

## CRIMINAL LAW EXAMINATION

James R. Elkins | Fall, 2010  
College of Law, West Virginia University

**Examination Questions:** The essay examination consists of two questions. Question I constitutes 60% of your final grade. Question II constitutes 40% of your final grade.

The grade you receive for the examination will account for 100% of your final grade for the course. You may underline or take notes on the examination itself and you are permitted to retain the examination after the exam is completed.

**Time Allocated for the Examination:** The time allocated for the examination is 3 ½ hours.

**Examination Room:** The examination must be taken in the assigned examination room.

**Bluebooks & ExamSoft:** Your response to the examination questions must be in Bluebook(s) or on a laptop using ExamSoft. During the examination, you will not be allowed to access the Internet or to make use of notes and materials that have been stored on your computer.

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

**Bluebooks & Examination Numbers:** Place your examination number on *each* examination booklet you use. You are allowed to use as many Bluebooks for your examination as you find necessary. Your answer to all questions on the examination must be confined to the examination Bluebooks.

Please number your exam Blue books: e.g., ①, ②, ③, and place the extra Bluebooks inside Book ①.

Use only the front side of each Bluebook page: This means that you should not write front and back of the same page. I repeat: *Use only one side of the Bluebook page.*

■WRITE LEGIBLY■

PLACE ONLY YOUR EXAM #—NOT YOUR NAME—ON EXAMINATION BLUEBOOKS!

**Prohibited Communications:** You are not permitted, during the examination, to confer with fellow students, or any other person, about 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, cellphone, or any other means, to communicate with anyone during the course of the examination about the examination. The use of cellphones in the examination room or outside the examination room during the examination,

except in the case of an emergency, is not allowed. If you have brought a cellphone with you to the examination room it should be muted or disabled during the examination.

**Questions About the Exam:** There should be no reason to consult with the instructor during the course of the examination (unless you find that your examination has missing pages, or you become ill and cannot finish the exam). If you encounter a problem or find a factual or legal discrepancy (or an obvious typographical problem) with any aspect of the two examination questions, you should resolve the problem by setting out the discrepancy, noting any facts or assumptions necessary to deal with the problem/discrepancy, and proceed to answer the question based on any assumptions you find necessary to answer a poorly stated aspect of the examination question.

**Jurisdiction:** For purposes of this examination, you should focus on basic rules, doctrines, and principles. You are not, in this examination, required to assume that the cases arise in West Virginia. The rules, doctrines, and principles to apply on this examination are the collective summation of assigned cases and jury instructions, class discussions, “instructor’s notes” and other materials provided on the course website. You may, of course, note and explain, any significant differences in legal tests and legal standards as they differ among jurisdictions if these differing rules and legal outcomes have a bearing on the examination question. And you may, where you find it pertinent, comment on or explain the law as it exists in West Virginia. You are not, however, being asked to assume, for purposes of the examination questions, that the cases arise in West Virginia.

**Citing Cases:** If you have occasion to cite to specific cases, and the case was assigned and discussed in class, you can simply cite as *Midget*, *Guthrie*, *Penny Gail Miller*, *McGuire*, *Lofthouse*, *Deem*, *Hoselton*, etc. If you rely upon a case that was not assigned, you should provide sufficient information or a citation so that I can locate the case.

**Advice:** Read the questions carefully and organize your answer. Relate your commentary, statements about the law, and your legal arguments to the facts of the case and to the specific directions you have been given as to what you are being asked to do.

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 and outlines for proposed commentary or legal analysis.

**Double-Check Your Examination Bluebooks:** When you finish the examination, double check to see that your examination number is placed on each Bluebook, that you have numbered the Bluebooks consecutively, and that multiple Bluebooks are placed inside Bluebook ❶.

### Good Luck on the Examination

**I Enjoyed the Course. I Will Miss Our Lively Tuesday & Thursday Sessions**

**Question I**  
**[60% of the Score for the Examination]**

**The Law Offices of Lucinda Atkins**

You are a defense lawyer representing Delva Hanson. She has been charged with murder in the shooting death of Carl Hanson, her husband, in a rented room at the Jayhawk Motel. The prosecution has indicated in pretrial hearings that they will seek a 1<sup>st</sup> degree murder conviction.

Delva Hanson has given two different versions of the shooting to the police. It appears that the prosecution intends to proceed on the basis of one or the other of the two accounts to secure a 1<sup>st</sup> degree murder conviction. The prosecution has not, to date, been willing to outline to you which of the two stories given by Delva Hanson will be the basis of their murder case.

