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Syracuse University
College of Law

Final Examination, Law 735

Federal Criminal Law

Fall, 2007

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This is a **3-hour**, in-class examination.

Instructions:

This examination consists of five parts. Parts A, C and D are each comprised of a fact pattern followed by questions based upon that fact pattern.

Part B contains one brief question whose answer requires policy analysis and argument.

Part E contains 13 objective questions (numbers 7 through 19). Your answers for Part E need not be complete sentences. For most of them, just a few words can receive full credit.

Answer the exam questions and give reasons for your answers. **In some instances in Parts A, B, C and D, there is no one right answer, so your explanations are very important for determining your grade.** The questions in Part E have specific answers that do not require much explanation. Except for the objective questions in Part E, you are strongly encouraged to read all of the questions in a given part before answering any of the questions in that part.

The questions will not appear in ExamSoft. You will need to read them from the printed hardcopy of the examination in your packet.

A statutory supplement is provided and should be in your examination packet. It contains the text of Sections 2, 241, 242, 245, 371, 1956, 1957, 1961, and 1962 of Title 18, United States Code.

Of course, the Code of Student Conduct is in effect.

Grading is anonymous. Do not include your name in your answers.

If a proctor, the Registrar or a Dean needs to contact me during the examination, please tell them that I can be reached at (518) 257-2435. You are not permitted to contact me directly.

- William Snyder

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The Examination Questions

Part A

(28% of total examination – recommend 50 minutes)

Fact Pattern for Part A:

The Westies were formed in the mid-1960s when James Coonan and his confederates attempted to wrest control of criminal activity in Hell's Kitchen from the then predominant gang leader, Michael "Mickey" Spillane. Coonan was ultimately victorious in his efforts to drive Spillane from power and seize control of the West Side. Throughout the 1970s and early 1980s, the Westies, under Coonan's leadership, maintained and expanded their position as the preeminent organized crime group in Hell's Kitchen. By the mid-1970s, Francis "Mickey" Featherstone had become Coonan's righthand man and the Westies' second-in-command. The Westies' money-making activities centered around loansharking, narcotics dealing, extorting local labor unions and controlling New York's West Side piers. In conducting their various illicit businesses, Coonan and his gang routinely engaged in extreme acts of violence and effectively cultivated a reputation for barbarism. For example, in January 1978, Coonan, and fellow Westies, Mickey Featherstone and Anton "Tony" Lucich, murdered and dismembered Richard Tassiello, a loansharking customer who had fallen behind in his payments. In May 1977, in a similarly macabre incident, Coonan, William "Billie" Beattie and other members of the Westies, murdered and dismembered Charles "Ruby" Stein, a loansharking financier to whom Coonan owed a substantial sum of money.

In the late 1970s, the Westies' power was further enhanced when it entered into an alliance with the Gambino Organized Crime Family. The Gambinos agreed to finance the Westies' loansharking operation and also permitted the Westies to use the Gambino name and reputation in connection with their own illicit businesses. In exchange, the Westies paid the Gambino Family ten percent of the proceeds from various illegal activities.

In the mid-1970s, Coonan established a loansharking business through which he supplied money at high rates of interest to Westies members. In turn, the members loaned money at usurious rates of interest to inhabitants of the Hell's Kitchen community. Although **Kevin Kelly** initially served as a collector and enforcer for other gang members, he was eventually rewarded with his own loansharking operation. Consistent with the Westies' reputation, Kelly utilized violence to ensure that his loansharking customers kept up their payments. For example, Kelly and fellow Westie Kenneth Shannon dealt with one delinquent loansharking customer by stripping and beating the customer, and then leaving him tied to a tree. In another incident, Kelly and fellow Westie James McElroy, pistol-whipped a loansharking customer for missing his payments and for making disparaging remarks about the Westies.

From 1984 until 1986, the Westies were involved in four interrelated cocaine distribution operations. Kelly and two other Westies members were primarily responsible for control of cocaine distribution in bars located on the Upper East Side of Manhattan. Kelly also lent assistance to other gang members who operated their own cocaine distribution operations. In

particular, Kelly supplied both cocaine and financing to his fellow gang members, and helped them collect debts.

