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Federal Courts  
The University of Oklahoma College of Law  
Fall 2012  
Professor Kit Johnson

### **FINAL EXAMINATION: ESSAY**

#### **General Notes and Instructions**

1. All exam materials (including this booklet and the answer sheet) must be turned in at the end of the period. You will not receive credit unless you return this booklet with your exam number written above.
2. Do not turn the page until instructed to begin.
3. You may write anywhere on the examination materials — e.g., for use as scratch paper. Only answers and material recorded in the proper places, however, will be graded.
4. Your goal is to show your mastery of the material presented in the course and your skills in analyzing legal problems. It is upon these bases that you will be graded.
5. During the exam: You may not consult with anyone – necessary communications with the proctors being the exception. You may not view, attempt to view, or use information obtained from viewing other student examinations or from viewing materials other than your own.
6. After the exam: You may discuss the exam with anyone, except that you may not communicate regarding the exam with any enrolled member of the class who has not yet taken the exam, and you must take reasonable precautions to prevent disclosure of exam information to the same.

#### **Specific Notes and Instructions for PART II:**

- a. Read all exam questions before answering any of them – that way you can be sure to put all of your material in the right place.
- b. Organization counts.
- c. Be complete, but avoid redundancy. Specifically, do not repeat the exact same analysis with substituted parties. For instance, computer users should probably not use the cut-and-paste function. Instead, to the extent called for, you may incorporate analysis by reference to another portion of your answer.
- d. Note all issues you see. More difficult issues will require more analysis. Spend your time accordingly.
- e. Feel free to use reasonable abbreviations.
- f. **Bluebooks:** Make sure your handwriting is legible. I cannot grade what I cannot read. Skip lines and write on only on one side of the page. Please put answers to each section in a separate blue book and label the blue books accordingly.
- g. **Computers:** Please clearly label your answers to each section.
- h. This section of the examination is “closed book.” You may not use any materials other than those provided to you by the proctors.
- i. Do not write your name on any part of the exam response or identify yourself in any way, other than to use your examination I.D. number appropriately. Self-identification on the exam will, at a minimum, result in a lower grade, and may result in disciplinary action
- j. This Part II is worth approximately 2/3 of your exam grade.
- k. Good luck.

## Section 1

### 1 HOUR, 40 MINUTES

Victor Velasquez was convicted of felony murder and sentenced to serve life in prison at the state-run Butler Correctional Facility outside of Syracuse, NY. He and a cousin had attempted to rob a Syracuse tavern. The owner fought back, and, in the ensuing struggle, the cousin's gun discharged and killed Patsy Parker, a patron who had stayed past closing time to finish her one last glass of alcohol.

Velasquez was a model prisoner. He deeply regretted the death of Patsy and committed himself wholly to turning his life around. He took G.E.D. classes with Glenda Good, a Syracuse public school teacher who taught at the prison. He undertook bible study with Reverend Rawlins. He worked in the prison kitchen as a dishwasher.

Velasquez, however, had a problem. A big problem. He was being pressured to join the Mara Salvatrucha (MS-13) prison gang. And Velasquez had no intention of joining.



Fig. 1: The Butler Correctional Facility Kitchen

When he was first approached by the gang, Velasquez reported the approach to Corrections Officer O'Connor. O'Connor told Velasquez to "stand strong."

When the gang learned Velasquez had spoken to O'Connor, they threatened Velasquez and told him to keep his mouth shut "or else."

Velasquez approached O'Connor again, asking if there was anything the prison could do to protect him – perhaps house him in a different unit or transfer him to another prison. O'Connor called Warden Williams on the phone to discuss the situation. After the call, O'Connor told Velasquez "I'm sorry, all I can say is stand strong."

After that, things got worse. Velasquez received anonymous death threats, scratched on prison toilet paper. He turned these over to O'Connor and renewed his pleas for help, without success.

Velasquez also found that numerous inmates began "accidentally" bumping into him on the way to the dining hall, his G.E.D. classes, and bible study. He reported this to O'Connor, who was well, and detailed his experiences in letters to Warden Williams and Commissioner Chase, head of the New York State Department of Corrections (DOC), which runs the Butler Correctional Facility.

On October 31, Velasquez was jumped while washing dishes after dinner. Two inmates, members of MS-13, rushed into the kitchen and viciously assaulted Velasquez. In addition to kicking and punching Velasquez, they drubbed him with cast-iron skillet that

had been used to cook dinner. When Velasquez was finally saved by prison officials, he was in bad shape. He was unconscious and had to be transferred by helicopter to the county hospital. All told, Velasquez suffered traumatic brain injury, six broken fingers, fractures in both tibia (bones in the lower legs), and compound fractures in both arms.

