

CRIMINAL LAW EXAM
Monday, December 15, 2008

Professor Houck

INSTRUCTIONS

1. This is a closed book exam. No outside materials of any kind are permitted.
2. You will have three hours to answer these questions. Please restrict your answers to the questions asked. 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. Allocate your time accordingly.
4. In your answers, please also observe the following:
 - answer the question
 - if writing, write on one side of a page only and legibly
 - several questions arise from recent news reports from which you may have learned more or different facts than those given. Accept the facts as stated in the questions, and no others, in your analysis.
5. Keep your head. There is nothing here beyond you.

2008 EXAM: IT'S IN THE NEWS!

I. Cyberbullying [20 points]

“Mom Avoids Worst in Cyberbully Trial”

Times Picayune, Nov. 27, 2008

“LOS ANGELES – A Missouri mother on trial in a landmark cyberbullying case was convicted Wednesday of only three minor offenses for her role in a mean-spirited Internet hoax that apparently drove a 13-year-old girl to suicide. . . .

Prosecutors said Drew and two others created a fictitious 16-year-old boy on MySpace and sent flirtatious messages from him to teenage neighbor Megan Meier. The “boy” then dumped Megan in 2006, saying, “The world would be a better place without you.” Megan hanged herself with a belt in her bedroom closet. . . .

Prosecutors said Drew wanted to humiliate Megan for saying mean things about Drew’s teenage daughter. They said Drew knew Megan suffered from depression and was emotionally fragile.”

Question 1 [20 points]:

The US Attorney, following the verdict, asks you to draft proposed legislation prohibiting cyberbullying. Please do so, and explain the choices you are making and their reasons.

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II. William Jefferson [40 points]

“Jefferson trial date is still unclear”

Times Picayune, Nov. 28, 2008

“WASHINGTON – More than 39 months after FBI agents raided his home and found \$90,000 stuffed in his freezer, Rep. William Jefferson, D-New Orleans, still is without a firm date for a corruption trial that could derail his political career even if voters give him a 10th term in Congress Dec. 6. . . .

Jefferson is accused of bribery, conspiracy and racketeering charges based on what the government says was a series of schemes in which he demanded, and sometimes received, payments to companies controlled by family members and supporters, in return for his help getting contracts, mostly in West Africa.”

News reports state the following [not yet proven in a court of law]. In the course of his service in the House of Representatives on committees dealing with commerce and foreign affairs, Congressman Jefferson established personal contacts with the heads of states of African countries. Several American businessmen approached Jefferson, individually, for his assistance in promoting various projects in the region. These same businessmen then, at Jefferson’s suggestion, made contributions to several Jefferson-family owned corporations. Jefferson contacted at least one West African leader on several occasions, from his House of Representatives office, on House of Representatives stationary and postage, and over his signature as Congressman William Jefferson (above which he penned, “Bill”), to promote a computer service contract with one of these businessmen. At the end of the investigation, Jefferson told a businesswoman, who was then cooperating with the FBI, to make her contribution to him directly, in cash, and to leave no record. The moneys were marked by the

FBI, the contribution made, and later recovered in a court-ordered search of Jefferson's home, stashed in his freezer. Ninety thousand dollars, in ice cold bundles.

Jefferson, and the businessmen, are charged with Conspiracy to Commit Bribery, Bribery, and Racketeering. Among other defenses, Jefferson claims that he believed and still believes that his conduct was protected by the Speech and Debate clause of the Constitution, which reads in pertinent part, "and for any Speech or Debate in either House, they [members of Congress] shall not be questioned in any other place". Assume further that this section has been liberally construed by the Supreme Court to protect legislative independence, extending it to cover, for example, a Senator accused of leaking classified materials to the press in order to advance legislative objectives. Assume further that the Court has not, however, dealt with Speech and Debate immunity from a bribery charge.

The federal Conspiracy statute 18 USC Sec. 371 reads:

"If two or more persons conspire to commit any offense against the United States . . . in any matter or for any purpose . . . and one or more such persons do any act to effect the object of the conspiracy", each shall be subject to fine and punishment.

The federal Bribery statute reads:

"§ 201. Bribery of public officials and witnesses

(a) For the purpose of this section –

(1) the term 'public official' means Member of Congress . . .

(3) the term 'official act' means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may be law be brought before any public official, in such officials official capacity, or in such official's place of trust or profit.

