

ADVANCED CRIMINAL PROCEDURE  
PROFESSOR KRAVITZ  
SPRING SEMESTER-1997

\*\*\*\*\*THE FINAL EXAMINATION\*\*\*\*\*

This examination consists of 6 questions. They are not of equal weight. Answer the questions and state your reasoning directly and concisely. The longest answers are not always the best, however mere conclusions are insufficient to receive credit.

ORGANIZATION IS VERY IMPORTANT. Read the questions carefully. Answer in the order that they are asked. Do not use facts set forth subsequent to the questions asked.

The following rules apply to this exam:

(1) All exams must be typed on 8 1/2" x 11" plain, white paper. There must be at least a 1 1/2" margin at the top and bottom of the pages. There must be a 1" margin on the side of the pages. Answers may be single spaced. There must be a cover page which has the student's number centered at the top of the page. If you are a graduating senior, the words "Graduating Senior" should appear immediately below the student number. The course and professor must also be designated on the cover

page.

(2) There is a one page, single side limit for ten point questions. There is a two page limit for the twenty point questions and a three page limit for the thirty point question.

(3) You may take as much time as you want to complete the exam, however all exams must be personally turned in at Professor Kravitz's office at 6:00 p.m. on May 8, 1997.

(4) You may use your class notes, the casebook and supplement. **YOU MAY NOT USE ANY OTHER SOURCES OR MATERIALS TO TAKE THIS EXAM. YOU MAY NOT USE WESTLAW OR LEXIS FOR THIS EXAM.**

(5) You must use appropriate citation form if you cite authorities from the casebook and supplement.

ABC Corporation ("ABC") is involved in the production, publication and distribution of adult magazines, videos and related adult-oriented merchandise. The corporate office and manufacturing facility is located at I Goodtimes Place. The following individuals are both its officers and shareholders: Alan Sandstone, president; Bertha Sandstone, vice-president; Carmen Sandstone, secretary; and Donald Sandstone, treasurer. The factory foreman is Elliot Sandstone. Landlord owns the land and building known and numbered as I Goodtimes Place.

During 1993, the federal government, pursuant to civil forfeiture statutes, obtained a seizure order and seized \$1,000,000 from ABC's bank account. It also, pursuant to the order, filed a notice of lis pendens concerning the Goodtimes Place property. Subsequently, the government instituted civil forfeiture proceedings against the currency and property, asserting that the currency was the proceeds of illegal activity and the property was used to facilitate illegal activity. The alleged illegal activity was money laundering, mail fraud and wire fraud.

Alan Sandstone and ABC Corporation filed the requisite claims and cost bonds to the \$1,000,000. Landlord did the same as to the building. All three claimants asserted that they were innocent owners of the seized property. The statutory scheme provides that "no property shall be forfeited of an owner by reason of any act or omission established by that owner or lienholder to have been committed without the knowledge of that owner or lienholder.

After the requisite adversary, probable cause hearings, the district court found that there was probable cause to believe the currency and building were used in the commission of money laundering, mail fraud and wire fraud. A jury was impaneled to hear claimants' innocent owner defenses.

At the conclusion of the forfeiture trial, the judge instructed the jury:

In order to be an innocent owner, the claimant must prove by a preponderance of the evidence that he/it did not commit the acts giving rise to the forfeiture, and, that he/it did not consent to the illegal acts of others.

The judge then submitted two interrogatories to the jury regarding each claimant's innocent owner defense which asked:

(1) Did Claimant prove by a preponderance of the evidence that he/it did not commit the crimes of money laundering, mail fraud and wire fraud?

(2) Did Claimant prove by a preponderance of the evidence that he did not acquiesce or consent to the illegal acts of third parties?

The jury returned a verdict of forfeiture concerning the \$1,000,000. The jury the first interrogatory by checking "Yes" and answered the second interrogatory -by checking "No." The jury found for Landlord on his innocent owner claim by checking "Yes" to both questions.

Subsequently, the U.S. Attorneys' Office instituted grand jury proceedings in order to investigate whether ABC and its officers should be indicted for any violations of federal criminal law. Pursuant to the investigation, foreman Elliott Sandstone testified under a grant of use immunity concerning the activities taking place at I Goodtimes Place. Among other matters, he testified that Carmen Sandstone was rarely at the business and had little knowledge of the day-to-day running of the business.

