

Exam No. _____

Advanced Criminal Law

Final Examination

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Fall Semester 2007

This is a 3-hour in class examination. Place your examination number at the top of this page. In addition, place your examination number on any bluebook (or computerized equivalent) you use to answer this examination. Do not include your name or personal information anywhere on the exam instructions or your answer. Also, if you are handwriting your exam, please write legibly.

This exam consists of two parts: Part I is one essay question worth 50% and Part II is fifteen (Short Answer, Multiple Choice and True/False) questions worth 50%. Your answers should be based on the assigned readings and the material covered in this class.

Read the exam questions carefully and attempt to answer each directly. Clear, well organized, and concise expression will be rewarded. If there are ambiguities in the questions, discuss the ambiguity and how it impacts your answer. You may consult your casebook, class handouts, class notes or outlines that you have personally prepared.

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Part I (Essay)

While attending the annual Mayor's Conference in Washington, D.C. on July 14th, Quimby, who is mayor of Springfield, Ohio, gets a phone call from his constituent, Montgomery Burns, the owner of the Springfield nuclear reactor. Burns knows that Mayor Quimby is one of three panelists who will decide which company receives the pending federal contract to build the new Shelbyville nuclear reactor.

During the phone call to Mayor Quimby, Burns states, "I will give you \$20,000 if you make sure I get that contract." The mayor, who is trying to shed his somewhat shady image, gives Burns his standard line, "I have to treat you like all other constituents and I can't provide any special favors." In response to this statement, Burns says, "I understand."

On July 21st, the Mayor returns from D.C. and finds \$10,000 in cash in a brown paper bag in his office. The note attached to the bag says "thanks for all of your help over the years, just keep taking care of me--Montgomery Burns." Mayor Quimby, not wanting his local bank to know too much about his finances, places the cash into his personal bank account by making two separate deposits at two different ATM locations on the same day, one for \$9,998 and the other for \$2.

Lisa, Quimby's Chief of Staff, gets wind of the reactor contract and mails a letter to Burns with the following language. "I am the Mayor's right hand woman. Give me \$20,000 or you will never get that contract!" The letter scares Burns who turns it over to the FBI.

Upon receipt of the letter, a grand jury is convened to investigate the mayor's office and 2 FBI agents, Homer and Bart, pay Lisa a visit. Homer tells Lisa that they are here pursuant to a grand jury investigation and want to know if she has "ever sent a letter to Mayor Quimby." Lisa responds by saying, "no." Lisa refuses to answer any further questions without her lawyer.

On August 1st, despite having the highest bid, the mayor voted to award Montgomery Burns the Shelbyville nuclear reactor contract. On the same day, the grand jury subpoenaed Mayor Quimby to testify. During the mayor's testimony, the following colloquy occurs between him and the Assistant U.S. Attorney (AUSA):

AUSA: Did you make a deposit of \$10,000 into your personal bank account on July 21st

Mayor: No

AUSA: Did anyone from Springfield, Ohio contact you on July 14th?

Mayor: No

AUSA: Did Montgomery Burns call you from Ohio while you were in Washington, D.C.?

Mayor: No

AUSA: Did you communicate with Montgomery Burns at all on July 14th?

Mayor: No

AUSA: Earlier, we heard testimony from Montgomery Burns who said that he talked to you on July 14th. Are you saying that conversation never happened?

Mayor: I stand corrected. I did talk to Montgomery Burns that day.

You are working in the U.S. Attorney's Office (congratulations, you did really well in law school!). Your boss, the U.S. Attorney, has walked into your office and asked for a charging memo based on the facts presented in Part I of this exam. More specifically, she wants to know what criminal charges (if any) can be brought against (1) Mayor Quimby, (2) Chief of Staff Lisa and (3) Montgomery Burns. After discussing the charges, she wants you to examine possible defenses and the likelihood of conviction. Finally, the U.S. Attorney only wants you to address the crimes covered in your Advanced Criminal Law class.

Part II of the exam is on the next page.

Part II (Short Answers, Multiple Choice and True/False)

1. In class we have discussed several instances where Congress has passed a statute to override or change a U.S. Supreme Court opinion, provide one example.
2. Briefly discuss the factors to be considered when deciding whether to prosecute under federal or state criminal charges. Of the factors you listed, which one do you consider the most important and why?
3. Briefly discuss any changes you would make to the federal grand jury. If you would not make any changes, explain why the status quo works.
4. Define the term “supervisory authority.” Also, give one example of how that doctrine has been used by the courts.
5. Under RICO 18 USC §1962(c), can someone/something be both the “enterprise” and the “person”? Discuss the reason for your answer.
6. Discuss the differences between criminal and civil asset forfeiture. If you were a prosecutor, which one (civil or criminal) would you prefer and why?
7. In U.S. v. Sattar 314 F. Supp. 2D 279 (Lynne Stewart case), the District Court struck down the original indictment. Briefly discuss why the court took such action and highlight the differences between 18 USC § 2339B and 18 USC § 2339A.
8. Is the federal court deprived of jurisdiction over a criminal defendant if said defendant was brought before the court via unlawful means? If not, under what doctrine is this allowed? Are there any exceptions to this doctrine?
9. A Substantial Assistance Departure pursuant to U.S.S.G. 5K1.1 is (circle the best answer)

- A) a motion filed by the defendant or his attorney
- B) restricted by the mandatory/minimum statutes
- C) both A and B
- D) none of the above

10. The federal sentencing guidelines are (circle the best answer):

- A) advisory
- B) mandatory
- C) no longer used
- D) none of the above

11. If the prosecutor fails to get a True Bill or indictment from a federal grand jury, she (circle the best answer)

- A) can't resubmit the same evidence to a different grand jury
- B) can resubmit the same evidence to a different grand jury
- C) can proceed to trial without an indictment
- D) none of the above

12. What were/was the major flaw/s of indeterminate sentencing? (circle the best answer)?

- A) disparity of sentences among similar defendants
- B) uncertainty concerning the exact length of the sentence
- C) both A and B
- D) none of the above

13. Under RICO 18 USC § 1962 (a) (b) or (c), which of the following can be an “enterprise”? (circle the best answer)

A) sheriff’s office

B) individual

C) organized crime family

D) all of the above

14. Can a municipality prosecute a defendant if the state where the municipality is located previously prosecuted the defendant for the same crime with the same elements?

(circle one) Yes or No

15. Does 18 USC § 245 (federally protected activities) cover harassment or intimidation of individuals because of their sexual orientation?

(circle one) Yes or No

End of the Exam

HAPPY HOLIDAYS!!!