

Brenner
Advanced Criminal Law
Fall 1992

Instructions:

Your final examination is to prepare a motion to dismiss and a memorandum in support of the motion. The motion to dismiss is directed toward the attached indictment. You represent Gordon Hawkins, and on his behalf you are going to move to dismiss as many counts as possible of the attached indictment.

It is up to you to decide how many counts you should move to dismiss; you can move to dismiss all of them or less than all. You must base your decision on the substantive adequacy of the counts in the indictment. You have no Rule 11 constraints, but this does not mean you should make frivolous arguments for the sake of making arguments. Try to imagine that you truly represent Hawkins and that your goal is to obtain the dismissal of as many of the charges against him as possible.

You are encouraged to be creative in making arguments in support of your motion to dismiss. You must base your arguments upon the law that is available to you; the law that is available to you consists of the statutes and cases in the casebook, in the supplement you purchased and in the materials that were handed out in class. This is not a research assignment! You are not to conduct independent research into the offenses included in the indictment. It is an analytical assignment: You are to use the materials in the casebook and the hand-outs as the basis for making arguments as to why certain counts are deficient as a matter of law.

In drafting your motion to dismiss, you are governed by the requirements of Local Rule 4.41 of the U.S. District Court for the Northern District of Illinois. Local Rule 4.41 provides as follows:

(a) All motions shall be accompanied by a memorandum in support of the relief sought in the motion. The memorandum shall

include citations to authority supporting arguments made in the motion. The memorandum should clearly indicate what relief is sought. In the case of memoranda supporting motions to dismiss a pleading (indictment or complaint), the memoranda should clearly indicate the portions of the pleading for which dismissal is sought. If a motion seeks dismissal of more than one portion (count or claim) of a pleading, the memorandum accompanying the motion should divide its arguments into separate sections, each of which clearly indicates the portion of the pleading to which it pertains. This can be done by captioning sections of the memorandum in the following fashion: "Count I"; "count II"; "Negligence Claim"; "Contract Claim."

(b) All motions and memoranda in support shall be flat and unfolded, shall be typewritten or printed, double-spaced on white paper approximately 8 1/2 inches by 11 inches in size and shall be secured at the top with a staple or other secure fastener. The first page of each document shall bear the caption of the proceeding (including the court, case title and number) and a title describing the purpose of the document (e.g., "Plaintiff's Motion to Dismiss Counts I-III of the Complaint").

(c) There is no fixed page limit for memoranda in support of motions filed with this court. Counsel are, however, cautioned not to include unnecessary or frivolous material in their memoranda. The court expects memoranda to be confined to the presentation of well-founded arguments in support of the relief sought.

(This rule is to be cited as "Local Rule 4.41.")

DO NOT INCLUDE YOUR NAME ON YOUR MOTION AND MEMORANDUM! Instead, put your examination number on both before handing them in to the faculty secretary. Be sure that you keep a copy of both, on the off-chance that anything might be lost or misplaced.

You must return your examination no later than 4:00 on the date on which your exam period ends. ["Your exam period" refers to the five-day period during for which you have signed out the examination.]

If you turn your exam in after 4:00 but before 4:30 on that date, your grade will be decreased by one increment (i.e., one letter grade).

No exams will be accepted after 4:30 p.m. on the date on which an exam period expires. If you do not have your exam in by 4:30 on that date, you will receive no credit for the exam. NO EXCEPTIONS WILL BE MADE TO THIS RULE!

The examinations will be graded on the following criteria: Knowledge of the applicable law; application of the law to the allegations in the indictment; creativity and tenability of argument; clarity and persuasiveness of presentation; organization and structuring of argument; use of authority in support of arguments.

The examination is worth 100 possible points. Your course grade will be based upon the total points you receive from the examination (100 possible) and from the in-class, team assignments (40 possible).

You do not need to include a statement of facts in the memorandum in support of your motion to dismiss. You should begin the memorandum with a paragraph that sets out which counts you are moving to dismiss and the general basis for your attack on each. As discussed in class, you should divide the memorandum in to sections, each of which addresses a specific count.

THIS IS AN EXAMINATION. THEREFORE, ONCE YOU RECEIVE YOUR COPY OF THE INDICTMENT, THE SCHOOL'S HONOR CODE APPLIES. YOU ARE TO COMPLY STRICTLY WITH THE HONOR CODE, WHICH MEANS THAT YOU ARE NOT TO DISCUSS THE EXAMINATION WITH ANYONE, FROM CLASS OR OTHERWISE. AND YOU ARE NOT TO OBTAIN ASSISTANCE FROM ANYONE IN PREPARING YOUR MOTION TO DISMISS AND MEMORANDUM IN SUPPORT. FAILURE TO COMPLY WILL RESULT IN SANCTIONS.

