

CRIMINAL LAW

Fall 2008

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Practice Examination Question

The question comprises two parts of equal weight. Please spend no more than two pages (double spaced, reasonable type size, margins, etc.) on each part.

Part One:

You represent Looter Scibby, a former state official in Kent. Scibby reports that he has been charged with violating Kent's prohibition against revealing the identity of undercover state police officers, and he needs your help.

Kent State Penal Code § 100 provides that:

(a) It shall be a felony for any state employee who has learned in his official capacity the identity of any undercover police officer to knowingly reveal the officer's identity to any person not qualified to receive this information.

(b) For purposes of this Section, the following definitions apply:

- (1) "undercover police officer" shall mean any police officer concealing her identity for purposes of police business,
- (2) "qualified" shall mean authorized by Kent law, and
- (3) "police business" shall mean the normal, authorized work of any Kent police department or other Kent law enforcement agency.

(c) Violation of subsection (a) of this Section is punishable by a prison term of not less than one year and not more than ten years. In addition to whatever prison sentence is assigned, at the discretion of the sentencing court, a violator of this provision may be fined not more than \$100,000.

Scibby tells you that while serving as the chief of staff to Kent's lieutenant governor, he received regular reports from various Kent agencies, and these reports sometimes included information about undercover operations. One such report informed Scibby that Mallory Blame, a member of the Kent Education Department's Keep Kids Off Drugs Squad, had, using her maiden name of Mallory Kang, infiltrated a gang known for selling illegal drugs to Kent schoolchildren.

Meanwhile, Mallory Blame's husband, Frank Blame, wrote newspaper articles castigating Scibby's boss for incompetent response to a crime wave. His regular *Kent Gazette* column, "The Blame Game," focused relentlessly on the administration's putative shortcomings with regard to criminal justice, and one column in particular stated that because of inadequate funding of undercover cops, the state had no real response to the drug gangs causing the crime wave.

Furious at what he believed to be inaccurate and biased coverage, Scibby informed David Sanders, a reporter at the rival *Kent Planet*, that Frank Blame's columns were biased and based on

false, self-serving information Blame received from his wife. Sanders replied, “His wife? I thought she was a secretary at the State Department of Education. What would she know?” Scibby replied, “Yeah, a lot of people think that,” and he then ended the conversation.

It turned out that Mallory Blame’s secretarial job was a sham, a cover for her role on the KKODS. Sanders eventually discovered the truth and reported it on the *Planet’s* front page (under a headline “Let’s Be Frank: *Gazette* Columnist Shills for Cop Wife”), causing embarrassment to Frank Blame and preventing Mallory Blame from gathering any further evidence. Indeed, the Blame family has entered the Kent Witness Relocation Program. The state police and prosecutors are furious and seek to convict Scibby.

What do you advise Scibby with respect to whether the state can convict him for a violation of Section 100?

Part Two:

For purposes of this Part only, assume that Scibby is convicted and is sentenced to five years in prison and a fine of \$50,000.

Scibby’s boss asks the Governor to pardon Scibby so he need not serve time in prison or pay a fine. The Governor, using authority under Kent law that is not questioned by any party, declines to pardon Scibby but instead commutes his sentence. Under the revised sentence, Scibby will serve no time in prison. He will still pay a fine of \$50,000. The Governor issues the following statement to explain her action:

Looter Scibby has been convicted of violating Kent law, a matter I take very seriously. Nonetheless, because I believe the sentence he received was overly harsh, I am reducing it in the interests of justice. Scibby must pay a stiff fine, and because his felony conviction remains on the books, he may no longer practice acupuncture in this state.

Scibby ran an acupuncture studio before entering politics. Felons may not hold acupuncture licenses in Kent, and the practice of acupuncture without a license is prohibited.

The Governor has not commuted any other sentence during her three years in office. She has, however, pardoned certain long-serving prisoners whom she believed to have been wrongly convicted but whose convictions were for one reason or another not reviewable by a court. For example, DNA evidence exculpated a prisoner who had served ten years for rape, but his attorney missed a crucial filing deadline and the courts denied relief. The Governor granted a pardon.

The Governor subsequently seeks reelection, and her political opponents intend to attack her on the basis of the commutation. Based on your knowledge of the rationales for and purposes of criminal punishment, what are the best arguments against the Governor with respect to the commutation? The best in her favor?