

Syracuse University

College of Law

**Final Examination, Law 735**

Federal Criminal Law

Fall, 2008

Visiting Assistant Professor William C. Snyder

This is a 3-hour, in-class, closed-book examination.

**Instructions:**

This examination consists of four parts. All parts count equally – that is, each part is 25% of the total points in the exam. Part C deals primarily with policy. Part D requires short answers and not necessarily complete sentences.

Answer the exam questions and give reasons for your answers. In some instances in Parts A, B and C, there is no one right answer, so your explanations are very important for determining your grade. The questions in Part D have specific answers that do not require much explanation. But, because I give partial credit, feel free to provide explanations in Part D if you have time and are not sure of your answer. There is also a bonus question (#17), the correct answer to which can be used to make up points missed anywhere in the examination.

The questions will not appear in ExamSoft. You will need to read them from the printed hardcopy of the examination in your packet. Make sure the number under which you answer a question in ExamSoft corresponds to the number of the question. Last year, some people entered all of their answers to all questions under #1 in ExamSoft, which left a very confused jumble.

A statutory supplement is provided and should be in your examination packet. It contains the text of Sections 2, 241, 242, 245, 371, 1001, 1503, 1951, 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

[intentional page break]

The Examination Questions

**Part A**

(25% of total examination – recommend 45 minutes)

Dern is a member of the City of Metropolis City Council, having been elected last year to a four-year term. Last March 1, the City Council began considering a major construction project to provide new office space for city agencies. The Council decided to acquire land with the assistance of a real estate broker, and to hire a contractor to construct a new building on the site once it is purchased. The Council agreed to meet on March 18 to continue the discussions.

On March 12, Dern met with real estate broker Pat Parsons over coffee at Dern's home. Parsons specializes in purchases of land for commercial and municipal building projects. During the meeting, Dern said to Parsons, "We have this big city project coming up. I sure would like for you to be our broker. Would you like a shot?" Parsons responded, "Of course." Dern then said, "Well, I can assure you that you will be considered, with a substantial brokerage fee. You know, it's a competitive business. But the only way I can assure that you will be considered would be for me to have a, you know, stake in the venture." Parsons said, "How does a half percent sound?" Dern nodded in response.

Dern next told Parsons that the City Council had already reached a confidential decision that it would only hire an agent who agreed to accept a real estate commission of lower than the standard six percent of the purchase price.

The City Council subsequently retained Parsons for the project. The Council chose Parsons because Parsons's proposal to the Council indicated Parsons's willingness to accept less than the usual six percent real estate commission.

On July 1, the city purchased the property at a fair market value of \$25 million. That day, Parsons gave Dern \$125,000 in cash, Dern's share of Parsons's commission.

Dern has been convicted of extortion, 18 U.S.C. §1951 (The Hobbs Act), based upon the foregoing. In the indictment and at trial, the government asserted that Dern was guilty under both the "use of force" theory and the "color of official right" theory. By means of a special verdict,<sup>1</sup> the jury convicted Dern under both theories.

1. What viable arguments does Dern have on appeal? What is the likely outcome, and why?

---

<sup>1</sup> The special verdict means that we know that the jury was unanimous on both theories.

## Part B

Part B is worth 25 % of the total exam. I recommend you commit 45 minutes to answering Part B (questions 2 and 3).

Lewis ran M & M Associates (“M & M”), a check-cashing business, out of a small enclosed area that Lewis rented in the back of Keller’s Bar. M & M charged its customers a 1% or 1.5% commission on each check cashed. M & M is a sole proprietorship, and has no employees other than Lewis, although Lewis did retain an accountant who came to M & M once or twice a month to keep the books. Lewis used some of the commission money to run the business and to buy computers and other office equipment.

Bookmakers tended to frequent Keller’s and to use M & M as a check-cashing service. Sometimes, M & M cashed bookmaker checks that banks would not accept. For example, some checks were neither made out by nor payable to the bookmakers (or the bookmakers’ agents) who were cashing them. Lewis neither asked about the names on the checks he cashed nor required that the checks be endorsed. And, Lewis never filed a currency transaction report (CTR) notifying the Internal Revenue Service of his many currency transactions involving more than \$10,000, thus violating civil and criminal laws. Lewis engaged in dozens of these transactions over a five-year period.

Assume that you are the Assistant United States Attorney in charge of an investigation into Lewis’s activities, and that you believe you have sufficient evidence to charge Lewis with multiple counts of money laundering, 18 U.S.C. § 1956(a)(1) , and failing to file CTRs, 31 U.S.C. §§ 5313(a) and 5322(b) (the latter two being statutes only mentioned in passing in our course). You are also considering a RICO charge against Lewis.

2. What RICO theory or theories would be viable? More specifically, what would you charge as the enterprise? What arguments about the enterprise might the defense assert if you pursue a RICO charge?
3. 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 recommended to address each element in turn in your answer.

### Part C

(25 points – recommend 45 minutes)

Rodney King was an African-American motorist who was stopped after engaging the police in a high-speed car chase. The force used by officers during and/or after his arrest was videotaped (which we watched in class). The videotape was widely distributed and broadcast, and the case became notorious.

