CRIMINAL LAW EXAMINATION

James R. Elkins
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College of Law, West Virginia University

Instructions: The essay examination consists of three questions. The weight to be accorded to the three questions is as follows:

Question I — 40%
Question II — 40%
Question III — 20%

Your response to the examination questions will account for 100% of your final grade. The examination must be taken in the assigned examination room.

Time Allocated for the Examination: The time allocated for the examination is 4 hours.

Open Book Exam: This is an open-book exam. You are allowed, during the exam, to use any materials or notes you may have brought with you to the examination room.

Prohibited Communications: You are not permitted to confer with fellow students, or any other person, while taking the examination. Consequently, you should refrain from conversations with fellow students, whether inside the examination room or outside it, during the examination. You are not permitted, by computer, or any other means, to communicate with anyone during the course of the examination.

Writing on the Exam: You may underline or take notes on the Examination and are permitted to retain the Examination after the exam is completed.

The Use of Bluebooks: Please place your examination number on *each* examination booklet you use.

Do not place your name on the examination blue books! Use the student exam number on the bluebook.

You are allowed to use as many Blue Books for your examination as you find necessary. Your answer to all questions on the examination must be confined to the examination Blue Books. Please write *legibly*. **Use only the front side of each Blue Book page (this means that you should not write front and back of the same page)**.

Please number your exam blue books:❶, ❷,❸, ❹, etc. Double check to see that your examination number is placed on each Blue Book.

ExamSoft: You are permitted to take the examination using a laptop computer using the ExamSoft software.

Questions About the Exam: There should be no reason to consult with the instructor during the course of the examination. If you encounter a problem or find a discrepancy (factual or legal) with any aspect of the examination questions, you should resolve it by setting out the discrepancy, noting any facts or assumptions necessary to deal with the problem/discrepancy, and proceed to answer the question drawing on the assumptions/explanations you have outlined.

Jurisdiction: In answering the examination questions, focus on basic principles and doctrines of criminal law. You may assume that these basic principles and doctrines are drawn from the cases you were assigned, the Dressler casebook, class discussions, and "instructor's notes" provided on the course website. You should, of course, note and explain, any legal tests or standards that you may draw upon that vary *significantly* depending upon the jurisdiction.

Advice: Read the question carefully; organize your answer. A premium will be placed on answers which are well-presented and well-argued. If the examination question raises more issues than you can fully discuss in the allocated time, you should focus on the most relevant issues.

No credit will be given for notes or outlines appended to an answer.

Question I — 40%

Randy Wilson was charged with and convicted of 1st degree murder for the death of David Groiler. Danny Kily was charged and convicted of felony-murder for his involvement in Groiler's death. They appeal their conviction.

Based on the following facts presented by way of testimony at the trial, and on the challenged jury instructions, you are to write an appellate opinion: (1) to resolve the various legal issues specifically raised by defendants Wilson and Kily on appeal, and (2) to resolve any and all issues that you determine should be raised by defense counsel in an appeal of the convictions of Randy Wilson and Danny Kily.

* * *

On the evening of December 3, 2006, Randy Wilson, visited his friend David Groiler, in Groiler's apartment in Westover. Randy Wilson knew that Groiler was an alcoholic and was using various depressants, including Valium and Percocet, drugs supplied to Groiler at various times by Randy Wilson and others. According to one witness, Groiler "had been drinking and doing pills" throughout the course of the day. Randy Wilson had been with Groiler at various times during the day.

At 6 p.m., Randy Wilson telephoned another friend, Danny Kily, to see whether he would drive Wilson and Groiler to Morgantown. Kily agreed, and picked up Wilson and Groiler. He testified at trial that Groiler was visibly inebriated, and was talking excited about trying "the real stuff." Kily suspected that the reason Wilson and Groiler wanted the ride to Morgantown was to buy heroin. Kily told Groiler, "you know what's good for you, you'll stay clean. That shit is nothing but trouble, and you know it." Wilson told Kily to mind his own business, to which Kily replied, "you been down so long Randy, you don't know what's up, so now you tryin' to drag David into that same dark pit you been livin' in. I've a good mind to turn around and save myself the aggravation of you two." Wilson tells Kily that he's got it all wrong, that he just wants to talk to an old friend to make sure there's no hard feelings about some drugs he had bought earlier.