Delva Hanson has also told you various versions of the story of the shooting, and seems, at times, quite confused as to what happened on the evening her husband was killed. She is emotionally fragile and sometimes uncooperative.

What you know from the police investigative reports and from your own investigation is as follows (all matters for which testimony can be produced at her trial by either the prosecution or the defense): Carl Hanson was killed on the evening of January 11, 2010 in a room rented by Delva Hanson at the Jayhawk Motel. Delva maintained for several weeks after the killing that she had killed her husband because she feared for her life because her husband was threatening to kill her.

The first account of the killing that Delva Hanson gave the police was that she was staying at the Jayhawk Motel in an effort to escape further physical violence from her husband. Her married life with Carl Hanson had been a tumultuous ten years in which Carl had subjected Delva to constant physical and emotional abuse.

On January 11, 2010, the day of the shooting death of Carl Hanson, Delva stopped by the house that she had shared with Carl Hanson to pick up winter clothes. Carl arrived at the house before she could finish packing up the clothes and began to sob and beg her to come back home. Delva told him, "this just means another beating. I've had enough." Carl grew more agitated and told her in a menacing voice, "I know you're staying at the Jayhawk Motel and there's nobody there at the motel that's going to keep me from killing you if I decide that's what I've got to do." With Carl still ranting, she left the house and tried without success to contact her son, Jamey Hanson. She called him on the telephone to see if could come and spend the night with her at the Jayhawk Motel.

Later in the evening at the Jayhawk, she heard someone knocking on her motel room door while she was in the bathroom taking a shower. She hoped it was her son Jamey. But by the time she got out of the bathroom, still in her bathrobe, Carl Hanson had gained entry into the room. (There was conflicting evidence as to how he gained entry into the room.) Carl had clearly been drinking

and Delva knew that when Carl Hanson was drinking heavily his rages were even more violent.

Delva and Carl resumed their argument from earlier in the day and he renewed his threat to kill her if she did not agree to return home with him that night. Outraged that Delva Hanson would not agree to do so, he forced Delva into the bathroom shower and under threat of further violence, sexually assaulted her.

Delva Hanson told police that after the sexual assault, Carl continued to verbally threaten her as she tried to get him to leave. She told him she'd think about coming home when he calmed down and wasn't so angry. Delva thought she had finally talked Carl into leaving, when he began to pound a beer bottle on the night stand by the bed and threw a twenty dollar bill toward her and demanded that she get him cigarettes and beer at a nearby convenience store. At this point, Delva became still more fearful. Carl had, six months prior to this January night, sexually assaulted Delva with a beer bottle. Fearing that Carl would assault her again, she walked to the table where her purse was located, pulled out a gun and demanded that Carl leave. Carl told her, "I'm goin' take a piss first, and then I'm going to stuff either that gun or this beer bottle up your ass." As he turned to go into the bathroom, he said, "You know don't you Delva, you are now one dead bitch!" When Carl walked out of the bathroom, and continued to walk toward her, Delva shut her eyes, and knew that it was finally all over. She shot Carl Hanson.

Delva told the police she didn't remember firing the pistol the first time, but when she heard the sound of the first shot, she said "I kinda woke up and knew I was firing the gun again and again." In Delva's statement to the police, as to what she was thinking on the evening of the killing, she told the police, "I wasn't feeling myself. I wasn't much more than a walking dead woman. I've lived this kind of zombie life for years now. I've been telling myself for a long time it was going to end this way. I thought would have to kill myself to end it." Delva Hanson further stated to the police, that "Carl was talking the same kind of trash he's always talking, about how he's going to kill me or cut me. He told me this evening that if I didn't get my sweet ass home he was going to make sure no man would ever be willing to look at me or touch me again." Delva claimed, in her statement to the police, "Carl Hanson deserved to die for all the misery he has brought on me."

The weapon used in the shooting was not recovered at the scene and could not be located in the immediate surroundings at the Jayhawk Motel. Delva Hanson told the police she had no memory of what happened to the pistol she used to shoot her husband. And, the police learned that Jamey Hanson could not be located.

