"ANSWER" TO QUESTION NO. 1 (2012)

Caveat!

The following is not a sample answer to Question No. 1 in the 2012 final examination in the Criminal Law course. This answer was written only to help me "objectivize" an answer to the essay question, to offer students ideas on what they could have presented, and to provide a learning tool in regard to the substance and analysis of many of the issues in this course. While the answer includes all issues and ideas that were possible to discuss, I did not expect any student to cover all of them – let alone even most of them. Much of the content of this answer merely offers alternative paths that could have been taken in regard to these issues; the last few pages of this answer contain the points that were accorded for each of the issues. The structure and approach of this answer for any issue are identical to the structure and approach used when the issue was the focus of a particular course problem during the semester.

Please remember that this question was given at a time when there was likely a different casebook (thus different cases) and even different rules and law. Also recognize that the answer is framed in an outline form – not the essay format that I want students to use – and has only been proof-read in regard to basic spelling. The answer is being put on Claranet solely to help, not to depress, my students. Thus, to get the most out of this answer, I strongly recommend that students first read the question and then outline an answer – or actually attempt to write up an answer – before reading this answer.
Call of the Question

1. Write essay explaining most realistic serious charges that can be filed based on the facts
   a. Request to discuss and analyze problems and defenses face in prosecuting the charges
   b. Memo should include how you will overcome the problems or defenses and
   c. If trials take place and facts established, how expect the cases will likely be decided

2. Murder for death of one of the Cell-I road blockers would clearly be most serious charge
   a. Charge the Hardy Fool, the ambulance driver, with 1st degree premeditated murder or 2nd degree AMH murder
      1. Major issue would be whether his mistakes of fact, such as whether there was a sufficient clearing, were honest [if charge 1st degree] or reasonable [if charge 2nd degree]
      2. Two possible defenses
         a. Necessity [but points given only if assume fetus was still alive]
         b. Prevention of felony
   b. Charge the all members of Cell I who did block traffic with 2nd degree AMH murder
      1. Points though were given only if discuss major problem of causation re whether
         a. Action of ambulance driver who “sped through” was a foreseeable intervening act
   c. Not expect or desire that charge any members of Struggle For Life [SFL], including Fallguy, with homicide Indirectly via either conspiracy or accomplice liability
      1. Points were given only if both assume and explain why Pinkerton/Alvarez theory via conspiracy liability or McVeigh/Abbott theory via accomplice liability can apply to acts respectively of a non-conspirator or of a non-principal and also that
      2. Pinkerton/Alvarez theory or McVeigh/Abbott theory can also apply to the death respectively of a co-conspirator or principal or co-accomplice who provoked his or her own death

3. Non-homicide crimes
   a. While an array of many charges, strategize which charges were the most serious and most realistically likely to be successful when prosecute someone directly for doing an actual crime
      1. Crimes include attempted murder (or assault with deadly weapon) by some members of Cell II, burglary by all members of Cell III, attempted kidnapping by some members of Cell III, the doctor’s assault of Mike Maimer, Maimer’s assault of the doctor, and blocking traffic by members of Cell I
      2. Discussion and analysis of any of these crimes should first be on problems [only if any] DA faces in prima facie case and defenses
      3. Then discuss and analyze how DA will overcome these problems or defenses
b. Then focus on how to get the other cell members and Fallguy liable *indirectly* for these non-homicide crimes *except* the doctor's assault on Maimer

1. Easiest to first focus on those members of each cell who did not directly commit the crimes done by some other member(s) of their cell
   a. These members could be charged as accomplices to crimes done directly by members of their respective cells either as accomplices via *Pinkerton* [and *Alvarez* if relevant] if liable initially as conspirators or as accomplices via *McVeigh/Abbott* if liable initially [via *Hicks*] as accomplices

2. Then, if time permits, focus on the liability indirectly of Fallguy for these crimes and of members of other cells for the crimes directly done by members of another cell
   a. All 16 members could be charged for crimes directly done by others either as accomplices via *Pinkerton* [and *Alvarez* if relevant] if liable initially as conspirators to one large conspiracy [such as conspiracy to cause physical harm to others] or as accomplices via *McVeigh/Abbott* if liable initially [via *Hicks*] as accomplices to one large crime [such as cause physical harm to others]

   c. Again not expect or desire that charge members of Cell III for the doctor's assault on Cell III member Mike Maimer via either conspiracy or accomplice liability
      1. Points were given *only if both assume and explain why that Pinkerton/Alvarez theory via conspiracy liability or McVeigh/Abbott theory via accomplice liability can apply to acts respectively of a non-conspirator or non-principal and also that*
      2. *Pinkerton/Alvarez theory or McVeigh/Abbott theory can also apply to the harm suffered respectively by a co-conspirator or a principal or co-accomplice who provoked the doctor*
Death of Cell I Road-Blocker