Bertha Sandstone also testified before the grand jury pursuant to an agreement not to prosecute if she cooperated with the government. Her agreement provided that she must testify truthfully before the grand jury and at all future proceedings. The agreement provided that any testimony she provided to the grand jury could never be used against her in any proceeding. The agreement further provided that she could be prosecuted for any breach of the agreement. Bertha Sandstone testified, inter alia, that Carmen Sandstone was rarely at the business and had little knowledge of the day-to-day running of the business.

In conducting its investigation, the grand jury issued subpoenas for the state and federal tax returns of ABC Corporation and Alan Sandstone, as well as a subpoena for "the personal diary and desk calendar of Alan Sandstone, if they exist."

(1)(Ten points) ABC Corporation filed a motion to quash the subpoena for its tax returns, claiming that the subpoena violated its fourth and fifth amendment rights under the U.S. Constitution. You are the trial judge. Rule on the motion to quash.

(2)(Ten points) Alan Sandstone filed a motion to quash the subpoenas for his tax returns, personal diary and desk calendar, claiming that the subpoenas violated his fourth and fifth amendment rights under the U.S. Constitution. You are the trial judge. Rule on the motion to quash.

The grand jury returned a multi-count indictment alleging:

- Count One: Conspiracy to commit mail fraud
- Count Two: Conspiracy to commit money laundering
- Count Three: Wire Fraud
- Count Four: Mail Fraud
- Count Five: Money Laundering
- Count Six: Tax Evasion on personal 1040 for 1991
- Count Seven: Tax Perjury on personal 1040 for 1992
- Count 8: Perjury before the grand jury

The following individuals were named as defendants:

- Alan Sandstone: Counts 1-7
- Bertha Sandstone: Counts 1-5
- Carmen Sandstone: Counts 1-5
- Donald Sandstone: Counts 1-5
- Elliott Sandstone: Counts 1-5, 8

Elliott Sandstone immediately moved to dismiss all charges against him in the indictment. He argued that he could not be charged due to the immunity he was given before the grand jury. An evidentiary hearing was held where it was discovered that the U.S. Attorneys' Office had segregated all its evidence against Elliott Sandstone prior to his immunized testimony before the grand jury and only used this segregated evidence when subsequently requesting an indictment against him on Counts 1-5. It was also revealed that the lead agent on the case was exposed to

Elliott Sandstone's immunized testimony prior to the agent testifying before the grand jury concerning Elliott Sandstone, however the agent did not refer to the immunized testimony when summarizing the evidence against Elliott Sandstone. The perjury count against Elliott Sandstone alleged that he gave false testimony before the grand jury while testifying under a grant of immunity.

(3)(ten points) You are the trial judge. Rule on the motion filed by Elliott Sandstone.

When the indictment was returned, all defendants were arrested. At the time of arrest, Alan Sandstone, after being Mirandized, made a voluntary statement to the FBI stating that he was sorry for the crimes that he and the company committed. At the time of Donald Sandstone's arrest, he stated that he knew what he did was wrong, but he was just following the orders of Alan Sandstone.

(4)(Thirty points)(three page limit)All defendants moved to sever their charges and sever defendants. Based on the facts presented above, all arguable grounds were argued. You are the trial judge. Determine what charges and defendants, if any, should be severed. Enter an appropriate order, taking into account the interests of the defendants, the prosecution and the court. Depending on your answer, issue any necessary in limine orders.

Alan Sandstone moved to inspect the grand jury transcript and to dismiss Counts 1-5 of the indictment. He alleged that the prosecutor misled the grand jury by failing to inform the grand jury of the determination in the civil forfeiture case that he did not personally commit the crimes of money laundering, mail fraud and tax fraud, and, that the government was precluded from proceeding on these counts as a matter of law.

(5)(Twenty points) You are the trial judge. Rule on all branches of the motion.

Bertha Sandstone moved to dismiss her charges alleging that the government was bound by the agreement not to prosecute negotiated by her attorney. The prosecution maintained that she did not tell the truth about Carmen Sandstone and, therefore, it was not bound by the agreement. The prosecution maintained that although Carmen's culpability was less than the other Sandstones' culpability, he still was an active and substantial co-conspirator. The prosecution further maintained that the grand jury's decision to indict was not predicated on Bertha's testimony to the grand jury, but, instead, was based on evidence developed based on the leads generated by Bertha's testimony before the grand jury. A review of the grand jury transcript substantiated the prosecution's assertions.

(6)(twenty points) You are the trial judge. Decide whether the indictment should be dismissed. Consider all relevant issues.