Vincent Leone was an officer of Local 1909 of the International Longshoremen's Association ("ILA") and an associate of the Gambino Family. The Gambinos assigned Leone to help the Westies oversee criminal activities on the West Side piers, where members of Local 1909 worked. In November 1983, the Westies discovered that Leone had been skimming money from the profits generated on the piers. Consequently, Coonan, who was then in prison, sent word through his wife Edna that Leone was to be killed. At the same time, Coonan ordered the murder of a Westie who had defied him and also instructed that another Westie was to be "put out of business." As directed, Edna Coonan approached Mickey Featherstone and offered him "control of the piers" if he would undertake the assignment. Featherstone refused. Several days later, however, Featherstone mentioned Coonan's request to Kelly and McElroy. Kelly expressed interest and, accompanied by McElroy, visited Coonan in prison. During their prison meeting, Coonan confirmed that he wanted Leone killed and promised Kelly and McElroy control of the piers if they engineered the murder and convinced Featherstone to assist in overseeing waterfront criminal activity.

On February 11, 1984, Leone was driving in his car with Kelly and McElroy. Either Kelly or McElroy asked Leone to pull over. When the car stopped, Kelly shot Leone six times in the head. After the shooting, Kelly and McElroy fled the scene in a car driven by fellow Westie William "Billie" Bokun.

In April 1985, Coonan and McElroy learned that the Gambino Family wanted to have John O'Connor, an officer of Carpenters' Local 608, "kneecapped," *i.e.*, injured but not killed. Apparently, O'Connor had caused difficulties on a construction site that was under Gambino Family protection. Coonan and McElroy offered to handle the job for the Gambinos. As a result, Kelly, McElroy and Shannon planned the shooting. In the early morning of May 7, 1986, Kelly waited for O'Connor outside his office building. When O'Connor arrived, Kelly followed him inside and shot him in the back. O'Connor survived the shooting.

On March 25, 1977, John Bokun, a friend of several Westies, was arguing with Michael Holly, a Hell's Kitchen resident, outside a bar. John Bokun suddenly drew a gun and shot Holly in the chest. An off-duty police officer happened to witness the shooting and attempted to intercede. Bokun responded to these efforts by firing several shots at the officer. The officer returned the gun fire, fatally wounding Bokun. Holly survived the incident. From that day forward, the Westies held Holly responsible for the death of John Bokun. On various occasions thereafter, the Westies plotted to avenge John Bokun's death. The plans were repeatedly aborted, until 1985 when Coonan directed several members of the Westies to kill Holly. Kelly, Shannon and Billie Bokun (John Bokun's brother) planned the killing. On April 25, 1985, at midday, Bokun, wearing a disguise, approached Holly on a crowded street and fired five bullets into his back. Bokun then escaped in a get-away car driven by Shannon.

The following day, Featherstone was arrested and eventually charged with the murder of Michael Holly. Featherstone was linked to the crime by two eyewitnesses and a variety of circumstantial

evidence. In the spring of 1986, Featherstone went to trial in state court and was convicted. After the conviction, Featherstone and his wife, Marcelle (“Sissy”) Featherstone, continued to insist that Featherstone was innocent and eventually agreed to cooperate with law enforcement authorities' efforts to investigate the Westies and perhaps to expose Holly's actual killers. As a result of Featherstone and his wife's cooperation, the government was able to amass substantial evidence of the Westies' criminal activities. The investigation also conclusively established that Featherstone was not involved in the murder of Holly and, therefore, his state conviction was set aside.