1. Liability of Hardy Fool
   a. Charge
      1. Facts said a private ambulance carrying a hemorrhaging woman from the clinic to a nearby hospital got stuck in the traffic jam caused by some Cell II road blockers
         a. Ambulance driver named Hardy Fool tried to get through the jam but could not, and "finally saw a clearing and sped through"
         b. In the process, he ran over and killed one of the Cell I road-blockers
      2. Since the DA must determine what is the highest homicide charge that can be brought against Fool, goal was to analyze whether the charge would be
         a. 1st degree premeditated murder -- ambulance as dangerous weapon
         b. 2nd degree AMH [general intent; professional driver assume saw protester]
         c. Voluntary manslaughter via provocation [not my choice]
         d. Involuntary or vehicular manslaughter [not my choice]
   b. Problems
      1. Problem would be whether Fool's arguable mistake of fact -- such as he thought he saw a clearing and sped through -- was
         a. Honest even if unreasonable if charge 1st degree murder [since honest belief would negate premeditation and arguably negate malice]
         b. Reasonable regardless if honest if charge 2nd degree AMH [since as a general intent crime, DA must only show that the belief was unreasonable]
      2. Fact issues that are relevant to if the mistake was honest or reasonable could include
         a. If assume ambulance is higher than most vehicles, why could driver not see Cell I road-blocker who was killed?
         b. Did driver see "clearing" because they were sitting on street and not visible?
         c. Since he arguably was stopped initially, how fast was he driving when then "sped through" and was not able to stop when eventually saw road-blocker on street?
         d. Was the blocker lying down or sitting in such way that could not be seen?
         e. Does "finally saw a clearing" mean there was actually a safe clearing?
         f. How can there be a clearing if people are sitting on the street?
         g. Did Hardy use his siren or blare his horn before speeding through?
         h. Did Hardy belief that patient would likely die if he was not able to speed to hospital?
         i. Were there alternative ways for Hardy to drive to the nearby hospital?
         j. Relevance of Hardy being certified to drive a private ambulance, which suggests has skills of a professional driver
k. Was Hardy hostile to the blockers, since worked for a private ambulance company that might have been sufficiently pro-choice to be called by the abortion clinic when a problem arose?

c. **Defenses**

1. Only possible defense was necessity defense which requires that there be a proper choice of evils

   a. Since driver would not qualify for defense if chose to kill one person to just save though another person

      1. Points were given *only if* assume fetus was still alive in the woman who was hemorrhaging, so that now the ambulance driver was seeking to save two lives [mother and fetus]

      2. Otherwise, defense would not be possible if woman was hemorrhaging because the abortion was completed, so that the fetus had already died

   b. If make the aforementioned crucial assumption, then was it reasonable to believe woman and fetus would die if did not speed to hospital?

      1. Fact that woman hemorrhaging does not necessarily mean she and fetus would soon die

      2. Was there doctor in ambulance who could treat them until got to hospital?

   c. Moreover, if make the aforementioned crucial assumption, was there imminence of death to the woman and her fetus?

      1. Alternatives re radio assistance or go back to clinic to get medical help

      2. Option use other routes to hospital [many streets since clinic downtown]

2. Defenses that were not possible [hence no points given]

   a. Defense of others [or "imperfect defense of others"]