It was a slow news week, so the Syracuse evening news ran a report on the Velasquez assault. Larry Lyons, a lawyer, rushed to the hospital and offered to represent Velasquez. Lyons got the job and filed three lawsuits.

1. Lyons filed a lawsuit pursuant to 42 U.S.C. § 1983 in the U.S. District Court for the Northern District of New York against Officer O'Connor, Warden Williams, the DOC, and Commissioner Chase. The suit alleged that each defendant had violated Velasquez' Eighth Amendment rights by their deliberate indifference to the threat of assault. He petitioned for damages to compensate Velasquez for his injuries as well as injunctive relief to (1) transfer Velasquez to a different prison after his release from the hospital and (2) ensure ongoing compliance by all defendants of Velasquez's Eighth Amendment rights.
2. Lyons filed a second, separate, petition, in the U.S. District Court for the Northern District of New York against Warden Williams, in his official capacity, for habeas corpus, arguing that Velasquez was being held in custody in violation of the Eighth Amendment.
3. Lyons also filed suit in state court on behalf of Tripp Tyson, an individual who had been convicted of embezzlement but had not yet been sentenced. When Tyson is eventually sentenced, he will be sent to one of the DOC prisons and, perhaps, the Butler Correctional Facility. Lyons sought class certification for Tyson and all similarly situated individuals. The lawsuit, based on 42 U.S.C. § 1983, was brought against Williams, the DOC, and Chase, seeking injunctive relief to ensure ongoing compliance with prisoners' Eighth Amendment rights at the Butler Correctional Facility.

While these lawsuits were pending, the DOC began an internal investigation into the assault on Velasquez. The investigation uncovered the fact that O'Connor and Williams had been receiving monthly payments that appeared to be traceable to the MS-13. The DOC turned this information over to the Onodaga County District Attorney. O'Connor and Williams were thereafter indicted on charges of criminal assault, battery, attempted murder, and conspiracy.

After the indictment, Lyons moved the federal court for an injunction to halt any further state criminal proceedings against O'Connor and Williams, pending completion of the federal case, to avoid possible preclusion problems. Counsel for each of the defendants responded with motions to dismiss on Eleventh Amendment grounds. The DOC and Chase jointly moved the federal court, in the alternative, to abstain from hearing Velasquez's case until the state courts had an opportunity to determine whether or not O'Connor and Williams were criminally culpable for the harm to Velasquez.

While the motions were pending, Congress passed the Prison Protection Act, which provided, in relevant part: “No court created by Act of Congress shall have jurisdiction over any action or proceeding brought by an inmate of a state prison under 42 U.S.C. § 1983.”

## **QUESTIONS**

Please answer these questions in numerical order, being sure to label your answers accordingly:

- Question 1:* What will be the effect of the Prison Protection Act on Velasquez’s first federal suit?
- Question 2:* Assuming the PPA does not bar Velasquez’s first federal suit, how should the court rule on his motion for an injunction?
- Question 3:* Assuming the PPA does not bar Velasquez’s first federal suit, how should the court rule on each of the defendants’ motions to dismiss?
- Question 4:* Assuming the PPA does not bar Velasquez’s first federal suit and that the defendants’ motions to dismiss are denied, how should the court rule on the alternative motion to stay?
- Question 5:* Putting aside the issues raised in questions 1-4, does Velasquez have a valid § 1983 claim?
- Question 6:* What will likely happen with Velasquez’s petition for habeas corpus?
- Question 7:* What will likely happen with the Tyson suit?

Here are a few things to keep in mind in writing your answer:

- These questions will not be given equal weight. Divide your time proportionately among the questions according to which ones require the most discussion and analysis. Plan ahead to put information where it belongs.
- Avoid needless repetition. (See item “c” in the notes and instructions.) Do not repeat the exact same analysis with substituted parties. Computer users should generally avoid the cut-and-paste function. You may incorporate analysis by reference to another portion of your exam answer to the extent appropriate.

### **Some suggested abbreviations for your answer:**

CC: Chancellor Chase  
DOC: New York State Department of Corrections  
LL: Larry Lyons  
OO: Officer O’Connor  
TT: Tripp Tyson  
VV: Victor Velasquez  
WW: Warden Williams

**Section 2**  
**20 MINUTES**

You are a clerk for a justice on the United States Supreme Court. You are working on a case that presents a unique opportunity to overturn the case we covered in Federal Courts that you most disagreed with. Draft a memo explaining why and how the law should change. Remember, you will be setting the precedent for all future cases. The justice will be looking for substantial policy analysis to back up your conclusion.