1. Kelly and others are tried for participating in and conspiring to participate in a racketeering enterprise, in violation of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1962(c) & (d). At the end of the presentation of evidence, Kelly moves for a directed verdict of acquittal on the RICO counts on the ground that there is insufficient evidence of an enterprise. You are the judge’s law clerk. As if you are drafting an opinion for the judge, answer and discuss whether the Westies are a RICO enterprise, citing the relevant facts above and all applicable statutes and precedents that we studied. (30 minutes)
2. What are the other elements of the crimes of participating in and conspiring to participate in a racketeering enterprise, in violation of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1962(c) & (d)? Do the facts above establish each element, and, if so, how? You are strongly encouraged to address each element in turn in your answer. (20 minutes)

Part B

Part B is worth 16 % of the total exam. I recommend you commit 30 minutes to answering Part B.

3. Should the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1961, *et seq.*, be the law? Why? Please discuss both the benefits and risks of having this statute at all and particularly at the federal level. (30 minutes)

Part C

(16 points – recommend 30 minutes)

Fact Pattern for Part C:

In 1988, William Tarpley, deputy, Collingsworth County Sheriff's police force, learned of a past affair of his wife Kathryn and Kerry Lee Vestal. Tarpley devised a plan to lure Vestal to the Tarpley home for the purpose of assaulting him.

Tarpley had his wife call Vestal and tell him that she had separated from her husband and that she wanted him to come pick her up. On the day that Vestal was to arrive, Tarpley and another deputy, Michael Pena, made a pair of "sap gloves" in his office at the sheriff's station. These are gloves with rubber hosing filled with metal or lead shot attached to the fingers. Tarpley told Pena that he planned to have his wife call her boyfriend over and then use the sap gloves on him.

That evening, Tarpley parked his patrol car behind the house of another deputy so as not to alert Vestal that he was at home. When Vestal arrived at the Tarpley residence, Mrs. Tarpley opened the door and pulled him into the house. Mr. Tarpley immediately tackled Vestal and hit him repeatedly in the head. He also inserted his service pistol in Vestal's mouth. He told Vestal that he was a sergeant on the police department, that he would and should kill Vestal, and that he could get away with it because he was a cop. He repeated "I'll kill you. I'm a cop. I can." Tarpley then had his wife telephone the sheriff's station and ask Pena to come to their house. She did, and when Pena arrived, Tarpley introduced him to Vestal as a fellow sergeant from the police department. Pena confirmed Tarpley's claims that Tarpley had shot people in the past.

Eventually, Tarpley let Vestal go, chasing him out of the house with threats to kill him if he reported the incident. Pena then gave Vestal his keys, and Vestal drove away, but not before Tarpley smashed the headlights on Vestal's truck. Pena and the Tarpleys followed Vestal in Pena's squad car until Vestal had left town. Pena also apparently radioed for another officer to meet up with them and that police car also followed Vestal to the edge of town.

According to Tarpley, he was acting as a jealous husband, not as a police officer. He assaulted Vestal in his own home under circumstances in which it was clear that the motive for his attack was the extra-marital affair. He never threatened to arrest Vestal. Vestal already knew he was a cop.

4. You are called upon to draft an indictment of Tarpley and of Pena. What offenses would you charge and why? In your answer, be sure to consider Sections 241, 242 and 245. (30 minutes)

Part D

(22 points – recommend 40 minutes)

Fact Pattern for Part D:

In the summer of 1989, **Ellen Campbell** was a licensed real estate agent working at Lake Norman Realty in Mooresville, North Carolina. During the same period, Mark Lawing was a drug dealer in Kannapolis, North Carolina. Lawing decided to buy a house on Lake Norman. He obtained Campbell's business card from Lake Norman Realty's Mooresville office, called Campbell, and scheduled an appointment to look at houses.

Over the course of about five weeks, Lawing met with Campbell approximately once a week and looked at a total of ten to twelve houses. Lawing represented himself to Campbell as the owner of a legitimate business, L & N Autocraft, which purportedly performed automobile customizing services. When meeting with Campbell, Lawing would travel in either a red Porsche he owned or a gold Porsche owned by a fellow drug dealer, Randy Sweatt, who would usually accompany Lawing. At one point, Lawing brought a briefcase containing \$20,000 in cash, showing the money to Campbell to demonstrate his ability to purchase a house.