      1. Majority view would be limited to a family member [like common law]

      2. Even if defense possible, Fool would fail both the alter ego test and the reasonable person test [specially disproportionate use of force]

   b. Imperfect defense of others, since this is a minority view that would not apply in unknown state

   c. Prevention of felony

      1. Crime being committed by the SFL members was not an atrocious felony and/or a forcible felony

      2. Moreover, purpose of driver was not to prevent the felony, but to get the woman to the nearby hospital

   d. How expect case will **likely be decided**
2. Liability of the **Cell I** who actually "chose to block traffic"

a. **Charge**
   1. 2nd degree AMH or involuntary manslaughter, since facts said
      a. Down, head of Cell I, told his members that felt blocking traffic in intersection and holding signs re "Abortion is Genocide" might be most effective form of protest"
      b. Each person then went to his assigned station and those "who chose to block traffic sat down in the road"

b. **Problems**
   1. Enough facts to prove 2nd degree AMH in unknown state
      a. Since jurisdiction would use an objective test, points for developing facts that not show [defendants] and then show [DA] recklessness, motive, wanton disregard etc.
   2. **Causation**
      a. Notion of whether foreseeable that someone -- such as a fellow member of the 1st cell -- would get hurt or die when people sit or lie down on a busy street

c. **Defense**
   1. Defense of necessity to the conspiracy charge, *infra*

d. Liability via complicity [not expect or desire]
   1. *Points only if* make and discuss *all* of the following assumptions
      a. Assume Cell I members who did block traffic were liable for some conspiracy, *infra* [or accomplice]
         1. Actual goal of Cell I members was to block traffic in the intersection and hold signs saying abortion is "genocide"
         2. Prosecutor though should charge a conspiracy whose object is even more serious -- such as destroying abortion clinics, destroying property, or causing actual bodily harm -- since death would now be more foreseeable
      b. Assume and explain why vicarious liability via either *Pinkerton* or *McVeigh/Abbott* can apply to the act respectively of a non-conspirator or a non-principal
         1. Major problem, if not brick wall, via concerns like agency, control, and foreseeability
         2. Expect discuss and analyze the relevant policies, as seen in *Canola* and causation cases, as to why liability should extend to acts of a non-conspirator
      c. Assume and explain why vicarious liability via either *Pinkerton* or *McVeigh/Abbott* can apply when the victim is respectively a co-conspirator or a principal or co-accomplice who provoked his/her own death
         1. Major problem, if not brick wall, via concerns expressed in cases like *Antick*
      d. If liability based on conspiracy charge and *Pinkerton*, explain if the *Alvarez* extension of and limit on *Pinkerton* would apply and, if so, how it would be met
1. Assume and explain first why homicide crime is very attenuated from the object of the conspiracy, such as blocking traffic or obstructing justice

2. DA must show that each conspirators charged played more than minor role in the conspiracy, since impossible that any of the conspirators would have any actual knowledge of at least some of circumstances/events that occurred

Finally, even if all the aforementioned assumptions were made and discussed, problem would be the degree of homicide for which would be liable as an accomplice via Pinkerton/Alvarez or McVeigh/Abbott

   a. Answer must be only general intent homicide, which would be either accomplice to 2nd degree AMH or accomplice to involuntary manslaughter

3. How expect case will likely be decided

3. Liability of the Cell I members who did not block traffic

   a. Assumption
      1. These people in Cell I chose to hold signs saying "Abortion is Genocide" as the most effective form of protest
      2. Charge of homicide could only be via vicarious liability

   b. Problems
      1. Since do not expect or desire vicarious liability charges against Cell I members who did not block traffic, points only if make and discuss all the required assumptions and problems in charging those Cell I members who did block traffic with homicide via vicarious liability, supra

   c. Defense
      1. Defense of necessity to the conspiracy charge, infra

4. Liability of the other members of Struggle For Life

   a. Assumption
      1. If the goal is to charge those who were not members of Cell I, then must assume that guilty of some conspiracy, infra [or accomplice]

   b. Conspiracy charge
      1. Choose a conspiracy whose object will be more serious -- such as blocking traffic, destroying abortion clinics, destroying property, or causing actual bodily harm -- since now some bodily harm will be more foreseeable via Pinkerton/Alvarez or McVeigh/Abbott

   c. Problems
      1. Since do not expect or desire vicarious liability charges against other members of Struggle for Life who did not block traffic, points only if make and discuss all the
required assumptions and problems in charging those Cell I members who did
block traffic with homicide via vicarious liability. *supra*

d. Defense

1. Defense of necessity to the conspiracy charge, *infra*

5. Liability of **Fallguy** [see conspiracy charges, *infra*, but not expect or desire]
Attempted Murder of Clinic Patients