In this examination, you represent Gordon Hawkins; you do not represent any of the other named defendants.

* * * *

NOTE: As you prepare your final exam, remember that the motion to dismiss/memorandum format is only a device for allowing you to display your analytical ability. You are not being graded on how well you draft a memorandum in support of a motion to dismiss, per se, but on how well you are able to analyze the issues in this indictment. In drafting your motion and memorandum, please keep the following distinction in mind:

(a) You are making arguments as to the legal insufficiency of counts in the indictment. (For example, if one count purported to charge murder, which is the intentional killing of a human being, but did not allege that the defendant acted intentionally, then you could attack this count as insufficient in omitting an essential element of the offense at issue.)

(b) You are not arguing evidence. (To continue the example used above, if the count did allege that the act was committed

intentionally, you could not move to dismiss based upon an argument that the evidence is not sufficient to prove intentional action. The sufficiency of the evidence is a trial issue; you are arguing legal insufficiency.)

IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF
ILLINOIS EASTERN DIVISION

UNITED STATES OF AMERICA,

* CASE NO. 92-CR-666

Plaintiff

* VIOLATIONS:

vs.

* 18 U.S.C. S1962(c)

GORDON HAWKINS

* 18 U.S.C. S1962(b)

MELINDA HAWKINS

* 18 U.S.C. S1341

FRED TOBIN

* 18 U.S.C. S1343

CAL PETERSON

* 18 U.S.C. S1346

MARIE MEHAN

* 18 U.S.C. S371

* 26 U.S.C. S7201

* * * *

INDICTMENT

COUNT ONE

The Special October, 1991 Grand Jury Charges:

1. During the year 1990 through 1992 at Chicago, in the Northern District of Illinois, Eastern Division,

GORDON HAWKINS

defendant herein, being a person employed by and associated with an enterprise, namely,

GORDON HAWKINS AND ASSOCIATES, P.C.,

which engaged in and the activities of which affected interstate commerce, did knowingly devise a scheme to defraud numerous insurance companies of money and property by means of false representations, to conduct and participate in the conduct of the affairs of Gordon Hawkins and Associates, P.C., directly and indirectly, through a pattern of racketeering activity, as that term is defined in Title 18, United States Code, SEC. 1961.

2. AT ALL TIMES MATERIAL TO THIS INDICTMENT:

A) Gordon Hawkins and Associates, P.C. (hereinafter "GHA") is a law firm, specializing in personal injury claims, and which is authorized and empowered as a professional organization by the laws of the State of Illinois.

B) GHA was an "enterprise," the activities of which affected interstate commerce, as "enterprise" is defined by 18 U.S.C.A. Sec. 1961(4).

C) GHA was owned by stockholders, more specifically but not limited to GORDON HAWKINS, MELINDA HAWKINS, and GARRETT HAWKINS .

3. In 1989 Andy Mahoney became a GHA client, represented by the defendant, CYNTHIA ELDER, after an automobile accident on the Dan Ryan Expressway in Chicago, Illinois with a party insured by the Fireman's Fealty Insurance Company, also located in Chicago, Illinois, (hereinafter referred to as "the insurance company").

4. Mahoney claimed that he had been injured in the collision, but the accident was caused by Mahoney's own intoxication.

5. In order to settle Mahoney's case, defendant CYNTHIA ELDER

paid or caused to be paid, to a police officer, whose name is presently unknown to the Grand Jury, a bribe to deliberately "lose" a police report which stated that the defendant's client had been intoxicated, with a blood alcohol level of .12 at the time of the traffic accident.

6. The defendant, CYNTHIA ELDER actually paid or caused to be paid to the police officer an amount of not less than one hundred dollars (\$100.00).

7. The police officer, upon payment or promise of payment, knowingly and willfully concealed or discarded the police report and lied that it had been "lost" or otherwise misplaced.

8. That sometime between the years 1988-91, in the Northern District of Illinois, Eastern Division, the defendant, CYNTHIA ELDER, who at all times material to this indictment, was a resident of Chicago, Illinois, did conspire with Bill Flynn, a co-member on the G.H.A. "Practice Committee," to devise a scheme of artifice for obtaining the money or property of the State Firm Insurance Company [hereinafter S.F.I.C.], by means of false or fraudulent representations made to the S.F.I.C. in conjunction with a civil lawsuit that S.F.I.C. then had pending against a Mrs. Gilds Larsen, a client of G.H.A.