Kily, reassured that he wasn't going to get mixed up with a Randy Wilson drug deal, drives Wilson and Groiler to an address in Sunnyside. Wilson tells Groiler and Kily to wait in the car, while he checks things out. Ten minutes later, Wilson returns to the car and tells Groiler that he's going to need some money. Groiler grumbles about the money, hands Wilson a hundred dollar bill, and says, "I may be drunk but I pay my own way." There was no discussion in the car, at that time, about the purchase of heroin.

Wilson reentered the Sunnyside house, and returned to the car with two "bags" of heroin. Kily, realizing that Wilson has purchased heroin, says, "we got fools aplenty in this car. I'm tired of pill heads and addicts. This is my last time providing you two with transportation. With friends like you two, I got plenty of enemies."

Kily then drove Wilson and Groiler back to Westover, to Groiler's apartment, and Kily agrees to come in for a beer. As soon as they arrive, Wilson opens a pint of whiskey and prepares one "bag" of the heroin for injection. Wilson gives a second bag of heroin to Groiler, who attempts, without success, to inject the prepared heroin. He is simply too intoxicated to find a vein for the injection. Wilson, laughing at his ineptness, says, "It looks look you're going to need some help." Wilson gives Groiler the injection, and less than a minute later, Groiler lost consciousness and collapsed onto the floor. It was Groiler's first time to use heroin; it would also be his last.

Kily remained in the kitchen area while Wilson and Groiler did the heroin in the living room area. The apartment is small. [The jury, viewing the Groiler apartment, will see that the living room area of the apartment is clearly visible from the kitchen area.]

After determining that Groiler was still breathing, and had regained consciousness, Kily and Wilson attempted to walk him around, and then placed him in a cold shower. Kily told Wilson that Groiler needed medical assistance and twice attempted to call 911. Wilson prevented Kily from completing the calls by hanging up the telephone. Wilson then told Kily to leave Groiler's apartment, that he would take care of Groiler. When Kily left Groiler's apartment, at Randy Wilson's request, Groiler was still breathing, but had again lost consciousness. Kily did not call for medical help for Groiler after he left the apartment.

At some point, after Kily left the Groiler apartment, Groiler stopped breathing. At approximately 8 p.m., approximately one hour after Groiler initially lost consciousness, and approximately twenty minutes after Kily left the apartment, Wilson called 911 and requested an ambulance.

Paramedics arrived at Groiler's home and determined that Groiler was unconscious, and in cardiac arrest. One of the paramedics asked Wilson whether Groiler had consumed drugs. Randy Wilson told the paramedic he knew nothing about anyone doing any drugs.

At trial, a paramedic testified that when they arrived at the Groiler apartment, Groiler was "unresponsive." The paramedics immediately began cardiopulmonary resuscitation of Groiler and established an intravenous line in order to administer medications. A visual inspection of the apartment convinced the paramedics that Groiler had been using heroin, and he was administered a narcotic antagonist, Narcan. At trial, a paramedic testified that the drug Narcan is used to reverse the effects of heroin and return a patient's breathing and heart rate to normal, but that it is generally effective only if administered before the patient has suffered a cardiac arrest. In this instance, Narcan was administered after Groiler's cardiac arrest.

The paramedics transported Groiler to Ruby Memorial Hospital, where he was pronounced dead at 8:47 p.m.

After performing an autopsy, the state medical examiner, Wendell Parsons, determined that Groiler had consumed alcohol, Valium, and heroin prior to his death. The medical examiner described the cause of death as "combined acute drug toxicity." At trial, the medical examiner further testified that

the level of blood alcohol was 0.18 percent, which the medical examiner characterized as "significant," but not "lethal." Groiler's blood level of diazepam, the active ingredient in Valium, was 0.06 milligrams per liter, which the medical examiner characterized as a "safe therapeutic level." Groiler's blood level of morphine, a heroin derivative, was 0.20 milligrams per liter, which the medical examiner characterized as "significant" and "potentially life-threatening," and that the morphine (heroin) alone could induce a "life-threatening heart-attack." He listed the cause of death as acute drug overdose.