Lawing eventually settled upon a house listed for \$191,000 and owned by Edward and Nancy Guy Fortier. The listing with the Fortiers had been secured by Sara Fox, another real estate agent with Lake Norman Realty. After negotiations, Lawing and the Fortiers agreed on a price of \$182,500, and entered into a written contract. Lawing was unable to secure a loan and decided to ask the Fortiers to accept \$60,000 under the table in cash and to lower the contract price to \$122,500. Lawing contacted Campbell and informed her of this proposal. Campbell relayed the proposal to Fox, who forwarded the offer to the Fortiers. The Fortiers agreed, and Fox had the Fortiers execute a new listing agreement which lowered the sales price and increased the commission percentage (in order to protect the realtors' profits on the sale).

Thereafter Lawing met the Fortiers, Fox and Campbell in the Mooresville sales office with \$60,000 in cash. The money was wrapped in small bundles and carried in a brown paper grocery bag. The money was counted, and a new contract was executed reflecting a sales price of \$122,500. Lawing tipped both Fox and Campbell with “a couple of hundred dollars.”

William Austin, the closing attorney, prepared closing documents, including HUD-1 and 1099-S forms, reflecting a sales price of \$122,500, based on the information provided by Campbell. Campbell, Fox, Austin, Lawing, Lawing's parents and the Fortiers were all present at the closing. The closing documents were signed, all reflecting a sales price of \$122,500.

5. Did Campbell violate 18 U.S.C. § 1956(a)(1)(B)(i)? Did Campbell violate 18 U.S.C. § 1957(a)? For both statutes, why or why not? (30 minutes).
6. These facts make out a violation of another major criminal (not forfeiture) statute that we studied. Which statute, and how are its elements met? (10 minutes)

Part E

Part E is worth 18 % of the exam. I recommend you commit 30 minutes or less to Part E. Full sentences are not required for your answers.

7. What is the dominant legal test for determining whether government action violates the *Posse Comitatus* Act?
8. Approximately how many people have been prosecuted for violating the *Posse Comitatus* Act?
9. What is the federal statutory mandatory minimum sentence for possession with intent to distribute 100 grams of a mixture or substance containing a detectable amount of cocaine base (“crack” cocaine), assuming no prior criminal history?
10. What is the federal statutory maximum sentence for possession with intent to distribute 1000 grams (1 kilogram) of a mixture or substance containing a detectable amount of cocaine hydrochloride (powdered cocaine), assuming no prior criminal history?
11. Please provide the holding and brief explanation of the facts of *United States v. Lopez*, 514 U.S. 549 (1995). (two or three sentences, maximum)
12. What is the legal test to determine if the government is selectively prosecuting a defendant?
13. What is the U.S. Department of Justice’s “*Petite* Policy?”
14. Must the government establish a *quid pro quo* to prove a violation of:
 - a) Title 18, U.S.C. § 201(b) (bribery)?
 - b) Title 18, U.S.C. § 201(c) (illegal gratuities)?
 - c) the Hobbs Act?
15. What is a *quid pro quo*?
16. A bandit sticks up a bar in New York that sells beer from Belgium, escaping with \$50. Has he had a sufficient effect upon interstate and/or foreign commerce to qualify for prosecution under the Hobbs Act? What is the standard to determine whether an effect on interstate and/or foreign commerce is sufficient for jurisdiction under the Hobbs Act? (Just a few words here are sufficient.)
17. Citizen offers Congressman \$5,000 if he will vote for a particular bill. Congressman agrees. Citizen never pays the money and Congressman never votes on the bill. Has citizen violated Section 201? Has Congressman violated Section 201?

18. What is the knowledge element of Title 18, United States Code, Section 2339B, Providing Material Support Or Resources To Designated Foreign Terrorist Organizations? In other words, to convict the defendant, the government must prove that the defendant knew what?"
19. Defendant transfers title to an airplane. Is that a "financial transaction" for purposes of Section 1956? Is that a monetary transaction for purposes of Section 1957?

END OF EXAMINATION

Good luck to all of you in your formal education and beyond. Truly, it has been a pleasure to get to know and to work with each of you. - WCS