

Exam Number \_\_\_\_\_

**HAMLIN UNIVERSITY SCHOOL OF LAW**

**Date of Examination:**

**Professor: Pielemeier**

**Semester: Fall 2004**

**FINAL EXAMINATION-MASS MEDIA**

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**CODE OF CONDUCT**

Violations of the Code of Conduct include (1) unauthorized conversation among students concerning the examination; (2) giving, receiving, or soliciting unauthorized aid; (3) using materials that are not specifically permitted by the written examination instruction; (4) exceeding the examination time limit; or (5) any other dishonest conduct in connection with the examination.

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**INSTRUCTIONS**

1. This examination consists of six (6) page(s) in addition to this cover page. Please ensure that you are not missing any pages.
2. The time allowed for this examination is three (3) hours.
3. Outside material permitted: None

**SPECIAL INSTRUCTIONS:**

- a. This examination consists of six questions. Suggested amounts of time to spend are stated with each question. These suggested times total three hours, which is the total amount of time permitted for the exam.
- b. Answers containing only your conclusions will receive little credit. Taking into account the amount of time suggested for each question, state fully the reasons supporting your answers. In addition, discuss all issues reasonably raised by each question, even though your resolution of one issue may render the others moot.
- c. The fact scenarios in the questions are not set in any particular state. You should discuss all issues reasonably raised based on general principles of law (including constitutional law) that were discussed in this course.

I (30 minutes)

Smith, who was chief of police in Bigtown, was one of several defendants charged with serious criminal conduct involving illegal drugs. Extensive media coverage ensued.

Thomas, a reporter for a local television station, Channel 6, persuaded one of the government's most important witnesses, Jones, to be interviewed by Thomas. After the interview, which lasted 40 minutes, Channel 6 edited it down to a four minute segment to be broadcast on the evening news. Channel 6 also contacted other government witnesses, scheduling interviews with them as well.

Before the segment of the Jones interview was broadcast (and before the jury selection had begun for the case), Smith's attorney learned of Channel 6's intentions, and feared that broadcasts of interviews of the government's witnesses would prejudice Smith's right to a fair trial. Smith's attorney made motions for the court to restrain Channel 6 from broadcasting the segment of the Jones interview, and to restrain the other government witnesses from speaking to Channel 6 and all other media entities.

In response to these motions the court (1) restrained Channel 6 from broadcasting the segment of the Jones interview until the judge could review the segment; (2) stated in its order that the restraint on Channel 6 would be lifted only if Channel 6 persuaded the court that broadcasting the segment would not violate Smith's right to a fair trial; and (3) finding that broadcasts of interviews with other government witnesses "could compromise Smith's right to a fair trial," enjoined those witnesses from speaking with Channel 6 and all other media entities.

Discuss the propriety of the court's three actions.

II (30 minutes)

[Assume that under the law of state in which the following occurred, it is a crime to publish or broadcast stolen documents and information gleaned from them.]

Adams is a reporter for WABC television. Adams' longtime friend, Baker, recently graduated from law school and was working as a law clerk for Judge Carr, a trial court judge. A few months after Baker began the job, he and Adams went out to dinner. During the meal, Baker told Adams that based on some of Judge Carr's rulings, he had begun to wonder if something "fishy, like bribes or payoffs," was going on in some of the cases before Judge Carr.

"Wow, would that be a story," said Adams, "but we'd have to have some pretty clear proof." Adams asked Baker if he'd be willing to use a tiny camera provided by WABC to photograph anything that might confirm Adams' suspicions, and Adams agreed.

A few nights later, while working late and after Judge Carr had gone home, Adams noticed that the Judge's chambers were unlocked, which was unusual after hours. Adams went into the chambers, and pulled out a drawer of the Judge's desk. Adams opened a notebook that was in the drawer, in which the names of some parties who had recently been given favorable rulings by the judge appeared, with dollar amounts varying from hundreds to thousands of dollars next to their names. Adams photographed these entries with the camera provided by WABC.

Shortly thereafter, WABC ran a story based on Adams' suspicions and the photographed entries, accusing Judge Carr of taking bribes in exchange for favorable rulings. The next day Judge Carr resigned from the bench. He was eventually convicted of criminal charges of accepting bribes, which also resulted in his disbarment.

Discuss whether Judge Carr could successfully bring a suit for damages against WABC, noting what legal theory or theories he might reasonably assert, and what sorts of damages he might reasonably claim. Assume that WABC's story was substantially true.

## III (60 minutes)

In the summer of 2002, the XYZ television network (assume this is a major American television network) broadcast a “reality” show called “Survive.” It involved sixteen contestants who would be “marooned” on a remote island, divided into two “tribes,” required to engage in multiple contests between the tribes and then, on a regular periodic basis, were asked to vote on which member to evict from the tribe. A majority vote of the then existing members of the tribe that had lost the most recent contest with the other tribe would be sufficient to evict a member of that tribe. This process went on over several weeks until there was only one remaining contestant, who won one million dollars. These activities were recorded by television cameras a few months before the broadcasts were actually aired by XYZ. The show was highly successful, drawing some of the highest ratings of network television shows that summer.

XYZ decided to broadcast another “edition” of “Survive” the following summer, 2003. Amy, a 28 year old attorney at a well respected law firm, applied to be a contestant. After going through an extended screening process that included multiple personal interviews and medical and psychological testing, Amy was accepted as one of the sixteen contestants. She and the others were flown to a remote island, and she was assigned to the tribe designated “Ragi.” Every three days during the shooting of the shows, one of the two tribes (i.e. the one that had lost the most recent contest) was required to vote to evict one of its members. The Ragi tribe lost the first contest, and voted 5-3 to evict Amy. She then went back to the United States.

Shortly before the episode in which Amy was evicted was scheduled to be broadcast, she contacted the producers of the “Morning Show” on the LMN television network (assume it is another major American television network). She informed them that another Ragi tribe member, Bill, had told her that he and another Ragi tribe member, Carl, had been told by the show’s executive producer, Dave, to vote to evict Amy. As a result, she believed that Dave had manipulated the votes of at least two members of the Ragi tribe. She thought that such actions were not only unfair, and contrary to the free competition theme of the “Survive” program, but also constituted “rigging” of the show, which would constitute a federal crime.

The producers of the LMN Morning Show discussed Amy’s allegations in a meeting in which the Executive Producer said, “This is great! I always thought there was something fishy about that show. Maybe putting Amy on will deflate some of Survive’s ratings and result in more viewers for our network’s shows.” They invited Amy to appear on the LMN Morning Show the morning after the Survive episode in which she was evicted was to be broadcast by XYZ. She did so and repeated on the air what she had told the Morning Show producers, reflected in the preceding paragraph.

While there had been some discussions about what happened on “Survive” on various networks’ talk shows during the summer of 2002, Amy’s Morning Show comments after

this first episode in 2003 were discussed extensively on various news and talk shows on all the television networks. Dave flatly denied that he had asked any tribe member to vote to evict Amy, and insisted there was no manipulation or “rigging” on the show. All of the Ragi tribe members, including Bill and Carl, denied that Dave had told them to vote to evict Amy or anyone else, and Bill denied telling Amy that Dave had done so.

Dave then sued Amy and the LMN network for defamation, based on Amy’s comments on the Morning Show.

Assume that after being informed of Amy’s allegations, LMN undertook no further investigation into whether they were true. Also assume that the testimony of witnesses at trial would be consistent with what is reflected above. Assume that Dave’s name was listed as Executive Producer in the credits of all episodes of *Survive*, and that he appeared occasionally on television talk and news shows during the summer of 2002. Finally, for purposes of this question only, assume that the statements reflected in this question would be admissible at trial for any purpose. (You might find this somewhat questionable if you have taken Evidence, but this is not an Evidence exam.)

Discuss the likelihood of Dave’s success in his defamation suit, assuming Amy and LMN raise all arguably applicable defenses. Focus your analysis on the legal issues raised by the question, rather than on speculation about who a jury is likely to believe.

IV (15 minutes)

Following a confrontation with and arrest by the Elkton chief of police, John Lee, the mayor of Elkton sent a letter to the local Elkton newspaper, *The Elkton Times*, which it subsequently published. The letter, which did not specifically mention any names, accused the Elkton police department of intimidating witnesses, stealing property, misappropriation of money, and improperly disposing of drug and gun evidence. At the time, the Elkton police department had twenty-six members, including the chief.

The police chief and all other members of the police department brought suit for defamation against both Lee and the *Times*. The defendants moved to dismiss on the ground that the letter was not sufficiently “of and concerning” the individual plaintiffs. Discuss how the motion should be resolved.

V (25 minutes)

In 2004, Minnesota enacted legislation restricting access of non-voters to election polling places. The legislation included the following statute:

Access for news media. The county auditor or municipal or school district clerk, or their designee, may, by written authorization, permit news media representatives to enter polling places for up to 15 minutes during voting hours to observe the voting process. A media representative must obtain prior authorization and present photo identification to the head election judge upon arrival at the polling place.

Before enactment of this statute, the practice in Minnesota had been that media representatives had free access to polling places, so long as they weren't being disruptive. There is no indication that disruption occurred in recent years.

Discuss reasonable arguments that might be made to the effect that the statute violates the First Amendment to the U.S. Constitution, and your view on how those arguments are likely to be resolved.

VI (20 minutes)

The Federal Communications Commission recently posted a notice on “Broadcast Localism,” initiating the Commission’s inquiry into how local broadcasters are serving the interests and needs of their communities and whether new rules are needed to guarantee that they are doing so.

The FCC has questioned whether broadcasters should be required to air specific quantities of news, public affairs, and locally originated programs. Supporters of the FCC’s inquiry say corporate consolidation has led broadcasters to increasingly neglect their obligation to serve local audiences.

In response to the inquiry, the National Association of Broadcasters has stated that governmental mandates on broadcasters that news and other programming be aired for a certain number of hours or during certain times would violate the First Amendment of the U.S. Constitution. Discuss the validity of this contention.