutor Janet Nevada, who has asked you for a memorandum on the legal issues raised by these sordid events. Please analyze for her which defendants can be convicted of what offenses. Assume that all acts described are proven and took place in the State of Confusion. Please limit your consideration of offenses to those included in the appendix of this examination as well as any applicable common law defenses. You should note that the State of Confusion, a new state in the United States, has a new penal code and that very few of its provisions have been interpreted. In the few cases involving interpretation of the Confusion Penal Code, the Supreme Court of Confusion has looked to other state courts, as well as the Model Penal Code, for guidance.

APPENDIX

STATE OF CONFUSION PENAL CODE (portions)

Section 91: Complicity. Any person who aids and abets another in the commission of a crime is an accomplice. Accomplices are punished as if they were principals in the commission of the offense.

Section 93: Attempt. A person is guilty of attempt to commit a crime if, acting with kind of culpability required for the commission of the crime, he tries to commit it. Attempt to commit a felony is punishable by imprisonment for not more than 10 years.

Section 95: Conspiracy. Conspiracy is the agreement by two or more persons to commit an unlawful act. Conspiracy to commit murder is punishable by imprisonment for a period not to exceed 20 years. Conspiracy to commit other felonies is punishable by a period of time not to exceed half the sentence for the felony that was the object of the conspiracy.

Section 97: Rape. A person who forcibly has sexual intercourse with another person and against the will of that person is guilty of rape, which is punishable by imprisonment for a period of 10 to 15 years.

§ 100. Murder. Murder is the unlawful killing of a human being with malice aforethought.

§ 101 Malice. Malice is express when there is manifested a deliberate intention unlawfully to take away or shorten the life of another. It is implied, when no reasonable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.

§ 102 Degrees of Murder: All murder perpetrated in a willful, deliberate, and premeditated manner is murder in the first degree. Any killing, whether intentional or not, which is committed in the perpetration of any felony dangerous to human life is murder in the first degree. All other kinds of murders are of the second degree.

§ 200. Involuntary Manslaughter: Involuntary manslaughter is the killing of a human being, without malice, in the commission of an unlawful act, not amounting to a dangerous felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection. Involuntary manslaughter is punishable by imprisonment up to five years.

§ 201. Voluntary Manslaughter: Voluntary manslaughter is the killing of a human being without malice upon a sudden quarrel or heat of passion. Voluntary manslaughter is punishable by imprisonment from 5 to 15 years.

§ 301. Larceny: Larceny consists of the stealing of anything of value which belongs to another. Whoever commits larceny when the value of the property stolen is over one hundred dollars (\$100) but not more than two hundred fifty dollars (\$250) is guilty of a fourth degree felony.