9. That sometime between the years 1988-01, in the Northern District of Illinois, Eastern Division, the defendant, CYNTHIA ELDER, having conspired with Bill Flynn to devise the above described scheme or artifice for obtaining the money or property of the S.F.I.C., for the purpose of executing the scheme or artifice for obtaining the money or property of the S.F.I.C., did knowingly cause to be sent, delivered, and moved by the United States Postal Service a settlement packet containing fraudulent evidence, to the S.F.I.C. In violation of Title 18, United States Code, SS 371 and 1341.

10. In or about 1991, defendant FRED CARLSON, did commit bribery in violation of Illinois state law, with intent to influence the performance of an act; to wit: "losing" a police report, which is related to the employment of Barney Fife, a police officer in

the Cook County Sheriff's Department, by tendering to Barney Fife \$100.00 which he is not authorized by law to accept.

11. In or about 1990, defendant, JERRI WHITE, did tamper with a witness; to wit: Joe Zeville, in violation of Illinois state law, with intent to deter such witness from testifying freely, fully, and truthfully to a matter pending before an Illinois state court by offering money, the exact amount being unknown, to Joe Zeville.

All in violation of Title 18, United States Code, S1962(c).

COUNT TWO

The Special October, 1991 Grand Jury reincorporates and realleges the allegations contained in paragraphs 1-11 of Count One of this indictment.

All in violation of 18 U.S.C. S1962(b).

COUNT THREE

The Special October, 1991 Grand Jury charges that:

On or about January 1, 1991, the exact date being unknown, and continuing to the present time, within the Northern District of Illinois - Eastern Division and elsewhere, defendants, GORDON HAWKINS, GORDON HAWKINS, P.C., BILL FLYNN, and STU WILLIAMS, along with others known and unknown to the Grand Jury, did unlawfully, knowingly, and willfully devise a scheme or artifice to obtain money and/or property by means of false and fraudulent pretenses, representations and/or promises, and for the purpose of executing such scheme or artifice, or attempting to do so, cause to be placed in the United States mail fraudulent documents in violation of 18 U.S.C. Sec 1341.

1. The Special October, 1991 Grand Jury incorporates and realleges the allegations contained in paragraph 2 of Count One, above.
2. At all times relevant to this indictment:
3. BILL FLYNN was a partner of the defendant law firm Gordon Hawkins and Associates, P.C.
4. STU WILLIAMS was an investigator for defendant Gordon Hawkins and Associates, P.C.
5. Gilda Larson was involved in an accident at a race track in Western Cook County, Illinois, in which she suffered injuries.
6. State Firm Insurance Company (hereinafter "State Firm"), was a corporation licensed to do business in, inter alia, the state of Illinois, and was the insurance carrier for the Western Cook County race track.
7. Gilda Larson retained the defendant law firm of Gordon Hawkins and Associates to represent her against the Western Cook County race track.

8. The object of the scheme outlined below was to unlawfully obtain money and/or property, by false and fraudulent pretenses, representations, and/or promises.
9. It was part of this scheme to defraud that BILL FLYNN ordered STU WILLIAMS to alter the scene of Gilda Larson's accident, alleged in paragraph 5, supra.
10. It was further part of the scheme to defraud that STU WILLIAMS altered the scene of Gilda Larson's accident, and subsequently photographed the altered scene.
11. It was further part of the scheme to defraud that on or about January 1, 1991, at Chicago, in the Northern District of Illinois - Eastern Division, BILL FLYNN and STU WILLIAMS, defendants herein, for the purpose of executing the scheme to defraud described above, and attempting to do so, knowingly caused to be placed in the United States mails to be delivered according to the directions thereon, the photographs of the altered scene, along with settlement materials containing false and fraudulent documents and other representations and statements in connection with Gilda Larson's suit against the Western Cook County race track, and, more specifically, against its insurance carrier, State Firm.
12. As a result of the above-mentioned scheme to defraud, an inflated settlement was obtained in the amount of one million dollars (\$1,000,000.00) by BILL FLYNN and STU WILLIAMS, on behalf of Gilda Larson, from State Firm.
13. It was further part of the scheme to defraud that on or about January 1992, in the Northern District of Illinois, Eastern Division at Chicago, the exact date being unknown to the Grand Jury, defendant Gordon Hawkins, a resident of Chicago, Illinois, did willfully and knowingly place or cause to be placed in the United States mails to be delivered according to the directions thereon, a falsified 1991 Joint United States Individual Income Tax Return, Form 1040, and accompanying schedules and forms, on behalf of himself and his wife, which was verified by a written declaration that it was made under the

penalties of perjury, which return and accompanying schedules and forms he did not believe to be true and correct as to every material matter contained therein, in that said return did not accurately report his gross iricome and did not accurately report his monetary expenditures for the 1991 tax year.