Wayne Fort, a Fayette County police detective, knew that the prosecutor would want a tighter case although he would probably be willing to charge Delva Hanson with murder based on the statements she had made to the police. Whether he could secure a conviction was another matter. Two things bothered Detective Fort about the case: Delva Hanson said she shot her husband "again and again" but there were only two bullet entry wounds found on Carl Hanson. Detective Fort had heard that term "I shot the weapon again and again" used a good many times in his years as a detective and in his experience it was not an expression used to mean that a weapon had been fired a second time but rather that it had been fired repeatedly. But the bigger and more

obvious problem was the missing weapon. To Detective Fort, Delva Hanson had seemed, in the taped interviews with her, overly eager to convince the police that she had shot her husband. He found it odd that she could offer no explanation as to the missing gun. As she told Detective Fort, “I was awfully confused and messed up that night. I wasn’t thinking straight about anything. I had all kinds of voices rattling around in my head.”

The police continued to question Delva Hanson. Detective Fort, troubled by various inconsistent statements made by Delva Hanson, and her inability to account for the missing weapon, tried to persuade Delva Hanson to confide in him and tell him what happened the night that Carl Hanson was killed at the Jayhawk Motel. Delva Hanson began to talk about her son and that she wanted to see him. She told Detective Fort, “if it had not been for Jamey, I’d probably have killed Carl Hanson years ago.” Detective Fort began to think that Jamey Hanson, Delva’s son, might be the key to what happened to Carl Hanson.

Jamey Hanson had apparently left town about the time of the shooting and had not been seen since. Detective Fort began to consider the possibility that Delva’s son had been involved in some way in the shooting. He finally convinced Delva that if she’d tell him what actually happened on the evening of the shooting, he’d personally see that her son was found and that he’d look after him when he was located. At this point, Delva provided Detective Fort a somewhat different account of the events that took place in the shooting death of her husband. She admitted that it was her son, Jamey Hanson, who shot Carl. She did not have a gun in her purse with her, she told Detective Fort, when Carl Hanson attacked her and sexually assaulted her. When Carl Hanson threw the \$20 bill at her and demanded that she get cigarettes and beer, she drove to the nearest convenience store and called Jamey. She told him that his father had violently and sexually assaulted her and that she feared for her life. She told Jamey to go to her sister’s house and get her gun,<sup>1</sup> and bring it to her at the convenience store that she might need it to protect herself. When Detective Fort asked Delva Hanson if she told Jamey she was going to kill Carl because he had sexually assaulted her, she said, “I never told Jamey what I was going to do. He knew I wanted the gun to protect myself. He knew what his father was capable of doing to me.” When Jamey didn’t show up at the convenience store, she thought he might have had some trouble finding the gun at her sister’s house so she returned to the Jayhawk Motel to try to finally settle things with Carl Hanson. She knew it would be worse for her if she just took off. When she got to the Jayhawk, Jamey Hanson was walking down the entranceway leading away from his mother’s rented room. He told his mother, “You don’t have to worry about anything anymore. The son-of-a-bitch is never going to hurt anyone again.” He walked to his car and drove away. Delva told Detective Fort, Jamey had said nothing about leaving town and that she had not been in contact with him since that night.

Jamey Hanson, age 22, has not been located and Delva Hanson claims that she does not know

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<sup>1</sup> Delva Hanson gave her sister, Wanda Fredrickson, a pistol on January 7<sup>th</sup>, four days before the shooting of Carl Hanson. Wanda Fredrickson was on vacation the week of the shooting. She was not at home when the pistol was taken from the history.

where he is.

Delva Hanson, in her statement to Detective Fort, explained her first account of the killing of Carl Hanson was an effort to protect Jamey Hanson. The shooting of Carl Hanson was, she said, “my doing and I’m the one who should be punished for it. If Jamey shot him, it’s no different than I shot him. It was all my doing. It wouldn’t have happened if I hadn’t gotten him involved.”

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Without access to Jamey Hanson, and no way to determine whether he will reappear or be located by the police before Delva Hanson’s case goes to trial, you are left with Delva’s conflicting stories, both stories which she’s told you at one time or another. It’s not clear whether the prosecution will proceed on the basis of version 1 (she killed her husband) or version 2 (her son killed his father). What is clear is that the prosecution seems hell-bent on securing a 1st degree murder conviction one way or another. The only thing you can do as her defense counsel is prepare for the trial assuming that the prosecution will elect one version of the story or the other and prepare to defend against both.

You and your young associates working on the case need a working blueprint of how to proceed. You begin work on a memorandum for use by the defense team in which you lay out the argument’s and problems that you foresee in the prosecution’s murder case against Delva Hanson. You will use the memorandum to set forth any and all possible defenses you will consider and how your defense may vary depending upon which version of the Hanson story the prosecution elects. (Is it possible that they might not actually elect *one* of the stories at all?)

