Conte
Legislation
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I.

Marian Brarian recently converted a large portion of her large family home on Far Corners Road in Elmvale, Ohigho into a bookstore, Books and Friends. In part, Marian's idea is to attract not only Elmvale residents who are by-and-large well- educated and many of whom often frequent a large bookstore about three miles from Elmvale, but students and faculty from the neighboring Oakmont College. In order to attract students and faculty, Marian also established as part of her bookstore, a cafe where students and other friends can have a coffee, tea or pop snacks or just hang out, chat or read at their leisure. In the cafe portion of her bookstore, Marian serves coffee, pastries, donuts, pop, snacks, sandwiches and the like to cafe customers.

Although Marian's conversion of her home to the bookstore was authorized by the Elmvale Planning Board, two weeks after her Grand Opening she was notified that she must close down. The Planning Board determined that Marian's cafe violated Elmvale Zoning Ordinance 222A, which states in pertinent part that bars and other alcoholic drinking establishments, restaurants, and ice cream and fast food vendors are prohibited in Zone B of Elmvale." Under this ordinance in Sec. 10.1, "restaurant" is defined as "a place where full meals and other food items are served to the public." "Fast food vendors" is not defined by the ordinance.

The minutes of the Elmvale City Council meeting at which the ordinance was adopted, reflect that the sponsor, Councilman Zeno, stated that the ordinance was needed to keep this area relatively free of outsiders. He stated that while small establishments including bakeries, clothing and grocery stores were needed for Elmvale residents, retail food and drink establishments that draw outsiders and large numbers of people were not. These would change the homey character of this (Zone B) area. Councilwoman, Bushey, argued that while some shops might be all right, she did not favor grocery stores or large clothing establishments among other attractive stores for this area. She thought Council ought to adopt a broader ordinance. Her motion to do so was defeated. In the end, stating that she agreed "we do not need more outsiders, including all the college kids coming up here," she voted for the current ordinance, which passed by a 3 to 2 margin.

Marian hired the firm of Statch, Ute and Law, who brought an action in the local Court of Common Pleas seeking a declaration that the ordinance did not apply to Books and Friends. The Court of Common Pleas upheld the planning board's decision without a written opinion. Marian has appealed.

A. (20 points)

You are working as a law clerk for Judge Perry Whiteman of the Court of Appeals. Judge Whiteman who you know generally approaches the interpretation of statutes with a rather conventional intentionalist approach asks you to draft a memorandum that may be able to be used by the Court as an Opinion, setting forth (1) the claim asserted by Marian; (2) the legal provision and other legal principles that apply to Marian's claim and (3) the likely reasoning of the court and (4) a recommended outcome.

B. (10 points)

How might the outcome of the case and the reasoning of a textualist differ from Judge Whiteman's draft opinion, and why?

II. (Total of 1 Hr and 20 minutes/45 points)

Gambling has become a significant economic interest and tourist attraction in many parts of the U.S. and Canada recently. Also recently, major casinos have been developed on Bell Island in the Detroyt River in the City of Detroyt, Wishagain. This has been done with the support and encouragement of the city and state governments in order to attract tourist dollars and to strengthen the economy of the city and state.

In order to enhance the attraction, several of the casinos hire attractive young women as dancers, dealers, croupiers, hostesses, and waitresses. A number of these women are recruited and "brought in" from good distances.

Some of the casinos, particularly several that feature nude dancing, rely upon agent/operatives to recruit and transport candidates for positions with them. Daphne Luker, an entrepreneur from Daytowne, Ohigho, has developed a system of recruitment of dancers, dealers and hostesses etc. whereby she interviews and assesses the skills and abilities of potential candidates from southern Ohigho and Kentucky. For fees that have been contracted for with the casinos, Daphne provides transportation to Detroyt for those that she approves for interviews and auditions. Successful candidates are then expected to complete a training sequence after which they may go to work on very lucrative terms for a casino. Just over 50% of Daphne's recruits are nude dancing candidates; the rest are divided amongst the other gambling and associated work activities. All of the young women are under 25 years old, and most are between 17 and 22. Nude dancing and gambling in a "licensed casino" are legal under Wishagain and Detroyt law. It is also legal under Detroyt and Wishagain law to work in a gambling casino when you have reached your 17th birthday.

The ambitious new U.S. Attorney for the Southern District of Ohigho, outraged and mortified at what

she has described as "this wholesale shredding of the moral underpinnings of the young women of our community, for profit and self-aggrandizement," has recently brought charges for violations of the Manno Act against Daphne Luker and the Paradice Showplayce, one of the casinos. The U.S. Government charges that Luker and the Casino's transportation of women and girls across state lines for nude dancing, and dealing and other gambling operations violates the Act. In its bill of information, the U.S. sets forth the names of ten women from the Daytowne and Cinnamonati, Ohigho areas, between the ages of 17 and 19, and information pertaining to the recruitment and transportation of each of these women by Luker, and their employment by Paradice as nude dancers, and further information concerning three other women between 19 and 23 who are employed as card dealers. The information also recites the particulars of Luker's transportation of the women from Ohigho to Wishagain.

The Manno Act is a federal statute that was enacted in 1910. Sec. 33.3 states in pertinent part.. ."it shall be unlawful and an offense to transport in interstate commerce any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose."

The Manno Act was enacted during a period when there was a great tide of immigration to the U.S. Much was in flux. The nation struggled to cope with great social and economic change. These changes were occuring in a nation whose leaders still adhered to Victorian and early Anierican moral values. Many were concerned about increases in crime, and exploitation and profiteering by despicable characters taking advantage of this social upheaval. In this context, one problem causing great consternation to many was that many of the new immigrants and other women and girls were being recruited and sold into prostitution rings or establishments, some legal, in certain states. This was generally characterized as "the White Slave Trade." The Manno Act is a reflection of this concern. In fact, Si of the Manno Act states that "this act shall be known as the White Slave Trade Act", a phrase whose general use has since gone into demise.

The Manno Act has been interpreted on several occasions by the U.S. Supreme Court. In U.S. v. Camnanelli, a 1915 case, the Court held that the Manno Act's proscription of "for any other immoral purpose" applied to concubinage. In U.S. v. Cleavland, in 1946, the Court applied the terms 'debauchery and other immoral purpose' to the Mormon practice of polygamy. That court defined "debauchery" as vicious, excessive indulgences in sensual pleasures of any kind, including intemperance and sexual immorality." In a 1905 case, Batty v. U.S., involving a similar statute that prohibited the imnortation of alien women and girls for prostitution or other immoral purposes, the U.S. Supreme Court applied that law to concubinage (cohabitation with a person one is not married to or keeping a mistress), and suggested that the law would apply to other situations in which alien women were being exploited for immoral sexual purposes.

During the legislative debate on the bill, Representative Manno, the sponsor whose name is given to the bill, stated that the chief aim of the bill is to wipe out the White Slave Trade. Rep. Manno went on for several hours citing examples of young women and girls being sold or delivered into prostitution rings and establishments in order to enable others to earn profits from the prostitution activities of these women. The Senate Committee Report, also referred emphatically to the problems of the White Slave

Trade and to "the depraved immorality of ill gotten gains."

Daphne Luker, outraged that she and her legitimate economic enterprise were being characterized as criminal, comes to your law firm for assistance. You are an associate for the firm. You are asked by a senior partner to prepare a memorandum concerning the appropriateness of the U.S. Attorney's charges in the application of the Manno Act to Ms. Luker's activities.

A. (20 points)

The Senior Partner suggests to you that this action is likely to come before Judge Lily Rose, who you know is a relatively conservative textualist. In your memorandum, which should be balanced and predictive, (1) set forth the legal provisions and principles that are likely to apply to the case against Luker and (2) applying the legal provisions and principles to the relevant factual situation or situations, describe the likely outcome and, importantly, the reasoning the court is likely to utilize.

B. (15 points)

If rather than Judge Rose, your client draws Judge Penelope Posner, a judge who is known for her Law and Economics approach to statutory interpretation, describe the reasoning the court is likely to use in considering the application of the statute to Ms. Luker.

C. (10 points)

If Ms. Luker loses this case in the U.S. District Court, and appeals the case, you know that the composition of the U.S. Court of Appeals is such that there is a significant likelihood that you would draw a panel with a majority who would use a dynamic approach to statutory interpretation. If this were to become the case, describe the outcome the court of appeals is likely to reach and the reasoning that court is likely to use.

III. (Total of 45 minutes/aS points)

In 1979 Congress enacted Title XA of the American Health Service Act (the Act) which provides

federal funding for family planning services. 52 of the Act states that the act is enacted in order"... (1) to assist in making voluntary family planning services available to all persons desiring such services;... [and) (2) to develop and make readily available information (including educational materials) on family planning and population growth to all persons desiring such information."

In the late 1970's there continued to be great social ferment, particularly about excessive out-of-wedlock births, population issues and family planning matters. The fundamental right of a woman to choose to have an abortion had also been well established since 1973. There was a great deal of pressure on Congress to generate strong efforts to deal with family planning and population growth issues.

The Act authorizes the provision of federal funds to support the establishment and operation of voluntary family planning projects, and Sl(a) authorizes the Secretary of Health and Human Services to administer a program of grants that will effectively carry out the goals of the Act. Sec. 1(b) of the Act empowers the Secretary to "make grants to and enter into contracts with public or non—profit private entities to assist in the establishment and operation of voluntary family planning projects that offer a broad range of acceptable and effective family planning methods.

Sec. 108 of the Act states, "None of the funds appropriated under this Act shall be used in programs where abortions are used as a method of family planning." According to the conference report on the Act, this restriction was "to ensure that funds under the Act are used to support preventive family planning services, population research, infertility services and other related medical, informational and education opportunities."

Several representatives on the floor of the House stated that they understood that the bill did not include any direct or indirect support for abortion, and on that basis were voting for the bill.

Until 1992, regulations promulgated by the Secretary did not regulate the form of counseling or information provided at federally funded projects. However, in instances in which the issue arose in the context of funding decisions, the Secretary declined to fund projects that offered abortion counseling or referrals. In 1992, the Secretary promulgated Regulation Z-52, in order to clarify "the family planning services" that the Act's funds may be used to assist." Regulation Z-52 specifies that "projects funded under the Act may provide counseling concerning the use of abortions as a method of family planning or provide referral for abortions to be considered as a method of family planning." Subsequent to the promulgation of Regulation Z-52, a large number of new grantees who previously were not funded due to their abortion counseling practices, were funded, and a good number of former grantees who did not provide abortion counseling or referrals received less funds or no funds.

Several of these former grantees who have now received less or no funding come to your firm for legal assistance. As an associate with the firm representing these entities and doctors,

(1) What claim or claims might be most reasonable to assert on their behalf. (2) What legal provisions and principles would be applicable to their claim or claims. (3) Recognizing that to the extent necessary

the local federal judge would most likely employ a conventional legal process approach to a matter of statutory interpretation, what is the likely reasoning the federal court would employ in resolving the matter raised by your clients.

END OF EXAMINATION

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