A forensic medical autopsy was conducted by Dr. Thomas Finley, a forensic medical examiner, for the defense who testified that by using state of the art cypto-analysis, he had determined that the drug given by the paramedics was not the narcotic antagonist Narcan but was Naltrexone. Naltrexone is sometimes used in a rapid detoxification regimen for narcotic dependence. Naltrexone induces rapid, and sometimes severe, withdrawal by displacing the opiates from receptor sites.

Dr. Finley testified at trial that while the use of Narcan would have been an appropriate last-ditch medical effort to try to revive Groiler, that no trained medical person would have used Naltrexone. Dr. Finley testified that in his view, the mistaken use of Naltrexone instead of Narcan, was itself a "significant immediate factor" in Groiler's death. When asked by the defense to explain what he meant by "significant immediate factor," Dr. Finley, responded as follows: "In these cases, you've got something like a toxic cocktail. David Groiler's body was responding, as best it could, to the various drugs he had taken, in particular, the alcohol, Valium, heroin, and, to the Naltrexone that had been mistakenly administered to him. He may well have been at risk of death with use of the combination of Valium, alcohol, and heroin, but that risk was magnified, by exactly how much we cannot say, when the paramedics administered Naltrexone. In my view, the rapid detox induced by the Naltrexone may have acted as a kind of final tipping-point. I don't know that it's possible in these kind of cases where you've got a volatile mix of potent drugs and alcohol to ever sort out with scientific certainty the exact role of any one of the particular intoxicants. In this case, I think the final blow to the system was the mistaken administration of Naltrexone."

When the state's medical examiner, Wendell Parsons, was recalled by the state, he confirmed that using the more advanced analytical techniques available in Dr. Finley's lab, that he agreed that it was Naltrexone rather than Narcan that had been administered to Groiler by the paramedics.

The most surprising testimony at the trial, was that of Priscilla Groiler, David Groiler's wife. She testified that she had been having an affair with both Randy Wilson and Danny Kily. She had, for several months, been trying to figure out a way to break the news to her husband, David, that she was not only unfaithful to him, but that she had fallen in love with Randy Wilson. On several occasions, Priscilla Groiler related, she and Randy Wilson had joked that when David Groiler drank himself to death, as he seemed bent on doing, then they'd finally have a chance to be together. In response to the question by the prosecutor, "Did Randy Wilson wish to see your husband dead?" she replied, "It was David who was trying to kill himself by using drugs. He just didn't have any sense when it came to using them. Randy and I knew that David was on the edge. We didn't know what was going to bring about his final undoing. We knew it would undoubtedly be drugs." When asked, if she could

try to provide a more specific answer to the question, she replied, "Deep down, we both wanted to see David Groiler dead. It was the only way we could be together." (The prosecution secured Priscilla Groiler's testimony in an agreement with the prosecutor's office to drop a marihuana possession charge against her.)

Randy Wilson testified at the trial that David Groiler was his friend. He admitted to having an affair with Priscilla Groiler. He denied having any discussions with Priscilla Groiler about how her husband might die. He claimed, "Priscilla Groiler has it all wrong. I never had in mind doing any harm to David."

* * *

After the presentation of the evidence in the David Groiler murder trial, the prosecution requested that the jury be instructed on 1st and 2nd degree murder in the case of Randy Wilson for his involvement in the death of David Groiler. The defense lawyer for Randy Wilson argued that, given the evidence, the case should be sent to the jury only with an involuntary manslaughter jury instruction. The motion for a directed verdict of acquittal on the murder charge was denied. The trial court elected to send the case against Randy Wilson to the jury with jury instructions on 1st and 2nd degree murder, and involuntary manslaughter.

The trial court gave the following jury instructions on the charges against Randy Wilson:

> "1. Murder of the First Degree is the deliberate, premeditated, and malicious killing of another person.
>
> 2. Murder of the Second Degree is the intentional killing of another person with malice but without deliberation or premeditation.
>
> 3. Involuntary Manslaughter occurs when the defendant, by negligence so gross and wanton that it shows a reckless disregard for human life, causes the unintentional death of another."