(b) Whoever –

(1) directly or indirectly, corruptly give, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent –

(A) to influence any official act; or

(B) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of the lawful duty of such official or person;

(2) being a public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for:

(A) being influenced in the performance of any official act;

(B) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or

(C) being induced to do or omit to do any act in violation of the official duty of such official or person"

shall be subject to fine and punishment.

RICO provides, as we have studied in this class.

Question 2 [40 points]:

Please assess the viability of each charge.

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III. O.J. Simpson [20 points]

“Dealer testimony supports Simpson in Las Vegas trial”

Times Picayune, Sept 17 2008

“LAS VEGAS – a sports memorabilia dealer who claims O.J. Simpson and five other men robbed him at gunpoint testified Tuesday that some of the items taken from him were the former football star’s family heirlooms. “I believed these items belonged to Mr. Simpson’s family,” said the alleged victim, Bruce Fromong. “They should go to his kids.” . . .

Fromong had testified that two of Simpson’s associates carried guns when they rushed into the hotel room. During the six-minute encounter, Fromong said, Simpson waved an arm up and down while someone yelled “put the gun down.” . . .

Fromong also testified that Simpson’s former agent, Mike Gilbert, hid some of the gridiron star’s memorabilia to thwart the judgment. He recalled an incident at Simpson’s Los Angeles mansion in which the football player joked about how the Goldman family would never get the valuable mementos.”

The facts appear to be these. A “collectables” dealer named Fromong, apparently in good faith, purchased several personal items of the former football star, including a football signed by members of a former team, team photographs, and personal photos of Simpson’s children, and was looking to sell them. Simpson, learned of this and, “identifying himself as a wealthy buyer”, called up Fromong and offered to buy the items. The rendezvous was set to take place in Fromong’s motel room. Simpson arrived along with several bodyguards and called Fromong from the desk. Fromong invited Simpson up, opened the door, and in rushed O.J., yelling, and two bodyguards waving pistols. O.J. et al searched the premises, finding sports memorabilia of other famous athletes, but left taking only those that had belonged to Simpson.

O.J. testified that the items were his and he was going in to “negotiate” for them. When asked on cross-examination whether, if negotiations failed, he was going to simply take them Simpson replied, “I don’t know, probably so, I mean they were mine”. He further stated that he had no idea that his bodyguards were armed, and had explicitly told them to “keep it cool”. He himself was unarmed.

Question 3 [20 points]:

O.J. Simpson is charged with Aggravated Burglary, defined as Burglary “while armed with a dangerous weapon”, a serious felony. Please assess the charge.

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IV. Help Desk [15 Points]

“Dear Professor Houck,”

Email June 23, 2008 from former student studying for NY Bar

“I just read this article in the Times-Pic regarding the conviction of a Tulane student for ‘attempted voluntary manslaughter’. . . .

I admit that if you stab someone 7 times, even in the unreasonable belief that it was in self-defense, you were probably attempting to kill the person. If the person had died, then you might be guilty of voluntary manslaughter. But if the person lives, how does that equate to attempted voluntary manslaughter – voluntary manslaughter exists as a charge b/c we recognize that not all killings are outright first-degree murder. But if there is no death . . . isn't it just aggravated battery?

I don't know how a jury would be able to wrap their heads around an attempted voluntary manslaughter charge . . . is it fair to a defendant to allow a jury to imply reckless intent to kill?"

Question 4 [15 Points]

a. Please advise.

b. Assume now that the victim died. The accused student testifies that he had been drinking heavily and believed that the deceased was attacking him with a meat cleaver. A meat cleaver was found in the deceased's hand. Another witness, who was in the other room, says that the deceased was in the kitchen preparing dinner. She heard loud words, then shouts, then screams. Please outline jury instructions on potential charges and defenses in your jurisdiction, including burdens of proof.

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V. Sanity [5 points]:

“Judging Whether a Killer is Sane Enough to Die”

Times Picayune, June 2, 2006

“HOUSTON, June 1 – Scott Panetti, a death row inmate in Texas, understands that the state says it intends to execute him for the murder of his wife's parents.

But Mr. Panetti, 48, who represented himself in court despite a long and colorful history of mental illness, says he believes that the state's real reason is a different one. He says the state, in league with Satan, wants to kill him to keep him from preaching the Gospel.

That delusion has been documented by doctors and acknowledged by judges and prosecutors. It poses what experts call the next big question in death penalty law now that the Supreme Court has barred the execution of juvenile offenders and the mentally retarded: what makes someone too mentally ill to be executed? . . .”

Question 5 [5 points]: What is your response to this question?