**Defense Investigation:** In your defense strategy memorandum on the prosecution’s case and your defense, you will want to take full account of your own investigation and the documents and reports provided to you by the prosecution.

You have learned from Delva Hanson and other witnesses that during the course of the Hanson marriage, Carl Hanson had knocked out several of your client’s teeth, broke her ribs on several occasions, and threatened to carve up her face so that no man would ever look at her again. In one episode, Carl kicked Delva down the stairs and she was hospitalized for complications associated with a pelvic fracture she received during the fall. She walked with a limp for several months because of the broken pelvis. Eight months after the stairs incident, she was treated for facial lacerations that occurred when Carl beat her with a tomato stick for mowing the grass too close. Police were called on multiple occasions but Carl Hanson was never charged with his assaults on Delva Hanson.

Mrs. Hanson suffered from diabetes and, on repeated occasions, Carl prevented Delva from taking her required dosage of insulin by hiding it or diluting the insulin with water. Following two of these episodes, Delva Hanson went into a diabetic coma and had to be hospitalized.

In November 2009, Delva was discharged from the hospital from her most recent diabetic coma

and with no other place to live, returned to Carl. He reacted in his usual manner. Two weeks after she returned from the hospital he kicked her repeatedly and choked her until she was unconscious. On that occasion, her son, Jamey Hanson happened to stop by the house, and find his mother. He warned his father that day that if he didn't leave his mother alone he was going to kill him if that's what it was going to take for him to start treating his mother right.

Over the years, when Carl Hanson's threats of physical violence escalated, Delva would take up residence at the Jayhawk Motel. She often voiced her fears to Jamey Hanson that his father was going to kill her.

In the months, preceding Carl Hanson's death, Delva Hanson began to lose weight. At the time she was charged with murder she weighed 104 lbs.

**Documents and Reports Provided by the Prosecution:** The prosecution has provided you with various documents associated with the Delva Hanson case.

A police sketch of the motel room places the crumpled body of Carl Hanson just outside the door to the bathroom in the room. Delva Hanson said in her first statement to the police that she had a gun in a purse that was on a table located to the immediate right of the door that opened into the single room from an outside entryway. She said she was standing immediately inside the entry door to the motel room when she shot her husband. The officer taking the statement asked Delva, "then, you could have just opened the door and walked away from your husband, is that right?" She answered, "well, I guess you could say that, maybe that's the way it looks, but I never walked away from Carl without paying dearly for it."

The autopsy revealed two gunshot wounds. From the location of the wounds, both were inflicted when the deceased was facing the shooter. One shot hit Hanson in the upper thigh and the other shot hit him in the heart. Carl Hanson weighed 240 pounds and was 6'4" in height.

A forensics report indicates that the gun used in the shooting was fired from a distance of approximately twelve feet from the body of the victim. A blood sample revealed the deceased had been drinking and had, at some point in the preceding days, used cocaine.

In one witness statement turned over to you by the prosecution, Alica Samples told police that Delva and Jamey Hanson had been at her house one night about three weeks before the shooting, an evening when Carl had been beating on Delva, and Delva had said, turning to Jamey Hanson, "one of us is going to have to kill that son of bitch before it's all over."

**Psychiatric Evaluations:** Aware of Delva Hanson's problematic mental state and her emotional fragility, and her varying accounts of the shooting, you consider the possibility that the long-term abuse of your client has left her mentally ill. In preparation of your defense and the defense memorandum that you are preparing, you want to sketch out as fully as possible how you will use Delva Hanson's mental status in your defense. You will also want to discuss any problems with a psychiatric-based defense that you find in trying to use the following experts for

the defense.

### **Dr. Herman Laiser Evaluation**

Dr. Herman Laiser, a forensic clinical psychiatrist at the Creedmore Psychiatric Center, examined Delva Hanson at your request. Dr. Laiser indicates in his report that he has determined that Delva Hanson suffers from post-traumatic stress disorder (PTSD) that arose from persistent, serious, traumatic, and in some instances, life-threatening incidents she suffered at the hands of her husband. Dr. Laiser notes that his PTSD diagnosis is compatible with what is sometimes called Battered Woman Syndrome (BWS), although he prefers not to use the term. Dr. Laiser notes that even those who use the term Battered Woman Syndrome view the syndrome as a sub-category of PTSD. Dr. Laiser further notes that there is “good science” on PTSD and the criteria for diagnosis is better established than is the case with BWS.

Dr. Laiser also found that Delva Hanson suffered from paranoia. The paranoia is at times rationally-based, related as it sometimes is, to the never-ending threat posed by her husband. Dr. Laiser finds that Delva Hanson has now developed a more broad-ranging paranoid delusion to the effect that her husband is part of a government conspiracy to establish a separatist state known as Patriarchy Homeland in Mingo County, a state in which women will serve as slaves.

Dr. Laiser reports that Hanson has auditory hallucinations. The “voices” she hears are sometimes associated with her general paranoia and at times with her paranoid delusional thinking about Carl Hanson and the Patriarchy Homeland state that will enslave women. The “voices” have told her in the past that she has an option: “Kill Carl Hanson or become one of the slaved-ones.” Sometimes, the “voices” simply tell her to kill herself as she will never free herself from Carl Hanson. At other times, the “voices” command her to kill her husband in order to protect women from enslavement in the new Patriarchy Homeland.

Dr. Laiser concludes that Hanson’s paranoid delusions, and her auditory hallucinations, and both the persistence and content of those “voices” have substantially deprived her of her capacity for rational decision-making. Dr. Laiser in his examination of Hanson found that her paranoid delusions extended to the trial and the prosecution’s charging her with murder. Delva Hanson relates to Dr. Laiser that she cannot, at times, cooperate with her lawyer because the “voices” tell her that her lawyer may be a part of the conspiracy master-minded by her husband.

Dr. Laiser can testify that Hanson suffered from a mental illness at the time of Carl Hanson death, and that the mental illness was most clearly and directly related to the events that took place in the room at the Jayhawk Motel. Dr. Laiser reports that based on his examination of Delva Hanson he cannot conclude that she lacked the intent to kill her husband or lacked the intent to have her son kill him. Dr. Laiser is unable to determine whether she suffered from a psychotic episode on the evening of the shooting. He finds that Delva Hanson could appreciate the wrongfulness of taking a human life but does not apply that general principle to her husband who she continues to claim “deserved to die, by his own doing.”

Dr. Laiser notes that there is no doubt that Delva Hanson was emotionally distraught. She faced endless abuse and lacked the resources and decision-making skills to extract herself from the situation. PTSD prevented her from competently and rationally weighing choices that other women might have made. Dr. Laiser can testify that Delva Hanson's emotions were volatile and unpredictable due to her PTSD and that she suffered persistent fears associated with her husband's abuse and still higher levels of fear based on her husband's actions on the evening of the shooting. PTSD induced emotions simply overpowered her rational thought about how to deal with her husband and her situation. Dr. Laiser observes that Delva Hanson has episodic memory of the actual shooting of her husband and is unable, or unwilling, to reveal whether she was hearing voices during the evening of the killing of her husband. Dr. Laiser attributes Delva Hanson's reticence to fully report her problem with "voices" to the fact that she does not want her son, Jamey, and her family to think that she is "crazy." While her mental illness may have been a participating cause of the shooting, Dr. Laiser cannot say that she was or was not, as a matter of law, insane, at the time of the offense.

### **Dr. Sharon Stevens Evaluation**

Dr. Sharon Stevens, Ph.D., a clinical psychologist, interviewed defendant at the request of the defense. Dr. Stevens concluded that defendant had a mental illness on the date of the crime charged which she diagnosed as major depression with psychotic features accompanied by an underlying borderline personality disorder. She explained that the combination of major depression and personality disorder can cause psychotic episodes, which, in defendant's case, can result in hearing voices and lapses from reality. Stevens observes that those who suffer major depression can appear normal to lay people and that she finds no clinical basis for any suspicions of malingering, a problem sometimes found in patients who report hearing "voices." If anything, Delva Hanson is overly cautious to try to convince the psychiatrist that she's not crazy. Dr. Stevens attributed the onset of defendant's mental condition to the beatings inflicted upon her by her husband. She finds only minimal clinical indicators of Post-traumatic Stress Disorder. Dr. Stevens was unable to render a psychiatric opinion as to whether the defendant was experiencing a psychotic episode at the time she killed her husband. She can testify that Delva Hanson's "depression" was sufficiently severe and that the inconsistent stories given by Delva Hanson as to how Carl Hanson was killed is a reasonable basis to find that she suffered a "psychotic episode" (that is, a "break with reality in which she was hearing voices that prompted her" during the course of the evening). Dr. Stevens concludes that Delva Hanson was psychotic during parts of the evening in which the shooting occurred.