Defendant Wilson's counsel requested that the jury be specifically instructed on the meaning of the terms premeditation and deliberation as follows:

> The Court instructs the jury that to premeditate is to consider how one's acts, if carried out, are likely to result in the death of another. To find that the defendant acted with premeditation and deliberation requires that the defendant consciously and actively seek to bring about the death of the deceased.

The trial court ruled that premeditation and deliberation are not esoteric terms, and that jurors may, in their deliberations, give these terms their everyday, ordinary meaning. The trial court declined to give the proposed jury instruction, or to provide further instructions defining premeditation and deliberation.

Counsel for Wilson requested a causation jury instruction. The trial court determined that given the equivocation in the testimony of the defense forensic medical expert that no causation instruction would be given.

* * *

On the murder charges against, Danny Kily, the trial court gave the following jury instruction:

> The crime of murder in the first degree is committed if by the acts of the defendant, Danny Kily, during the commission of the crime of the delivery, possession with intent to deliver, or manufacture with intent to deliver, a controlled substance, the death of David Groiler occurred as a result of injuries received in the commission of the crime.
>
> To find the defendant guilty of murder for the death of David Groiler for his participation in the sale and delivery of heroin, the death of David Groiler must be causally related to the underlying drug offense.
>
> If the evidence shows that defendant Danny Kily was present at the scene of the sale, delivery, and possession of a controlled substance, acted in concert with Randy Wilson and the victim, David Groiler, in the purchase of a controlled substance, i.e. heroin, and contributed by his acts to their criminal possession, then you may find that Danny Kily has engaged in a felony set forth by statute as the basis for a conviction of murder if you should further find that during the commission of the above stated drug felony, he has contributed to the death of David Grolier.

Defendant Danny Kily contends, on appeal, that the trial court erred in failing to give his requested jury instruction on aiding and abetting. Defense counsel initially requested that instead of the "acting in concert" jury instruction, the trial court should give a more precise jury instruction. The defense proffered the following:

> To find that Danny Kily aided and abetted Randy Wilson and David Groiler in the commission of the crime of possession with intent to deliver a controlled substance—i.e. heroin—you must find that Danny Kily associated himself with the criminal venture, participated in it as something that he wished to bring about, and sought by his action to make it succeed.

The prosecution argued that the explicit language of *Peoni*, while frequently cited by the courts as a test for aiding and abetting, was not required or necessary as part of an aiding and abetting jury instruction. When the trial court expressed support for the prosecution's argument, defense counsel for Kily argued that, instead of using either one or the other of the proposed jury instructions, that the "acting in concert" jury instruction requested by the prosecution was not contrary to the *Peoni* instruction and that the court could give the defense's requested instruction as an elaboration on and

more precise meaning of the inexact and vague phase, "acted in concert." The trial court rejected the defense argument on grounds that the proffered jury instruction would be repetitive.

Defendant Danny Kily's lawyers argued that the trial court erred when it failed to grant the defense motion for a directed verdict of acquittal for Danny Kily on the felony-murder charge.

* * *

Based on the facts presented by way of testimony at the trial, and on the challenged jury instructions, you are to write an appellate opinion: (1) to resolve the various legal issues specifically raised by defendants Wilson and Kily on appeal, and (2) to resolve any and all issues that you determine should be raised by defense counsel in an appeal of the convictions of Randy Wilson and Danny Kily.

* * *

Note: The felony provision that served as the basis for Danny Kily's conviction, §10A-4-401 (a), reads as follows: "It is unlawful for any person to deliver, possess with intent to deliver, manufacture with intent to deliver, a controlled substance." Heroin is defined in the statute as a controlled substance.

Question II — 40%

Debra Foxjoy appeals a judgment convicting her of first-degree murder, in the shooting and killing of her husband, Harold Foxjoy. She raises various issues on appeal, including: (1) the failure of the trial court to order a pretrial evaluation to determine whether she suffered from "battered spouse syndrome," (2) refusal of the trial court to allow testimony at the trial regarding the victim's prior violent acts, (3) the failure of the trial court to instruct the jury on self-defense, and (4) failure of the trial court to instruct the jury on voluntary manslaughter by reason that the killing of Harold Foxjoy took place in a heat of passion.