Four Los Angeles police officers who participated in the arrest of Mr. King were tried under state law for various assault-related crimes, including assault with a deadly weapon. They were acquitted by an all-white jury, touching off riots in parts of Los Angeles which caused more than 40 deaths and millions of dollars of property damage.

Because of jurisdictional limitations, there was no federal crime of “assault” that could have been applied to the police officers in the Rodney King case. But the officers were subject to prosecution under Title 18, United States Code, Section 242, a civil rights statute enacted under the authority of the 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> Amendments to the Constitution, which were ratified shortly after the Civil War. After their state acquittals, two of the Los Angeles police officers who participated in the arrest of Mr. King were convicted in federal district court by a multi-racial jury of § 242, Deprivation Of Rights Under Color Of Law.

The American Civil Liberties Union (ACLU) had long opposed the “dual sovereignty” doctrine and had argued that successive prosecutions by state and federal authorities were improper, regardless of the U.S. Supreme Court’s resolution of the constitutional issue in *Bartkus*<sup>2</sup> and *Abbate*.<sup>3</sup> After the initial acquittal of the police officers mentioned above, the national board of the ACLU decided to “suspend” its opposition to the “dual sovereignty” doctrine and support the federal prosecution. During the federal trial, however, the national board reversed itself and condemned the federal prosecution. The local Southern California ACLU chapter broke ranks with the national board and continued to support the federal prosecution.

4. How should this debate be resolved? Is the dual sovereignty doctrine good policy in today’s world? Be sure to address both legal and policy reasons for your position.

---

<sup>2</sup> “Every citizen of the United States is also a citizen of a state or territory. He may be said to owe allegiance to two sovereigns, and may be liable to punishment for an infraction of the laws of either. The same act may be an offence or transgression of the laws of both.”

<sup>3</sup> “It follows that an act denounced as a crime by both national and state sovereignties is an offense against the peace and dignity of both and may be punished by each.”

**Part D**

Part D, then, must be worth 25 % of the exam. I recommend you commit 45 minutes *or less* to Part D.

5. What is the *Aguilar* Rule? (*Aguilar* was the case in which a federal district judge was prosecuted for one count of disclosing a wiretap and one count of violating Title 18, U.S.C. § 1503, Influencing Or Injuring Officer Or Juror Generally.)
6. Today, post *Booker*, what are the steps for imposing a sentence in federal district court? This question does not ask what are the steps for determining the applicable Sentencing Guidelines range. Rather, now that the Guidelines are “advisory,” what are the steps for actually imposing the sentence? [Hint: you could reason these steps out from the cases, but they are laid out plainly in *Gall v. United States*, the drug case about a University student who withdrew from a conspiracy prior to arrest in which the district court departed from the Guidelines range by 100%.]
7. International law recognizes five principles of jurisdiction by which domestic criminal courts of the United States may reach conduct outside United States territory. What are four of the five, along with a brief definition of each?
8. What is the dominant legal test for determining whether government action violates the *Posse Comitatus* Act?
9. What is the statutory mandatory minimum sentence for possession with intent to distribute 100 grams of a mixture containing a detectable amount of cocaine base (“crack” cocaine), assuming no prior criminal history?
10. What is the 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)?
11. What is the U.S. Department of Justice’s “*Petite* Policy?”
12. In plain words, what is the offense of “structuring?”

13. Which of the following are false?

- a. Both laundered funds and any property that facilitates the laundering are forfeitable.
- b. A prosecution under Title 18, U.S.C. § 1956 may not be based upon funds drawn from a commingled account unless those funds can be traced and shown to be the proceeds of unlawful activity. (Majority rule agreed upon in class.)
- c. A prosecution under Title 18, U.S.C. § 1957 may not be based upon funds drawn from a commingled account unless those funds can be traced and shown to be the proceeds of unlawful activity. (Majority rule agreed upon in class.)
- d. Willful blindness can satisfy the knowledge requirements of Section 1956.
- e. Willful blindness can satisfy the knowledge requirements of Section 1957.

14. Is it a valid defense to Title 18 U.S.C. § 245 that the defendant bashed in the victim's skull only because he thought the victim was homosexual? (Think *U.S. v. Bledsoe*.)

15. Which of the following are false?

- a. The two-witness rule continues to be applicable to Title 18, United States Code, Section 1621 but not 1623.
- b. Under Title 18, United States Code, Section 1001, “willfully” requires that the prosecution show that the defendant acted with a purpose to do something the law forbids and with an awareness of the generally unlawful nature of his actions, not that he knew he was breaking a particular law.
- c. Under Title 18, United States Code, Section 1001, the defendant must know that he is lying to some federal agency, but the prosecution does not need to show that he knew he was lying to a particular federal agency.

16. Define “materiality” as it applies to Title 18, United States Code, Section 1001. That is, in *United States v. Whab* (the guy who lied to the federal agent saying that he was born in Brooklyn), the Court stated that: “A false statement is material if it has a \_\_\_\_\_.” (No, you don't need the exact words, just the concept.)

**Bonus question:**

17. Approximately how many federal crimes exist today?

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