1. Liability of those Cell II members who did throw rocks [direct liability]
   a. Charge (s)
      1. Attempted murder or assault with deadly weapon
         a. Facts were that Cell II, headed by Valeria Vandel, discussed ways that might disrupt the operation of the abortion clinic
         b. While Cell I acts occurring, "meanwhile some members of Cell II threw rocks, collected from construction site, thru clinic windows" [but no patients hurt]
         c. Points for as many charges as there were people who were near the windows at which the rocks were thrown
   b. Problems
      1. Mens rea for attempt requires specific intent [ADW is general intent]
         a. Defendants will claim intent at most was to scare
         b. But does goal to "disrupt operation of abortion clinic" by throwing rocks "collected from constructive site" constitute mens rea of intent to kill?
         c. Import that some did believe need even to have "some injuries and deaths"
      2. Actus reus for attempt [points for MPC substantial step as test and act policies]
         a. Relevant facts in analyzing actus reus include size of rocks; how crowded was clinic; how far away was clinic, windows open or closed, was glass shatterproof or not; possibility of flying glass, etc.
   c. Defense
      1. If fervent opponents of abortion can invoke necessity defense, their claim would be that saving the lives of an infinite number of fetuses and persons
      2. Since cases like Schoon though said no necessity defense for indirect civil disobedience due to always the alternative of seeking legislative change, points only if develop elements of necessity in way that can at least answer and possibly overcome the concerns expressed in cases like Schoon
   d. How expect case will likely be decided

2. Liability of those Cell II members who did not throw rocks [vicarious liability]
   a. Assumption
      1. Those who did not throw rocks are either conspirators or accomplices to assaultive crimes stemming from Vandel “discuss[ing] ways that might disrupt the operation of the clinic,” supra
   b. Charge (s)
      1. Accomplice to attempted murder or accomplice to some intentional or unintentional assault via Pinkerton/Alvarez or McVeigh/Abbott respectively
2. Points given for as many charges as there were people who were near the windows at which the rocks were thrown

c. Problems

1. Acts of throwing rocks would be foreseeable or natural consequences of conspiracy to assault or to disrupt by throwing rocks

2. Would DA also have to satisfy the Alvarez extension of and limits on Pinkerton if the charge of accomplice to attempted murder is too attenuated from the original conspiracy charge?

3. If Pinkerton satisfied and Alvarez either does not apply or is satisfied, will they be charged with accomplice to attempted murder or only as accomplice to some lesser intentional or unintentional assault

d. Defense

1. See defense for Cell II members who did throw rocks, supra

e. How expect case will likely be decided

3. Liability of other members of Struggle For Life [vicarious liability]

a. Assumption

1. Those other members of Struggle of Life who were not members of Cell II are either conspirators or accomplices to serious crimes, such as blocking traffic, destroying abortion clinics, destroying property, or causing actual bodily harm, infra

2. Since it is a small group, probably had previous meetings, so that each probably knew of each other's preferred method of protest

b. Charge (s)

1. Accomplice to attempted murder or accomplice to some intentional or unintentional assault via Pinkerton or McVeigh/Abbott respectively

c. Problems

1. See discussion of problems for those Cell II members who did not throw rocks, supra

d. Defense

1. See defense for Cell II members who did throw rocks, supra

e. How expect case will likely be decided

4. Liability of Fallguy [see conspiracy charges, infra]
Serious Injury of Mike Maimer

1. Liability of doctor
   a. Charge
      1. Attempted murder or some form of aggravated assault and battery, since facts said
         a. After members of Cell II broke into clinic, “one of them Mike Maimer, started to
            assault a doctor, but the doctor fought back and seriously injured Maimer”
   
   b. Problem
      1. Since no actus reus or mens rea problem, only “problem” would be to assess
         what is the highest non-homicide charge that can be brought against the doctor:
         attempted murder or some form of aggravated assault and battery
   
   c. Defense
      1. Self-defense
         a. Since doctor “seriously injured Maimer,” only problem in self-defense for the
            doctor is if Maimer started to assault doctor with deadly force [to which
            the doctor’s force would be proportional] or non-deadly force [to which the
            doctor’s force would be not proportional]
            1. Yet, since the doctor saw 5 people break into clinic, and one about to start to
               assault him, can doctor claim felt need to use whatever force was
               necessary?
         b. No points given for discussing the other three elements of self-defense --
            honest belief, reasonable belief, and imminence -- since they are clearly not
            problems
            1. Points though were given if assume the jurisdiction requires retreat
               [majority view?] and, if does, can doctor claim exception since was in one’s
               own business?
         d. How expect case will likely be decided