Based on the following facts that were developed at trial, write a draft of an opinion for the appellate court addressing the issues raised by the defendant *and* any issues that defense counsel should raise on appeal to have her conviction overturned.

* * *

Debra Foxjoy was tried for fatally shooting her husband, Harold Foxjoy. The Foxjoys had been married for 22 years and had two daughters.

In late January, 2006 the Foxjoys' 17-year-old daughter Brenda informed her mother that she was pregnant and that 21-year-old Chad Wilson was the father of her unborn child. On Valentine's Day weekend, Debra and Brenda told Harold Foxjoy about the pregnancy, and he became enraged. He went into the bedroom he shared with Debra and came out with two guns, threatened to kill Wilson if he could find him, stormed out of the house, and drove off to look for Chad Wilson. He returned home later that night with his brother, who had taken away his guns as well as a billy club that Harold Foxjoy kept in his vehicle.

Over the next several months, Harold continued to make threats against Chad Wilson, claiming that if he encountered Wilson, "he's dead; they'll pick him up in a body bag." Debra tried to avoid talk of their daughter's pregnancy because the mere mention of Wilson's name set Harold off. "It was like you lit the fuse of a bomb," she said.

On the evening of May 28, 2006, Debra and Harold argued about their finances. The argument was not heated. The next morning, May 29, Debra overslept. Knowing that she would be late for work, she decided to stay home and try to talk to Harold again about their finances and apologize for not telling him the truth about not paying certain overdue bills. She testified that she had lied to her husband because she was afraid of his reaction. Harold was asleep, lying on his left side, on the half of the bed closest to the bedroom door. When Debra woke Harold by shaking his foot, he rolled over on his back and then to his right side, to face her. She was standing next to the bed, at his feet. Debra asked Harold if he were still upset about the events of the previous night. He said that he was.

Debra then turned the conversation towards Brenda and Chad Wilson. This upset Harold, who began yelling that Wilson had ruined his life and ruined Brenda's life. Debra tried to reason with Harold,

telling him that he was mistaken, that he would have to come around, that he could not disown his daughter and refuse to accept Wilson or his unborn grandchild. Harold became angry and said: "It's all your fault, your fault Brenda got pregnant. It's your fault that this all happened." He continued, "Fuck Chad and fuck you, too. I'm sick of it." Then he said: "Maybe I should just take care of you guys and get on with my life." Debra understood this to be a threat. She thought Harold was going to kill her and then kill Chad Wilson.

Debra testified that Harold clenched his fists, threw back the covers, and rolled across the bed "like he was going to reach for something." Debra knew that Harold kept a handgun under his side of the bed—the side on which she was now standing. She grabbed the gun, knowing that "that's what he was going for."

Debra was afraid. "Harold made a move like he was coming after me, and I knew I had to protect myself." She pointed the gun at her husband, as they continued to talk. As they spoke, "he got more furious" and "that's when he made the move to come toward me. There was a fire in his eyes that I seen before and I knew that he could not control his anger." At that instant, "it was like he was the weapon, and I was going to be the victim." According to her testimony, "he just sat up in the bed and made that move like he was—I knew he was coming after me—so I fired the gun not really aiming it anywhere, just to stop him, and after I fired it, he fell back in the bed. Then, he made another move like he was still going to get up and get me, so I fired a second time." When the police arrived, Harold's left leg was still on the bed under the covers, and his right leg was hanging off of the bed.

Harold Foxjoy, 43, was 6 feet tall, and weighed 278 pounds.

* * *

Prior to her jury trial on the charge of first-degree murder, the prosecution filed a motion *in limine* to disallow evidence that she sought to produce at trial concerning Harold Foxjoy's violent nature. After the prosecution presented its case, the trial court allowed Debra to make an offer of proof regarding the evidence she sought to admit. With the jury out, Debra testified as to the following incidents:

¶ 1 On one occasion Harold was angry with her and chased her in their house. "He chased me down the hallway towards our bedroom." He "grabbed me and threw me on the bed and broke the bed frame."