14. The return alleged in the previous paragraph declared that the Total Income (Form 1040, Line 22) for he and his wife for the calendar year 1991 was \$750,000 whereas, as defendant, Gordon Hawkins then and there well knew and believed, the Total Income during the year 1991 was an amount in excess of \$3,816,100.00.

15. In January, 1992, Gordon Hawkins, for the purpose of executing, or attempting to execute the scheme or artifice to defraud described above, knowingly placed or caused to be placed in a post office or authorized depository for mail matter, a falsified tax return in an effort to defraud the United States Government;

In violation of Title 18, United States Code, S1341.

Count FOUR

The Special October, 1991 Grand Jury charges that commencing in the year 1988, in the Northern District of Illinois, Eastern Division, the Defendant, GORDON HAWKINS, who was a resident of Chicago, Illinois during the calendar year 1988, devised a

scheme and artifice to defraud the citizens of the State of Illinois of their intangible right to the honest services of attorneys licensed to practice in that state by failing to disclose, in direct contravention of Illinois Revised Code S666-123(a)(ii), that the defendant law firm GORDON HAWKINS AND ASSOCIATES, P.C., a professional corporation incorporated under Illinois law, had 15% of its shares of stock owned by defendant Melinda Hawkins and another 10% of its shares of stock owned by Garrett Hawkins, neither of whom is a lawyer licensed to practice law in Illinois or any other State or Jurisdiction in the United States. Melinda Hawkins was, at the time, married to defendant Gordon Hawkins, Garret Hawkins is Gordon Hawkins' father.

1. At all times material to this indictment, Ill._Rev. Code S666-123(a)(ii) provided that "[n]o non-lawyer shall own an interest in any law firm that has incorporated as a professional corporation under Illinois law."

2. In 1988, defendant Gordon Hawkins incorporated defendant Gordon Hawkins and Associates, P.C. without disclosing that his wife and father owned the interests in the firm set forth in the preceding paragraph.

3. Beginning in 1989 and continuing until the present, Hawkins has used the telephone wires to fax yearly reports on Gordon Hawkins and Associates to the Illinois Secretary of State's office, as required by Ill. Rev. Code S666-125(a).

4. In none of the reports alleged in paragraph 3, above, did defendant Hawkins disclose the illegal interests held by his father and wife, as set forth more fully in paragraph 1, above.

5. On or about December 15, 1989, defendant Gordon Hawkins, having devised the above described scheme and artifice to defraud the citizens of the State of Illinois, for the purpose of executing and in order to effect said scheme and artifice to defraud did knowingly cause to be sent by the Illinois Bell Telephone Service an annual report for the professional corporation known as GORDON HAWKINS AND ASSOCIATES, P.C.;

In violation of Title 18, U.S.C. S1343 and S1346.

COUNT FIVE

The special October, 1991 Grand Jury charges that on or about January 1, 1991, the exact date being unknown and continuing to the present time, within the Northern District of Illinois, Eastern Division, and elsewhere, defendants, GORDON HAWKINS, GLENDA HAWKINS, CAL PETERSON, HARIE MEEHAN, and FRED TOBIN, along with others known and unknown to the Grand Jury, did unlawfully, knowingly, and willfully conspire, combine, confederate, and agree together and with each other to defraud the United States of America by hampering, hindering, impeding, impairing, obstructing, and defeating the lawful Governmental functions of the Internal Revenue Service of the Treasury Department of the United States in the ascertainment, computation, assessment, and collection of income taxes in violation of 18 U.S.C. S371.

1. At all times material to this indictment,

a) The Internal Revenue Service was the agency of the United States Department of the Treasury.

b) GORDON HAWKINS was the equity partner and managing partner of the defendant Gordon Hawkins and Associates, P.C., a law firm which handled personal injury claims.

c) GLENDA HAWKINS was the sister of GORDON HAWKINS.

d) CAL PETERSON was the husband of GLENDA PETERSON.

e) MARIE MEEHAN was a business associate and employee of GORDON HAWKINS and Gordon Hawkins and Associates.

2. The objects of the conspiracy were to be accomplished by various means and methods including, but not limited to:

a) The fraudulent depositing of funds into Gordon Hawkins and Associates' corporate "Miscellaneous Revenue Account;"

b) The inclusion of these funds as revenue in Gordon Hawkins and Associates' yearly income statement;

c) The inclusion of these funds on GORDON HAWKINS personal tax return as "Miscellaneous Billings."

3. On or about January 1, 1991, GLENDA HAWKINS and CAL PETERSON initiated contact with GORDON HAWKINS and Gordon Hawkins and Associates and thereby prompted the illegal laundering of the funds obtained from the manufacturing, sale, and distribution of marijuana through GORDON HAWKINS'S personal financial records, and through Gordon Hawkins and Associates corporate financial records.

4. GORDON HAWKINS directed that MARIE MEEHAN fraudulently prepare his personal tax return by including the laundered money under "Miscellaneous Billings."

5. On or about April 15, 1992, in the Northern District of Illinois, Eastern Division,

GORDON HAWKINS AND MELINDA HAWKINS,

defendants herein, who during the calendar year 1991 were residents of Chicago, Illinois, willfully and knowingly made and caused to be made, subscribed and caused to be subscribed, a 1991 Joint United States Individual Income Tax Return, and accompanying schedules and forms, which were verified by a written declaration that it was made under the penalties of perjury, which return and accompanying schedules and forms were filed with the Internal Revenue Service and which return and accompanying schedules and forms they did not believe to be true and correct as to every material matter contained therein, in that the defendants GORDON HAWKINS and MELINDA HAWKINS represented and caused to be represented in said return and it accompanying schedules and forms that their combined total Income for the calendar year 1991 was \$750,000.00 whereas, as defendants GORDON HAWKINS and MELINDA HAWKIWS then and there well knew and believed, the Total Income during the year 1991 was an amount in excess of \$750,000.00.

6. That during the calendar year 1990 in the month of January,

FRED TOBIN,

defendant herein, then an incarcerated inmate of the Illinois State Prison, had and received a gross income of approximately \$15,000.00 and had a taxable income of approximately \$15,000.00 whereas, upon said taxable income, defendant FRED TOBIN, owed to the United States of America income tax of approximately \$2,250.00 whereas, well knowing of the foregoing facts, beginning on or about April 16, 1990 and continuing thereafter until the date of this indictment, in the State of Illinois, in a matter within the jurisdiction of an agency of the United

States, to wit, the Internal Revenue Service, defendant FRED TOBIW did knowingly and willfully fail to acknowledge the whole and entire aforementioned amount of income tax due and owing by him to the United States of America for the calendar year 1990, evinced by the following acts:

a) By failing to make such income tax return on or before April 15, 1990 to the Internal Revenue Service specifically stating the items of his gross income and any deductions and credits to which he was entitled, and

b) By failing to pay said income tax due and owing to the Internal Revenue Service.

7. That each member of the conspiracy set forth above is liable for the overt acts and substantive offenses perpetuated by all other members.

COUNT SIX

The Special October, 1991 grand Jury charges:

That on or about April 15, 1992, in the Northern District of Illinois, Eastern Division, GORDON HAWKINS, defendant herein, who during the calendar year 1991 was a resident of Chicago, Illinois, willfully and knowingly made and caused to be made, subscribed and caused to be subscribed, a 1991 United States Individual Income Tax Return, Form 1040, which was verified by a

written declaration that it was made under the penalty of perjury, which return was filed with the Internal Revenue Service and which return he did not believe to be true and correct as to every material matter therein, in that the defendant GORDON HAWKINS, represented and caused to be represented in said return that his Total Income for the calendar year 1991 was \$750,000.00, whereas, as defendant GORDON HAWKINS then and there well knew and believed, the Total Income during the year 1991 was an amount in excess of \$750,000.00. In violation of Title 26, United States Code, S7201.

COUNT SEVEN

The Special October, 1991 Grand Jury Charges:

That on or before April 15, 1992, in the Northern District of Illinois - Eastern Division, GORDON HAWKINS, who was a resident of Chicago, Illinois during the calendar year 1991, willfully and knowingly made and caused to be made, subscribed and caused to be subscribed, a 1991 Joint United States Individual Income Tax Return, Form 1040, and accompanying schedules and forms, on behalf of himself and his wife, which was verified that it was made under the penalties of perjury, which return and accompanying schedules and forms were filed with the Internal Revenue Service, and which United States Individual Income Tax Return, Form 1040, he did not believe to be true and correct as to every material matter contained therein, in that the defendant GORDON HAWKINS represented and caused to be

represented in said return and its accompanying schedules and forms that the Total Income (Form, Line 22) for he and his wife for the calendar year 1991 was \$750,000.00 whereas, as defendant GORDON HAWKINS then and there well knew and believed, the Total Income during the year 1991 was an amount in excess of \$750,000; In violation of Title 26, United States Code, S7206(1).

A TRUE BILL:

FOREPERSON

UNITED STATES ATTORNEY