2. Liability of Cell III members [not expect or desire]
   a. Liability via complicity
      1. Points only if make and discuss all of the following assumptions
         a. Assume Cell III members were liable for some conspiracy or as an accomplice, infra
            1. Actual goal of Cell III members was to “break into the abortion clinic and
               destroy the means by which the “genocide is being carried out”
            2. Prosecutor though should charge a conspiracy whose object is even more
               serious -- such as destroy abortion clinics, destroy property, or cause bodily
               harm -- since serious bodily harm would now be more foreseeable
         b. Assume and explain how vicarious liability via either Pinkerton or McVeigh/Abbott
            can apply respectively to the act of a non-conspirator or non-principal
c. Assume and explain how vicarious liability via either Pinkerton or McVeigh/Abbott can apply when the victim is respectively a co-conspirator or principal or co-accomplice who provoked his own bodily harm.

d. If charge relatively non-serious conspiracy, assume and explain if the Alvarez extension of and limit on Pinkerton would apply and, if so, how it was met.

2. Even if all the aforementioned assumptions were made and discussed, problem finally would be the degree of liability as an accomplice via Pinkerton/Alvarez or McVeigh/Abbott.

a. Answer must be only accomplice to a general intent assault or battery.

3. Liability of other members of Struggle For Life [not expect or desire]

a. Liability via complicity

1. Points only if make and discuss all of the following assumptions

a. Assume other members of Struggle for Life were liable for some conspiracy or accomplice, infra, whose object is very serious -- such as causing bodily harm to others or destroying property -- since serious bodily harm would now be more foreseeable.

b. Assume and explain how vicarious liability via either Pinkerton or McVeigh/Abbott can apply respectively to the act of a non-conspirator or non-principal.

c. Assume and explain how vicarious liability via either Pinkerton or McVeigh/Abbott can apply when the victim respectively is a co-conspirator or principal or co-accomplice who provoked his own bodily harm.

d. If charge relatively non-serious conspiracy, assume and explain if the Alvarez extension of and limit on Pinkerton would apply and, if so, how it was met.

2. Even if all the aforementioned assumptions were made and discussed, problem finally would be the degree of liability as an accomplice via Pinkerton/Alvarez or McVeigh/Abbott.

a. Answer must be only accomplice to a general intent assault or battery.

4. Liability of Fallguy [see conspiracy charges, infra, but not expect or desire]
Attempted Kidnapping of Reckonwith

1. Liability of Noble Kaws

   a. **Charge**

      1. Attempted kidnapping since fact said

         a. “Several other [members of Cell III] were talking to a woman, Amanda B. Reckonwith, who was about to have an abortion.

         b. They tried to persuade Reckonwith to stop, but she said that she would not, so they decided to kidnap her and hold her prisoner until she could no longer legally have an abortion.

         c. As one of the Cell III members, Noble Kaws, approach Reckonwith to escort her out of the clinic, the police arrived at the scene and arrested all of the Struggle for Life members”

      b. If instead charge false imprisonment, points were given only for identifying the crime unless assume false imprisonment crime requires specific intent

         1. If not make this assumption, there would be no problems with this charge

      c. If instead charge some assaultive crime, points were given only for identifying the crime unless assume DA charged a specific intent assault

         1. If not make this assumption, there would be no problems with this charge

   b. **Problems**

      1. Sufficient actus reus for the attempted kidnapping charge?

         a. Point(s) if discuss MPC substantial step test for actus reus

         b. Def will focus on all things that remain to be done

         c. DA will argue that little remained to be done because victim was already being approached to be escorted out of the clinic plus -- since it is a serious crime that occurred after Kaws and others had already broke into the clinic, Kaws has gone beyond mere preparation

      2. Sufficient mens rea for attempted kidnapping charge?

         a. Since test is specific intent, def may claim just acted on the spur of the moment

         b. No points though were given for assuming that, when “Noble Kaws approached Reckonwith to escort her out of the clinic,” he was doing it for some reason other than kidnapping

   c. **Defense**

      1. See defense for Cell II members who did throw rocks, supra

   d. How expect case will likely be decided
2. Liability of the **Cell III members** who "decided to kidnap" [vicarious liability]
   
   a. **Assumption**
      
      1. Liable for conspiracy to kidnap, *infra*, since they “decided to kidnap her and hold her prisoner until she could no longer legally have a an abortion