¶ 2 On another occasion, the violent acts were described by Debra as follows:

> "We were in the house ready to go out into the woods and cut wood. And I don't remember what we were discussing. And he got mad. And he was gonna kick something in the living room. So I went over to stop him. And when I went over to stop him, he picked me up and threw me on the floor. And I realized when I tried to get up that I had hurt my back; I couldn't get up and so I cried. And then he left the

> room. And then he came back and I was still laying there. And he said, 'well, can't hurt that bad. Why don't you get up?' And then, still crying, I told him I couldn't. And he said, 'I don't want you go and tellin' everybody about this. We'll just make up a story and tell 'em that you fell out in the woods.' And so that's what I had told the people at the emergency room."

¶ 3 She told how Harold once threw a wrench at her and how he routinely twisted her arms, sometimes grabbed her by the armpits and lifted her up off the ground until she cried, and when he was angry, he twisted her breasts.

¶ 4 Debra said she had considered filing for divorce, but Harold threatened to kill her if she ever actually filed. He repeated that threat throughout their marriage. She said she stayed with him because of fear.

¶ 5 Debra testified about a number of incidents of violence or threats of violence to others. For instance, Harold threatened a supervisor at the General Motors plant where he worked, and was suspended for 30 days. He had to undergo counseling and began taking Paxil (a prescription drug used to treat mental depression, panic disorder, and generalized anxiety disorder). He stopped taking the drug six months after the incident.

¶ 6 Debra described a "road rage" incident in which Harold thought a woman had cut him off as she backed out of a driveway. He yelled at the woman, then accelerated his vehicle, pulling in front of her car as they came to a red light. Then he stopped, jumped out of his truck, cursed at the woman, and kicked off the side mirror of her car.

¶ 7 Debra also noted two incidents involving a neighbor. In one incident, after an argument, Harold punched the neighbor in the face. At a later date, the neighbor complained about Harold shooting a pistol in the back yard. Harold walked over to the neighbor, pistol in hand, "and was gonna hit him with it. But then didn't hit him with the gun but hit him with his fist instead," Debra said.

¶ 8 Debra said that Harold Foxjoy would often pound on the table, or throw things across the room. One time he pushed a microwave off the counter to the floor, and another time he smashed a VCR.

After Debra made her offer of proof, the court determined that she had not initially, as a matter of law, established a sufficient factual basis to support a claim of self-defense, and therefore the various incidents set forth in her testimony (paragraphs 1-8) as to Harold Foxjoy's propensity for violence, would not be allowed. The court refused to allow her to testify as to Harold Foxjoy's prior specific violent acts. The defendant's request for jury instructions on self-defense were denied.

* * *

The jury found Debra Foxjoy guilty of first degree murder and she appeals her conviction. She raises various issues on appeal, including: (1) the failure of the trial court to order a pretrial evaluation to determine whether she suffered from "battered spouse syndrome," (2) refusal of the trial court to allow testimony at the trial regarding the victim's prior violent acts, (3) the failure of the trial court to instruct the jury on self-defense, (4) failure of the trial court to instruct the jury on voluntary manslaughter, and (5) insufficiency of the evidence to support a conviction of 1st degree murder.

Based on the facts that were developed at trial, write a draft of an opinion for the appellate court addressing the issues specifically raised by the defendant and any other issues that you feel that defense counsel should raise on appeal.

Question III — 20%

The New York Times

November 28, 2007
A Hoax Turned Fatal Draws Anger . . .

By CHRISTOPHER MAAG

DARDENNE PRAIRIE, Mo., Nov. 21 — Megan Meier died believing that somewhere in this world lived a boy named Josh Evans who hated her. He was 16, owned a pet snake, and she thought he was the cutest boyfriend she ever had.

Josh contacted Megan through her page on *MySpace.com*, the social networking Web site, said Megan's mother, Tina Meier. They flirted for weeks, but only online — Josh said his family had no phone. On Oct. 15, 2006, Josh suddenly turned mean. He called Megan names, and later they traded insults for an hour.

The next day, in his final message, said Megan's father, Ron Meier, Josh wrote, "The world would be a better place without you."

