

Final Examination  
**Honors Lawyering Evidence H2**  
Professor Farber  
Summer 2006

1. You have **three (3) hours** to complete this exam.
2. This is a **closed book** exam. No outside materials may be used.
3. This exam has two parts. You may allocate your time as you wish.

**Part I** is worth 50% of the exam grade. It has thirty- three (33) multiple choice questions.

**Part II** is worth 50% of the exam grade. It has five questions.

Answer each question pursuant to the Federal Rules Of Evidence unless the question specifically tells you to apply the California evidence code.

You have been provided with a rules supplement containing the federal rules of evidence and the California evidence code that you may use during the exam.

4. Write your exam number on your exam envelope. Put your correct class section and student exam # at the top of this page, each page of questions, each blue book, and the ParSCORE TEST FORM. **Do not** use your name, student ID number or Social Security Number on any exam materials.
5. At the conclusion of the exam, return all test materials, including blue books, ParScore answer sheet, scratch paper, and this exam packet to the envelope and submit it to the proctor. **DO NOT** seal the envelope. Students who do not return all exam materials at the end of the exam may not be graded.

**GOOD LUCK!**

**PART II**

This section is worth 50% of your exam grade.

**You should only answer Part II according to the Federal Rules of Evidence. No credit will be given for analysis under the California Evidence Code.**

I strongly recommend that you read this section of the exam once in its entirety before beginning.

Each of the five questions in this part puts you in a particular role. Remember your role when answering these questions. If you are asked to make or comment on objections, make all *reasonable* arguments in favor of or against the admission of the evidence and state the strength of each.

Please number all of your answers so it is clear which question you are answering. Be sure to differentiate one argument/explanation from another so you get credit for each separate part of your answer. Please write legibly, skip lines, and write on only one side of the page.

## **Part II**

Jack Bauer, an aspiring fiction writer, has been charged with the murder in the second degree. The alleged victim was Tony Almeda, the deputy editor of a leading literary publication, called *The Cambridge Textual Universe* (CTU), based in Cambridge, MA. Some background facts: The victim was found dead on January 3, 2003, stabbed seven times in an alleyway just off of Connecticut Ave., in the District of Columbia with a sharp instrument. Near the body in a garbage can, a long antique sword was found, with a red and black handle with distinctive Russian lettering gilded on the handle on one side. No fingerprints were found on the blade. Jack recently endured a bitter divorce and custody dispute, in which he lost custody of his daughter, Kim. In the course of this dispute, he admitted having an ongoing affair with Kate Warner.

Assume for the purposes of answering all the following questions that Jack is being tried in a jurisdiction that has enacted the Federal Rules of Evidence.

The prosecutor has already introduced (1) evidence placing Jack Bauer near the scene of the crime on the afternoon of January 3, 2003; (2) and evidence that blood found on a pair of Jack's jeans matched the blood type of the victim, AB. Unfortunately, the blood sample was lost by the laboratory before DNA testing was able to be performed.

The prosecutor now offers the evidence of Ramon Salazar, an employee of CTU.

Q. Mr. Salazar, what are your duties at CTU?

A. I'm an assistant editor. I help to evaluate manuscripts, I maintain the manuscript files and I maintain our correspondence as well. We have a small office just outside of Harvard Square only four employees, so I do a little bit of everything.

Q. Do you keep a copy of every letter you send out?

A. Yes. They are organized on the computer by date, recipient, and topic. They don't get put into our correspondence file on the computer until they are printed out, signed and mailed. Our letters get mailed every afternoon on the day that they are written and signed; the mail is collected at 4:00 p.m.

Q. Is this document now marked as Exhibit 8 a letter from the correspondence file that you maintain?

A. Yes it is.

Q. Had Tony Almeda written that letter?

A. Yes, he wrote it and had me proofread it before he printed it and signed it. He wrote a number of letters that day, as he was about to leave for Washington D.C. that evening for a three-day trip.

Q. Can you read the letter to us?

A. Yes. It is dated January 2, 2003 and it is addressed to Jack Bauer. It reads: Dear Mr. Bauer. I am sorry to inform you that we will not be able to publish your short story, So many crosses to bear in CTU. Frankly, we did not find the story persuasive, instructive or entertaining. The quality of your writing is uneven, and the lead character is unpleasant and egomaniacal. You do have some lovely turns of phrase along the way, but your impressive use of metaphor is not enough to sustain the reader's interest. While based on this sample, we doubt that we will ever be interested in your future work, we will be willing to give another piece a close read if you should choose to send it to us. I'm sorry that I can't give you better news. Sincerely, Tony Almeda. ♦

***Question 1: You are the defense attorney. Do you wish to offer any objections to the introduction of this letter into evidence? Why or why not?***

If you did object, the judge overrules your objection and permits the letter to be introduced into evidence.

The Prosecution next offers the evidence of officer Ryan Chappelle, a ten year veteran on the force.

Q: Can you please tell me the current whereabouts of Kate Warner?

A: I'm the officer assigned to investigating that matter. At the present time, Ms. Warner is missing; she has been missing for the past 14 months.

Defense attorney: Objection. I don't see the relevance here. . .

Judge: Prosecutor, where is this going?

Prosecutor: (out of the hearing of the jury): I expect this officer to testify that (1) Ms. Warner is suspected to be the victim of foul play and that (2) Jack Bauer is a key suspect in her disappearance and possible death, because (a) he has told the officer in an informal interview about having an affair with her which he had tried unsuccessfully to cover up during his divorce proceedings; and (b) he is the last person known to have seen her alive as he acknowledged to the officer having dinner with her the evening before Ms. Warner's disappearance.

***Question 2: You are the judge's clerk. Advise the judge as to any possible objections to the testimony that the defense might make and how she ought to rule on them.***

Rightly or wrongly, the court overrules any objections, and allows the police officer to testify about the disappearance of Kate Warner, but she does provide the jury with a limiting instruction with respect to this evidence.

**The prosecution rests.**

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The defense calls Chase Edmunds, a long-time friend of Jack Bauer's, to the stand.

Q: Chase, did you see Jack Bauer a few days before Tony Almeda's death?

A: Yes, I did. We spent New Year's Eve together.

Q: What did you do that evening?

A: As he was walking toward my house, he had a big smile on his face, I saw him out the window. Then he was whistling a song, and almost dancing a little jig, and he looked positively radiant. He'd brought over a fabulous bottle of Champagne, and he uncorked it, poured us each a glass, and made a toast. He said to me, 2003 is going to be a good year. Here's to friendship, to small acts of kindness, and to the joys of muddling through.

Q: Did he say anything else?

A: Yes. He said that he knew his fiction writing wasn't really taking off, and that he thought he'd truly accepted that it was going to be more of a hobby than a career. He said he intended to do some training to become a mediator or perhaps get a degree to become a social worker.

Q: Did he say anything about the story he had submitted to CTU?

A: Only in passing. He said that he'd sent an article to a journal in Cambridge, but that he was quite sure that it was going to be rejected. But he said that he felt peaceful about that

that the purpose of his writing was an inner journey, not publication in some pretentious literary rag.

Pros: Objection, your honor! All this testimony is entirely hearsay and should be excluded.

***Question 3: You are the defense attorney. How do you respond to the prosecutor's objection?***

Rightly or wrongly, the court overrules the prosecutor's objection and permits Chase's testimony.

The defense next calls Jack Bauer to the witness stand.

Q: Let me go straight to the point, Jack, no beating around the bush. Did you kill Tony Almeda?

A: No, I most certainly did not. I had never even met the guy. I knew him by reputation, of course, but I've never even seen him in person, much less spoken to him.

Q. And have you ever owned a black and red sword?

A. No. Never.

Q. Can you tell us how blood got onto your grey sweatpants?

A. I'm not positive, but I do have a guess. I volunteer at a men's homeless shelter two evenings a week. One night, sometime between Christmas and New Year's, though I don't remember the exact date, there was a huge altercation, about five residents got into a big fight. Several of them were bleeding before it was over. I helped to break the fight up, and actually got punched in my jaw for my efforts, but I was able, finally, to calm the men down. Then I helped to administer first aid while we waited for a nurse. I have to admit that since my divorce I'm not the best housekeeper, and it's possible that I got some blood on my sweatpants that night without realizing it, and hadn't yet laundered them.

Q, I see. So you volunteer at a homeless shelter, do you? Given how busy your life is, can I ask why you do this?

A. I've become very interested in eastern religion, pacifism, and the idea of community. I want to give something back to my own community, and to help some troubled souls find a little bit of the peace that I'm blessed enough to have. Also I'm a great believer in karma, the golden rule, whatever you want to call it: Do unto others . . .

Q: Interesting. Now, we have heard testimony that you were in the vicinity of Connecticut Ave. on the afternoon of January 3. Is this correct?

A. Yes. I was spending some time at my favorite cafe, located right at the intersection of Connecticut and 21<sup>st</sup> streets.

Q. What were you doing there?

A: I was surfing the web for a while and working a bit on the draft of a new story. I ate a little food at some point a cinnamon scone, I think, and I drank a non-fat vanilla latte. After a while I got restless, so I took a walk around the neighborhood. I needed to pick up my daughter at school at 4:30, as I was going to take her to a gymnastics class that afternoon at 5:00 p.m.

Defense: No further questions.

Prosecutor: Mr. Bauer, I have just a few questions for you. First, isn't it true that you regularly spanked your daughter when she was young?

A. No! I never laid a hand on her.

Def: Ob, ob, ob . . .

Q. Don't you also cheat on your tax returns by putting significant amounts of your personal expenses onto your corporate American Express Card and then deducting them as alleged business expenses?

A. Nonsense!

Def: Ob. . . But before he can get the words out, the following exchange occurs:

Q. Isn't it also true that you punched an acquaintance last February?

A. I don't know what you're talking about.

Q. Let me remind you. Your acquaintance, David Palmer, told you, I'm glad your wife left you. Frankly, she could do better you never really appreciated her, and you gave him a one-two punch that required medical attention.

A. I remember nothing of the sort.

Def: (sputtering) Objection, your honor! I've been trying to get a word in edgewise, here. This is all impermissible character evidence and some of it is hearsay to boot. I request that it all be stricken from the record and that the jury be instructed to ignore all of this ridiculous slander.

***Question 4: You are the prosecutor. Respond to the defense objections.***

Rightly or wrongly, the court permits the testimony to stand.

The prosecution then indicates to the court that it wishes to call two rebuttal witnesses: first, Nina Myers, a friend of Jack's ex-wife's, to testify that Jack did spank his children, cheat on his tax returns, and hit a friend; and second, Kyle Singer, who works at the cafe Jack said he frequented, who will testify that (1) the wireless web access at the coffeehouse was not functioning on the afternoon of January 3; (2) the cafe does not carry cinnamon scones; and (3) as he recalls, Jack, who was indeed a regular at the cafe, stopped by the coffeehouse only briefly that particular afternoon, and said that his daughter's gymnastic class was cancelled and that his wife was going to pick her up at school, and that he was going to go take some foreign weapon (she can't quite remember whether it was Japanese or Russian) to be appraised.

Defense: Objection, your honor. None of this should be admissible.

***Question 5: You are the judge's clerk. Advise her on whether any of the prosecution's rebuttal witnesses will be permitted, and why or why not.***

**End of Examination**