   b. **Charge**
      
      1. Accomplice via *Pinkerton* to attempted kidnapping if Kaws guilty of attempted kidnap,
         to false imprisonment if Kaws guilty of false imprisonment, or instead to some assaultive crime if Kaws guilty only of an assaultive crime

   c. **Problems**
      
      1. No problems since crime to which charge as accomplice was either the object crime of the conspiracy or a lesser included offense of that conspiracy object crime

   d. **Defense**
      
      1. See defense for Cell II members who did throw rocks, *supra*

   e. How expect case will likely be decided

3. Liability of **Cell III members** who were not involved in kidnapping [vicarious liability]
   
   a. **Assumption**
      
      1. Liable for conspiracy to break into clinic or to commit more serious crime, such as conspiracy to burglarize since, as members of Cell III, they
         
         a. Knew that Scott Free, who headed Cell III had decided to break into the abortion clinic and destroy the means by which the “genocide’ is being carried out
         
         b. Heard that when Free said “we might have to break the fingers and hands that perform these murders, a member of the cell, Hal. E. Looya, shouted ‘Amen’”
         
         c. Actually did break into the clinic

   b. **Problems**
      
      1. Could those members of Cell III who were not involved in the kidnapping decision but arguably heard the other members talking to Reckonwith know enough of the essentials so that could be charged with conspiracy to kidnap or be liable as an accomplice to kidnapping via *Pinkerton or McVeigh/Abbott*?

      2. Must Alvarez be met if kidnapping viewed as too attenuated from object of their conspiracy?

      3. Would charge be via *Pinkerton or McVeigh/Abbott* accomplice to attempted kidnapping, accomplice to false imprisonment, or instead accomplice to an assaultive crime

   c. **Defense**
      
      1. See defense for Cell II members who did throw rocks, *supra*
d. How expect case will **likely be decided**

4. Liability of **other members** of Struggle For Life  

   [vicarious liability]

   a. **Assumption**

      1. Those other members of Struggle of Life who were not members of Cell III! are either conspirators or accomplices to serious crimes, such as causing bodily harm to others or destroying property, *infra*

      2. Since they are members of a small group, they likely had previous meetings, so that each probably knew the essentials of each other’s preferred method of protest

   b. **Charge**

      1. Accomplice via *PinkertonAlvarez* or *McVeigh/Abbott* to attempted kidnapping, to false imprisonment, or instead to an assaultive crime

   c. **Problems**

      1. See discussion of problems for those Cell III members who did not kidnap, *supra*

   d. **Defense**

      1. See defense for Cell II members who did throw rocks, *supra*

   e. How expect case will **likely be decided**

4. Liability of **Fallguy**  

   [see conspiracy charges, *infra*]
Assault of Doctor

1. Liability of Mike Maimer

   a. Charge

      1. intentional assault and battery since after members of Cell III broke into clinic, one of them, Mike Maimer, started to assault a doctor, but doctor fought back

   b. Problem

      1. No problems since he clearly had the specific intent and did “start to assault doctor”

   c. Defense

      1. See discussion of defense for those Cell II members who did throw rocks, *supra*

   d. How expect case will likely be decided

2. Liability of all other Cell III members who were not involved in assault [vicarious liability]

   a. Assumption

      1. Liable for conspiracy to break into clinic or to commit more serious crime since, as members of Cell III, they did actually break into the clinic and also

         a. Knew that Scott Free, who headed Cell III had decided to break into the abortion clinic and destroy the means by which the “genocide’ is being carried out

         b. Heard that when Free said “we might have to break the fingers and hands that perform these murders, a member of the cell, Hal. E. Looya, shouted ‘Amen’”

   b. Charge

      1. Accomplice via *Pinkerton* or *McVeigh/Abbott* to a specific intent assault and battery or instead accomplice to an unintentional assault and battery

   c. Problems

      1. Could those members of Cell III who were not involved in Maimer’s assault on the doctor but saw him do be liable via *Pinkerton* or *McVeigh/Abbott*?

         a. Was an assault by Maimer more foreseeable to the all other members of Cell III since Free who headed Cell II did talk openly about breaking fingers and hands?

         b. Would Free and Looya would especially be more liable via *Pinkerton* because of their words of violence?

         c. Would an assault by Maimer of the doctor be foreseeable since people in the clinic might resist the invasion and burglary done by Cell III members?

