Evidence Midterm Issue Outline
December 9, 2004

Essay #1

Paul testimony: Barb statement admissible in CA, not FRE, to show Ace predisposition to commit crime. Subject to *Crawford* limitation that statement was testimonial and Ace never had opportunity to cross examine. *Crawford* limitation probably not waived due to forfeiture doctrine.

Dr. Tom statement to prove predisposition admissible if non-testimonial; inadmissible if testimonial unless *Crawford* forfeiture doctrine applies.

Issue whether both statements admissible for non-hearsay purpose, to show malice aforethought or absence of mistake. May be subject to 352-403 exclusion since defense is identity.

Dan testimony re Vicky 911 call may be admissible hearsay if excited utterance. Does not violate *Crawford* since A cross-examined her at his prelim. May be admitted to show Ace's predispostition in both CA and FRE. May be irrelevant for 1101(b) non-hearsay purposes, eg identity, intent, common plan, in light of Ace's defense.

Transcript of Vicky's testimony admissible, subject to above, per FRE or in CA if she rejects reasonable efforts to induce her to testify. Her contumaciousness makes her unavailable.

Essay #2

Bob's statement to Ruth admissible as state of mind to prove future plans.

A should object to showing police report to Walt absent foundation that Walt's recollection could be refreshed by being shown an object.

The police report, if used to refresh Walt's recollection, should not be read to the jury, since it is not past recollection recorded. It is inadmissible hearsay and should not be introduced into evidence, since the part containing Walt's statement does not qualify as either a business or an official record.

Tom's transcript may not be admissible unless A had a similar motive to the mechanic who had an opportunity to cross-examine him at the earlier trial.

Sam's testimony re Walt's statement is admissible as a prior inconsistent statement. It comes in for its truth and impeachment in CA, impeachment only in FRE.