

Final Exam

Constitutional Law I

Prof. Fletcher

May 12, 2009

9 AM – Two-and-a-half Hours

Instructions:

The instructions are simple. Answer the following two questions based on the materials we have studied this semester. Don't bother bringing up the Eighth Amendment in the second question. Each question is worth one-half of your final grade. This is an open book exam and you may use any written materials you can find.

Enjoy your summer!

Question One

The State of Waganakasing ("W") has one law school. Under a state statute, the graduates of the law school who complete their law school education with a "D+" grade average or higher are automatically entitled to a license to practice law in the State of W, assuming they meet minimal character and fitness requirements.

Two times each year, the W State Bar Association, a nonprofit entity chartered by the W State Legislature, engages a private scholastic testing company to hold the state bar exam. The state bar exam consists of two portions – an essay portion and a multiple choice portion. Both portions are "multistate," meaning that the legal subjects they test

are not specific to any one state, but common to all states. Graduates of law schools located in states other than W and graduates of W's law school who did not graduate with a D+ average may take the exam. If they pass the test and meet the regular character and fitness qualifications, these law school graduates are eligible for a license from the W State Bar.

Williston MacGillicuddy, Willie Mac to his friends, graduated from a law school in the State of Migizi ("M"). He wishes to practice law in the State of W but is incensed to find that his friends who have graduated from one of W's law schools typically do not have to take the bar exam in the State of W. He believes the State of W's legislation allowing near-automatic licensure to the graduates of W's law school is unconstitutional, recalling something he read in Constitutional Law I. Willie refuses to sign up for the W state bar exam until he the state statute is struck down. Instead, he will tend bar until the conclusion of his suit.

Willie Mac contacts you – a lawyer licensed in the State of W – to bring the suit in federal court. What legal theory or theories will help Willie succeed? What defenses could the W State Bar Association bring to defeat Willie's claim? What are his chances of success?

Question Two

The Nation of East Atlantis ("NEA"), an island nation located between Cuba and the Bahamas, has no working government. It is virtually lawless, and has become a haven for drug smugglers and pirates. Pirates operating out of the NEA have seized control of several American cargo ships, using the crews of the ships to acquire hefty ransoms. An

unusual number of pirates are actually American citizens who have relocated to the NEA for purposes of becoming pirates.

Congress declares war on the NEA's pirates, but not the NEA itself. Congress asserts that the island nation does not have a government, and that the pirates are the equivalent of war profiteers who normally would be considered war criminals. Congress enacts a statute authorizing the President as Commander in Chief to deal specifically with the pirates operating out of the NEA, preempting all other Acts of Congress that the President might otherwise draw upon to deal with the problem. Of note, Congress authorizes the President to capture pirates from the NEA on the open seas and bring them to the United States to stand trial before a special tribunal composed of military officers. Accused pirates are given the right to counsel, the right to discover evidence before trial, the right to a hearing before the tribunal, and the right to confront witnesses. Overall, it is the full panoply of criminal defense rights, with a few major exceptions. Congress denies convicted pirates and drug smugglers the right to appeal the decision of the special tribunal to any federal court; nor may convicted pirates enjoy the right of habeas corpus. Instead, convicted pirates must appeal directly to the President only. The President's decision on appeal is final.

The second part of the statute details the punishments for persons convicted of piracy out of the NEA. After a prison term in a federal penitentiary, each released convict must be deported to their home country. In the case of American citizens, a convicted pirate who has completed his prison term must register with the local law enforcement jurisdiction, usually a county sheriff's office or the sort. If a convicted pirate moves to another community, they must re-register in that community. Finally, upon registration,

the local law enforcement jurisdiction will issue a large, brightly-colored, one foot by one foot letter “P” that each convicted pirate must wear in public for everyone to see. Congress requires that local law enforcement officers must police violations of the registration requirement and the letter requirement, and state courts have jurisdiction over any prosecutions.

Ellis Short II, the son of a prominent Lansing lawyer and an American citizen, dropped out of law school and moved to the NEA to become a pirate, seeking fortune and thrills. On his first pirate voyage, he is arrested by United States Naval personnel on the open seas in the act of attempting to take over an American cruise ship. Navy personnel transport Short to Florida, where he is convicted by a tribunal assembled in accordance with the Congressional anti-piracy statute. He appeals to the President, who denies his appeal without comment. On remand, the piracy tribunal sentences Short II to six months in prison. Upon his release, Short II registers with the Ingham County Sheriff’s Office, but flatly refuses to wear the letter “P” in public, as is required by the piracy statute.

Short’s father hires you, the very best criminal appellate litigator in the business, to challenge Congress’s anti-piracy statute. Identify legal theories upon which Short II could rely, and judge the likelihood of their success, to avoid having to wear the “P,” or otherwise expunge his conviction.