**State's Expert Witness:** The defense has been provided a report of an examination by a prosecution psychiatric expert, Dr. Helen Schwartz, Director of Wrightsville Psychiatric Hospital.<sup>2</sup> Dr. Schwartz found Delva Hanson competent to stand trial, and, for purposes of

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<sup>2</sup> After defense counsel raised issues about Delva Hanson's psychological status and gave notice that it intended to raise issues as to whether she was criminally responsible at the shooting of Carl Hanson, the state secured its own psychiatric evaluation of Delva Hanson.

criminal responsibility that she did not meet the test for insanity. Dr. Schwartz concludes that the defendant would not, applying full DSM-IV-R criteria, be diagnosed as schizophrenic, but instead suffered only from a borderline personality disorder. Dr. Schwartz found that the defendant was obviously fearful of her husband but did not find, in the absence of symptoms of schizophrenia, that the paranoia was anything more than fears of her husband and some wild flights of imagination associated with occasional feelings of being overwhelmed. Her fears and her attempts to continue to function in the face of them are more likely associated with her impending trial. Dr. Schwartz concludes that Hanson does not fit the profile for Battered Woman Syndrome. Her active phantasies about killing her abusive husband are normal given her situation, and, according to Dr. Schwartz, need not be associated with her subjective reporting that she has heard “voices” that tell her to kill her husband. Dr. Schwartz found that consistent with a diagnosis of borderline personality disorder, that Delva Hanson has simply made up a fanciful story about hearing voices. "A voice doesn't tell you something which then you scheme and plan to carry out." According to Dr. Schwartz, "planning is not consistent with the loss of control that we associate with the kind of psychosis necessary for a conclusion that the defendant would meet the legal test for insanity.”

Dr. Schwartz, in her assessment that Hanson should be diagnosed as borderline personality disorder, noted her marked shifts in mood, from calm and composed, to wanting to get on with her life, and at times, crying, and becoming extremely angry. “She is, at times, sufficiently calm, and able to answer questions spontaneously. She can, at times, give a systematic, coherent, logical account of what happened during the evening her husband was killed. That she has told different stories about the events does not mean that she cannot fully appreciate that something happened, and that what happened may have been wrong according to the law. The different stories she has told are based on her feelings of guilt about her son, not her mental illness.” Dr. Schwartz concludes that the defendant, with the assistance of her attorney, can use the defendant's most lucid interludes to prepare her case. Likewise, she finds that Delva Hanson fully understands the legal proceedings. Any confusion she may have demonstrated about the legal proceedings could be associated with her long-standing political beliefs about the government—beliefs held by many who are not mentally ill—than with paranoia or any kind of persistent delusion. Dr. Schwartz found Hanson's frequent mention of voices an effort to escape moral responsibility for the death of her husband, and suggest the possibility of malingering.

## Question II

[40% of the Score for the Examination]

### Fayette County Prosecutor's Office

You are the chief associate prosecutor in the Fayette County Prosecutor's Office. Your boss, Franklin Evans, is an elected Prosecutor and is currently running for re-election. There has been a steady stream of news about the death of Lacy Forrest, her party life, and the growing use of illegal drugs in Fayette County, in particular, MDA, the drug implicated in the death of Lacy Forrest. It appears that she obtained the drug from a young man named Scott Wilson. It's obvious to everyone in the prosecutor's office that the failure to vigorously prosecute Scott Wilson and to obtain a conviction could result in Franklin Evans defeat in his bid for re-election.

You know that the Forrest family has had a presence in Fayette County since the county was founded in 1831. The Forrest family is widely know as the founder of the Fayette County Home Loan Bank, one of the oldest banks in the country. Several members of the family have been prominent members of the legal profession.

Franklin Evans, the prosecutor, has asked you to draft a memorandum in which you outline the various options for proceeding in this case. He wants you to provide a detailed commentary on how the office can secure Scott Wilson's conviction for the death of Lacy Forrest. You are familiar with cases in jurisdictions where prosecutors do not bring homicide charges in cases of this type and jurisdictions where defendants are convicted of homicide charges and the appellate courts overturn the convictions.

Franklin Evans has instructed you to look closely at the Scott Wilson case and to prepare a prosecution strategy memorandum that will pave the way for charging Scott Wilson with a homicide that will "send a message." He noted, in giving you this assignment, that "this is not just about getting re-elected. It's about doing something that will make a statement about the senseless loss of life and the erosion of commonsense by young people in their use and abuse of illegal drugs in Fayette County." Franklin Evans has made it abundantly clear to you: "We've got to make a statement in this case." He has asked you to outline, as fully as possible, the legal issues that are presented in the trial of Scott Wilson.

In preparing the memorandum for Franklin Evans, you want to lay out *any* and *all* theories on which you may prosecute and secure Scott Wilson's conviction for homicide in the death of Lacy Forrest. You are mindful, as you prepare the office memorandum, that you need to: 1) outline the theories and legal doctrines on which the prosecution will be based, 2) think ahead to the trial and what jury instructions the evidence may warrant, 3) head off possible challenges to a conviction that you might obtain (as you know that a high profile case inevitably results in an appeal), and, finally, 4) lay out any further investigations that might be warranted in order to help insure a conviction.

**Lacy Forrest's Death:** On April 4, 2010, 18-year-old Lacy Forrest died from cardiac arrest. The police investigating the case interviewed witnesses and provided investigative reports to the District Attorney as to the following facts which you assume can provide the basis for trial testimony. The police reports indicate that at approximately 8 p.m., April 3, 2010, Lacy Forrest consumed MDA sold to her by Scott Wilson. An autopsy establishes the cause of death as cardiac arrest. Further investigation linked the use of MDA to her death.

**Lacy Forrest and the Ingestion of the MDA:** Lacy Forrest arrived at an April 3<sup>rd</sup> party with two friends, Lindsay Wagner and Wanda Searls. Forrest had already consumed a 120 mg. tab of MDMA (*Ecstasy*) in early morning hours of April 3<sup>rd</sup> before the party on the evening of April 3<sup>rd</sup>. Wagner and Searls had also taken MDMA and reported that none of them had ill-effects from the drug. Wagner had obtained the MDMA from Scott Wilson. When they encountered Scott Wilson at the party, Wagner told Wilson that she and her friends were “wasted” from days of partying, had mellowed out with the MDMA that she had bought from him, and that it was time to “get straight.” There are conflicting witness reports as to exactly what Wagner told Scott about Lacy Forrest’s drug use, and whether she related to him that they had been taking other drugs procured from him on the day of the party. Wagner told investigators, “I told Scott, we’ve been using the MDMA I got from you and it’s beautiful stuff. I don’t know that I told him when we used it.” Wanda Searls remembers only the most “general kind of party talk about the fact that we’d been “having the usual good time.”

Forrest, who had history of dazzling young men, was able to convince Scott Wilson that she was ready to try some of his infamous MDA. Wanda Searls told police that Lacy Forrest was flirting with Scott Wilson and left the party with him. Scott Wilson gave a statement to the police in which he admitted to leaving the party with Lacy Forrest to go outside to his Honda CR-V where he placed MDA powder in two special stone ceramic cups bearing an elaborate Chinese zodiac etching, mixed it with orange juice, and drank it with Lacy.



He did not, he claims, sell any drugs to Lacy Forrest. While they were waiting for the MDA to take effect, Scott Wilson told Lacy Forrest the legend that inspired the etching on the stone cups. In the sixth century B.C., Buddha invited all the animals in creation to a race, only twelve showed up: Rat, Ox, Tiger, Rabbit, Dragon, Snake, Horse, Ram, Monkey, Cock, Dog, and Pig. The Buddha gave each, according to their place in the race, a number starting with the Rat, the winner of the race. He further told Lacy that the Chinese zodiac, though not entirely identical with the Greek zodiac, nonetheless shares with it the duodecimal system and the idea of using animals as numerical symbols.

Lacy and Scott returned to the party and an hour later Lacy told Scott she was feeling violently ill and that she thought she should go to the hospital. Scott advised against it, warning her that hospital staff know little about how to deal with use of MDA and that she'd undoubtedly be all right. He told her, according to Lindsay Wagner, that she'd end up in trouble with the police for taking an illegal drug if she went to the hospital. What Scott Hanson didn't tell her was that he too could end up in trouble.

**A Prosecution Office Forensic Report on MDA:** MDA—3,4-Methylenedioxyamphetamine—is a “controlled substance” and thus, illegal to manufacture, distribute, sell, or possess. MDA is a chemical compound that acts as a psychedelic, stimulant, and empathogen. It is in the amphetamine chemical class and is used primarily as a recreational drug. MDA is similar in pharmacological make-up and phenomenological effects to the more widely used MDMA (*Ecstasy*). MDA is known, by both experts and experienced users, to be less predictable than MDMA, with effects varying widely from person to person. Those who traffic in MDA know that properly controlled scientific experiments have not been reported on proper usage and dosage levels of MDA. A recreational dose of MDA is commonly between 100 and 160mg. There are currently no accepted medical uses for MDA although it is undergoing research for various uses. MDA

MDA is known to be potentially more powerful than MDMA. It can also be more toxic. Toxic levels of MDA result in overstimulation of the central nervous system and the cardiovascular system. Symptoms of acute toxicity may include agitation, sweating, increased blood pressure and heart rate, dramatic increase in body temperature, and convulsions. Death can be caused by cardiac effects induced by the use of MDA. In the drug culture, the use of MDA and MDMA are thought to be “relatively safe” although there are reported deaths from the use of both drugs.

The danger in the use of MDA with other drugs is well known among experienced users. Cases have been reported of death in which individuals who ingest MDA while taking ritonavir (Norvir)(an antiviral AIDS drug). Toxicity and death have also been reported in cases where individuals took MDA in combination with certain monoamine oxidase inhibitors (MAOIs) such as phenelzine (Nardil)(an anti-depressant) and tranylcypromine (Parnate)(an anti-depressant).

**Scott Wilson:** Scott Wilson has a long history of use, knowledge of, and manufacture of MDA. While serving in the military, he became familiar with MDA. As a member of a Military Intelligence Chemical Operations Unit, Wilson was one of a select group of soldiers who used their backgrounds in chemistry to help develop a chemical agent that would serve as "truth

serum" in military interrogations and an incapacitating agent in field operations. Wilson was involved in at least one experiment in which MDA was administered to an unknowing subject in which an intravenous dose of 300 milligrams proved fatal and resulted in the research subject's death.

A search of Scott Wilson's house resulted in the seizure of a file of research/medical/forensic articles on clinical findings of morbidity and fatality in the use of MDA and MDMA, and MDA used with other drugs. Included in the research papers taken by police investigators was an article by Fabrizio Schifano, "A Bitter Pill: Overview of Ecstasy (MDMA, MDA) Related Fatalities" published in the journal *Psychopharmacology* in 2004. The article states, in a subsection titled "Mechanisms of Death" that: "After acute administration, a number of different physical complications have been reported: tachycardia, arrhythmias, hypertension, metabolic acidosis, cerebral haemorrhages, convulsions, coma, rhabdomyolysis, mydriasis, vomiting, diarrhoea, thrombocytopenia, disseminated intravascular coagulation and acute kidney failure."

**Autopsy Report:** A coroner's autopsy finds Lacy Forrest died of cardiac arrest. The report also states that she had congenital cardiac arrhythmia which the coroner confirmed had been previously undiagnosed. Arrhythmia is a term for a heterogeneous group of conditions in which there is abnormal electrical activity in the heart. The heart beat may be too fast, too slow, or irregular. The type of arrhythmia identified in Lacy Forrest's case was associated with subjects aged 18-26 and was of the kind that could, although infrequently, result in sudden cardiac arrest.

The autopsy finding was as follows: "The cause of Lacy Forrest's death was cardiac failure. An undiagnosed cardiac arrhythmia of which she apparently had no knowledge made her vulnerable to sudden cardiac arrest. Cardiac arrest in this case is most likely to have been induced by an overdose of MDA, unstable solvent compounds used in the synthesis of the MDA, a lethal combination of MDA and MDMA, and an MDA interaction with the use of the anti-depressant, phenelzine (Nardil). The combination effect of MDA, and MDMA, along with Nardil is the most likely suggested aggravating factor in the inducement of cardiac arrest. The unstudied effect of the exact combination of drugs in this subject makes final determination of the effect of these drugs as a participating cause of death near impossible to determine with any scientific certainty."

**Forensic Laboratory Report:** Laboratory testing of the MDA consumed by Lacy Forrest indicates: 1) the presence of excess of levels of nitroethane commonly used as a solvent during the synthesis of MDA; 2) an estimated dosage use of MDA of 280 mg,; 3) the presence of the anti-depressant phenelzine.

The synthesis/manufacture of MDA is, the report notes, a complex chemical process and there are numerous opportunities to produce solvent-tainted MDA.

**Lacy Forrest's Personal Physician:** Dr. K.L. Komie confirms that Lacy Forrest had been prescribed Nardil for treatment of depression.