      2. Is assault so attenuated from conspiracy object that must also satisfy *Alvarez*?

   c. Defense

      1. Fervent opponents of abortion will not be able to invoke necessity defense *supra*

   d. How expect case will likely be decided
3. Liability of **other members** of Struggle For Life [vicarious liability]

   a. **Assumption**

      1. Those other members of Struggle of Life who were not members of Cell III! are either conspirators or accomplices to serious crimes, such causing bodily harm to others or destroying property, *infra*

      2. Since it is a small group, probably had previous meetings, so that each probably knew of each other’s preferred method of protest

   b. **Charge**

      1. Accomplice via *Pinkerton or McVeigh/Abbott* to specific intent assault and battery or instead accomplice to an unintentional assault and battery

   c. **Problems**

      1. See discussion of problems for those Cell III members who did not assault, *supra*

   d. **Defense**

      1. See defense for Cell II members who did throw rocks, *supra*

   e. How expect case will likely be decided

4. Liability of **Fallguy** [see conspiracy charges, *infra*]
Conspiracy Charges

Preliminary Issues

1. Whether to charge one large conspiracy or instead many separate little ones
   
   a. DA will often choose to charge one large conspiracy given many of its advantages
      
      1. Group has common goal to take its fight beyond the legislatures and courts and into the streets
         
         a. Group was small, which means probably had previous meetings at which each possibly knew of each other's preferred method of protest
         
         b. Group had common shared goal to confront which is the crime of disrupting the clinic operations [or even a riot]
      
      2. Even those who favored only demonstrations that are arguably lawful "refused to condemn more extreme actions by their sisters and brothers"
         
         a. All 16 members of the group agreed to confront members of a pro-choice group who were conducting rally at large downtown intersection near abortion clinic
      
      3. Words of the leader's benediction shows that all did share a common goal
         
         a. "We are the Lord's soldiers [and] we have no choice but to protect the lives of innocent children"
         
         b. "As you know, I abhor violence, except when necessary to protect against even greater violence"
         
         c. " I urge you all to follow your individual consciences, but be assured that whatever you decide you must do, you have the Lord's blessing -- and mine"
         
         d. "Now, as God's General, I must go home to pray and prepare a press statement about our noble mission. But you, as his soldiers, must put your lives on the line"
      
      4. 15 members made a decision to divide into three cells of five people each and met separately to plan their particular roles in the confrontation
         
         a. Arguably each cell could see each other cell when they each acted, and hence see what each cell was doing and planning
         
         b. Issue is whether DA will instead engage in role reversal and seek to charge many different people in an array of many different smaller conspiracies
2. Which is the **most serious** conspiracy object
   a. Many potential choices
      1. Conspiracy to cause physical harm to others [meaning of "confrontation"]?
      2. Conspiracy to destroy property
      3. Conspiracy to obstruct justice
      4. Conspiracy to burglarize [conspiracy to break into the abortion clinic]
      5. Conspiracy to assault or to disrupt by throwing rocks
      6. Conspiracy to destroy the means of the clinic's operation
      7. Conspiracy to kidnap
      8. Conspiracy to block traffic
      9. Conspiracy to commit civil disobedience
   
   b. Choice of the most serious conspiracy will be based on
      1. Length of the punishment
      2. Ease with which can convict
      3. How many members can be joined
      4. General advantages of large conspiracies, such as naming Fallguy as a co-conspirator and then using his hearsay statement
      5. Whether it will lead to a greater array of other charges via *Pinkerton* and maybe *Alvarez*
   
   c. Defendants will claim a defense of necessity for any conspiracy charge
      1. Hope will be that such a defense cuts off liability for the conspiracy
      2. Or at least such a defense cuts off any *Pinkerton* liability

3. **Tests for Agreement**
   a. If charge one large wheel conspiracy with Fallguy as the hub, test to show an agreement among all the conspirators requires at least knowledge of the others and what they were doing, as well as arguably *Kotteakos* requirement of more than just knowledge
      1. Points given for discussing relevant policies in meeting the test
      2. Points given if assume each cell was such close proximity to teach other that they were that Cell I members were blocking traffic, some members of Cell II were throwing rocks, and Cell III members were breaking into the abortion clinic
   
   b. If charge smaller and separate conspiracies, test from *James* case requires that members of each conspiracy have knowledge of the essentials of the conspiracy

4. **Defense**
   a. No defense possible to any charged conspiracies; see defense for Cell II members who did throw rocks, *supra*
Particular Conspiracies

1. Conspiracy to commit assault and battery

   a. Basis of charge

      1. Facts said "all 16 members of the [small] group [of anti-abortionists called "Struggle for Life"] agreed to confront the members of a pro-choice group conducting a rally at a large downtown intersection near an abortion clinic"

      2. View is that one large conspiracy to commit bodily assault on others, since each cell was essential and existed to do the separate tasks stemming from their implicit shared agreement to take action

   b. Problems

      1. Issue is if this conspiracy charge can include those others in the Struggle for Life group who "favor only demonstrations that are arguably lawful, though they refuse to condemn more extreme actions by their sisters and brothers"

         a. Test requires only that need know the essentials of the agreement and know that many others are involved

         b. DA focus on fact each cooperated with each others, that all of their acts were inter-dependent, and that divided into groups to get things done

         c. Def will claim each had own distinct ends -- even if illegal -- and that blocking traffic or throwing rocks and burglary were not inter-dependent acts

      2. Issue is if this conspiracy can include those non-Cell III members who support civil disobedience or obstructing justice that only includes disruption of pro-choice meetings

      3. Issue is if this conspiracy charge can include Fallguy who had already left

         a. Def will claim that he left to go home and prepare a press statement, so had no idea or agreement with what later occurred

         b. DA will claim that he is either the hub or the major end of a chain

            1. Fallguy is the authority figure and leader who uses an appeal to God to get their agreement

            2. His words that urge them "to protect the lives of innocent children," to take steps "necessary to protect against even greater violence," and to "put your lives on the line" all show that he knows essentials of the agreement

      4. DA should have no problems if includes in this conspiracy charge

         a. "Some" of the members who "believe in destroying abortion clinics, even if that means some injuries and deaths"

         b. "Other" members who "support civil disobedience, including the destruction of property and disruption of pro-choice meetings"

     c. How expect case will likely be decided
2. Conspiracy by Cell III members to "destroy the means by which the 'genocide' is being carried out" [or conspiracy to "physically harm" clinic staff]

a. Basis of charge

1. Object of such conspiracy can be interpreted to include physical injuries to doctors and other clinic staff

2. Facts even re when Free said "we might even have to break the fingers and hands that perform these murders, a member of the cell, Hal E. Looya, shouted 'Amen'"

3. Issue is whether these words can even be interpreted as a conspiracy to kill

b. Problems

1. Issue is if this conspiracy charge can include those members of Cell III who did not show their assent or agreement to Free's statement "might even have to break fingers and hands"

2. Issue is if this conspiracy charge can include those non-Cell III members who are the others that "favor only demonstrations that are arguably lawful, though they refuse to condemn more extreme actions by their sisters and brothers"

3. Issue is if this conspiracy can include those non-Cell III members who support civil disobedience that only includes disruption of pro-choice meetings

4. Issue is if this conspiracy charge can include Fallguy

c. How expect case will likely be decided

3. Conspiracy by Cell III members to burglarize abortion clinic [conspiracy to “break into”]

a. Basis of charge

1. Object of such conspiracy can be interpreted to commit burglary, which can then in physical and property harm in the clinic itself plus the disruption of any pro-choice other pro-choice activities in the clinic meetings

b. Problems

1. Issue is if this conspiracy charge can include those non-Cell III members who are the others that "favor only demonstrations that are arguably lawful, though they refuse to condemn more extreme actions by their sisters and brothers"

2. Issue is if this conspiracy can include those non-Cell III members who support civil disobedience that only includes disruption of pro-choice meetings

3. Issue is if this conspiracy charge can include Fallguy

c. How expect case will likely be decided
4. Conspiracy by several members of Cell III to kidnap
   
a. Basis of charge
      1. Facts were "several other" members of Cell III tried to persuade Reckonwith to stop her abortion, but she said she would not
      2. "So they decided to kidnap Reckonwith and hold her prisoner until she could no longer legally have an abortion"

b. Problems
   1. Issue is whether there is a sufficient overt act done by any of the conspirators
      a. While common law did not require an overt act, does majority view now require such an act?
   2. Issue is if this conspiracy charge can include those members of Cell III who did not participate in the decision to kidnap
   3. Issue is if this conspiracy charge can include those non-Cell III members who are the others that "favor only demonstrations that are arguably lawful, though they refuse to condemn more extreme actions by their sisters and brothers"
   4. