

CRIMINAL LAW: EXAMINATION
Thursday, December 13, 2001

Professor Houck

INSTRUCTIONS

1. This is a closed book exam. No books or study materials of any kind are permitted.
2. You have three hours to answer these questions. Please restrict your answers to the questions asked. Please also supply authority for those points you believe are controlling. If not otherwise stated, you should refer to the law of your jurisdiction.
3. This is a 100-point exam. The questions are weighted as indicated. I reserve the right to allocate up to 5 additional points for an outstanding answer, up to 10 additional points total. Allocate your time accordingly.
4. In your answers, please also observe the following:
 - answer the question
 - write on one side of a page only
 - write legibly (if I can't read it, it isn't there)
 - no relevant facts are intentionally omitted; if you believe a fact is necessary to the answer, please state what you are assuming and why.
5. Keep your head. There is nothing here beyond you.

I. War on Terrorism (25 points)

The United States Congress is considering new legislation intended to, in the words of the Attorney General, "deter, expose and eradicate terrorism from United States Soil." Title One of the bill, entitled SAFEGUARDS OF LIBERTY, will provide for the relaxation of certain procedural features of the criminal justice system (e.g. habeas corpus, right to counsel). Title Two, entitled JUSTICE FOR TERROR, will provide for the criminalization of terrorism and a mandatory death penalty for convicted terrorists.

Question 1: You are an Assistant Attorney General in the Criminal Division of the U.S. Department of Justice. Please draft the principal provisions of Title Two (do NOT consider Title One; save that analysis for Constitutional Criminal Procedure). In your draft, please identify possible legal (not political) difficulties with this title of the bill, and how you have met them. Do not be concerned about legislative form or style; that will be up to the Committee, at a later date.

II. The Game (25 points)

Al's girlfriend plays basketball for Texas Christian (TC), a rival of his school, Tulane. In fact, Emma is the leading scorer. Al is paying his student loans by betting the "point spread" on TC games, i.e. not on the winner but on the winning margin of victory (e.g. TC by five points). Emma gives him useful information on upcoming games, like who is hurt, the team's read on the opponent, etc. Emma is flying in over Christmas holidays for the TC-Tulane game. Al invites her to come a few days early; "we'll have a major party!," he says, "and plan a killing on the Tulane game." Emma flies in three days before the game, they have a major party (indeed they spend an entire day in bed), and she tells Al that her team is hot, she's determined to "score big" and that TC will "beat the spread [e.g. the predicted margin of victory] by at least five points." They talk about taking a trip to Bermuda on the winnings. But ... TC loses the game instead, Al gets drunk, starts talking about "that bitch who double-crossed me," and pretty soon both he and Emma are arrested and charged with Sports Bribery, Conspiracy to Commit Sports Bribery, the Mann Act! ... and RICO.

The Sports Bribery statute prohibits:

"(1) the offer of anything of value to a player of a sporting event with the intent to influence him to lose or cause to be lost, or corruptly to affect or influence the result thereof, or to limit his team's margin of victory.

or,

(2) the acceptance of, or the offer to accept, directly or indirectly, anything of value under such circumstances by any player."

The Mann Act prohibits:

"Any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting in interstate or foreign commerce . . . any woman or girl for the purpose of prostitution or debauchery or for any other immoral purpose..."

Question 2: Evaluate the charges.

III. Elliot (10 points)

Remember Elliot, who was charged with a RICO 1962(d) violation in connection with purchasing drugs (amphetamines) on two occasions from co-defendants (Foster, Hawkins), receiving a ham from a stolen shipment, and helping to rig a jury in a

separate but related trial. As you will recall, the court threw out his 1962(d) conviction on grounds of insufficient evidence.

Question 3: What outcome had Elliot been charged instead with Aiding and Abetting the crime of 1962(c)?

Question 4: Had Elliot been found guilty on the above facts of a RICO violation, is he also guilty of the arson, murder, hijacking of the "Career Club" shirts and other crimes committed by Foster, Hawkins and others?

IV. Three Mile Island (10 points)

1. "INDICTMENTS EXPECTED IN 1979 N-PLANT ACCIDENT

WASHINGTON – Justice Department officials said Thursday that they expect indictments arising from the Three Mile Island nuclear plant accident to be announced in the next few weeks.

The grand jury's inquiry centers on charges by Harold W. Hartman, Jr., a reactor technician at Three Mile Island, that shortly before the accident took place the company personnel had falsified data concerning a leaky valve to avoid having to shut down the power plant's Unit 2 for repairs. In the accident, which shut down the entire plant, radioactive gases and water escaped from the unit 2 reactor.

According to a transcript that was made available here, Hartman told investigators in May 1979 that leak rate test results "had to be fudged every time we got it, we had to do something to make it right."

New Orleans Times Picayune¹

Assume that Nuclear Regulatory Commission (NRC) regulations require weekly reports on nuclear plant safety, to include the operational and safety features of operating reactors. Section 101 of the regulations prohibits "the knowing submission of reports containing false information." Each violation of Section 101 is punishable by up to five years in jail and a \$10,000 fine.

Assume further that the TMI reactor is owned by Pennsylvania Power and Light (PPL); PPL, in turn, has contracted with Security Systems Inc (SSI), an independent consulting firm, to provide "training, monitoring and compliance with NRC safety and operational requirements." There is no evidence that any officer or director of PPL, or any employee of SSI, had personal knowledge of the falsification of the safety requirements. Hartman and other PPL technicians provided the documents to SSI personnel, who forwarded them routinely, to the NRC. Hartman explained that they felt "tremendous pressure" from upper-level management to keep the reactor on-line, and were told that that a shut-down could lead to layoffs and possibly permanent downsizing.

Question 5: You are an Assistant U.S. Attorney receiving the matter for criminal prosecution. Please evaluate charges on violations of the NRC regulations against PPL, SSI, and their chief executive officers.

V. Rape (10 points)

The charge is rape. They are college students, they had been dating for about a month, there is evidence that both he and she had been drinking. His testimony is that she consented, or at least he thought that she did. Her testimony is that she did not

¹ The news story quoted is authentic, although edited for purposes of this question. The names of the corporations and facts that follow are apocryphal.

consent, that she said no initially and then, "when he wouldn't stop I just blanked my mind." She reported it promptly to her sorority sisters and to the police; medical examination confirmed recent sexual intercourse.

Question 6: You are the law clerk to the trial judge. Please draft the appropriate jury instructions on the charge and the defenses you foresee in this case, including the respective burdens of proof.

VI. "My God, Hannah" (10 points)

Remember the unfortunate Mr. Hardie, staring at the even more unfortunate Mrs. Sutton, the elderly neighbor whom he has just shot to death, by accident, with a rusty pistol that had not discharged in the past, even when he had tried to jam a cartridge out of it, and that he believed to be unserviceable.

Question 7: Assume that Hardie is charged with Involuntary Manslaughter (or its analogue in your jurisdiction). Does he have a Mistake of Fact defense?

Question 8: Assume that Hardie was originally charged with Murder but that the jury has returned a verdict of Involuntary Manslaughter. We are now at sentencing. The Court, applying guidelines that mirror the federal guidelines, has found a base offense level of ten, and has made upward adjustments for Vulnerable Victim, 2 levels, and for Use of a Weapon, five levels, and has made an upward departure of 5 levels for "knowing endangerment and willful and wanton indifference to human life" ... for a total of 24 levels. Please evaluate an appeal of the sentence.

VII. The Mob (10 points)

Let us revisit the FBI-intercepted conversation between two members of a Boston organized crime family, referring to the First Circuit Court of Appeal's decision in Turkette that limited RICO to "legal" organizations:

Angiulo: ... they don't prove that a legitimate business was infiltrated, we're off the hook. We can do any (expletive) thing we want. They can stick RICO ... I wouldn't be in a legitimate business for all the (expletive) money in the world to begin with ... The law says that whoever infiltrates legitimate businesses in interstate commerce shall be susceptible to this.

Zannino: That's right.

Angiulo: Our argument is we're illegitimate business

Angiulo: We're, we're, we're illegal here, illegal there, arsonists. We're every (expletive) thing.

Zannino: Pimps! ... Prostitutes!

Angiulo: The law does not cover us. Is that right?

Zannino: That's the argument.

Question 9: Recalling the Model Penal Code provisions for Mistake of Law discussed in Barker, if Angiulo and Zannino were on trial for violations of RICO in a Model Penal Code jurisdiction, would they be entitled to a Mistake of Law defense?