Sobbing, Megan ran into her bedroom closet. Her mother found her there, hanging from a belt. She was 13.

Six weeks after Megan's death, her parents learned that Josh Evans never existed. He was an online character created by Lori Drew, then 47, who lived four houses down the street in this rapidly growing community 35 miles northwest of St. Louis.

That an adult would plot such a cruel hoax against a 13-year-old girl has drawn outraged phone calls, e-mail messages and blog posts from around the world.

* * *

St. Charles County's prosecuting attorney, Jack Banas, said he was reviewing the case to determine whether anyone could be charged with a crime. State Representative Doug Funderburk, whose district includes Dardenne Prairie, said he was looking into the feasibility of introducing legislation to tighten restrictions against online harassment and fraud.

In seventh grade, Megan Meier had tried desperately to join the popular crowd at Fort Zumwalt West

Middle School, only to be teased about her weight, her mother said. At the beginning of eighth grade last year, she transferred to Immaculate Conception, a nearby Catholic school. Within three months, Ms. Meier said, her daughter had a new group of friends, lost 20 pounds and joined the volleyball team.

At one time, Lori Drew's daughter and Megan had been "joined at the hip," said Megan's great-aunt Vicki Dunn. But the two drifted apart, and when Megan changed schools she told the other girl that she no longer wanted to be friends, Ms. Meier said.

In a report filed with the Sheriff's Department, Lori Drew said she created the *MySpace* profile of "Josh Evans" to win Megan's trust and learn how Megan felt about her daughter. Reached at home, Lori's husband, Curt Drew, said only that the family had no comment.

Because Ms. Drew had taken Megan on family vacations, she knew the girl had been prescribed anti-depression medication, Ms. Meier said. She also knew that Megan had a *MySpace* page.

Ms. Drew had told a girl across the street about the hoax, said the girl's mother, who requested anonymity to protect her daughter, a minor.

"Lori laughed about it," the mother said, adding that Ms. Drew and Ms. Drew's daughter "said they were going to mess with Megan."

After a month of innocent flirtation between Megan and Josh, Ms. Meier said, Megan suddenly received a message from him saying, "I don't like the way you treat your friends, and I don't know if I want to be friends with you."

They argued online. The next day other youngsters who had linked to Josh's *MySpace* profile joined the increasingly bitter exchange and began sending profanity-laden messages to Megan, who retreated to her bedroom. No more than 15 minutes had passed, Ms. Meier recalled, when she suddenly felt something was terribly wrong. She rushed to the bedroom and found her daughter's body hanging in the closet.

As paramedics worked to revive Megan, the neighbor who insisted on anonymity said, Lori Drew called the neighbor's daughter and told her to "keep her mouth shut" about the *MySpace* page.

Six weeks later, at a meeting with the Meiers, mediated by grief counselors, the neighbor told them that "Josh" was a hoax. The Drews were not present.

"I just sat there in shock," Mr. Meier said.

Shortly before Megan's death, the Meiers had agreed to store a foosball table the Drews had bought as a Christmas surprise for their children. When the Meiers learned about the *MySpace* hoax, they attacked the table with a sledgehammer and an ax, Ms. Meier said, and threw the pieces onto the Drews' driveway.

"I felt like such a fool," Mr. Meier said. "I'm supposed to protect my family, and here I allowed these people to inject themselves into our lives."

The police learned about the hoax when Ms. Drew filed a complaint about the damage to the foosball table. In the report, she stated that she felt the hoax "contributed to Megan's suicide, but she did not feel 'as guilty' because at the funeral she found out Megan had tried to commit suicide before."

Megan had mentioned suicide several times, her mother said, but had never attempted it, and no one who knew her, including her doctors, felt she was suicidal.

"There are no words to explain my rage," Ms. Meier said. "These people were supposed to be our friends."

You are an assistant prosecuting attorney working in the office of the St. Charles County's prosecuting attorney, Jack Banas. Mr. Banas has asked you to review all the facts in this case as presented in the *New York Times* article. He has specifically requested that you determine whether Lori Drew can be charged with the murder of Megan Meier, and if not with murder, with manslaughter. He has requested that you present a full work-up of your review in the form of a memorandum.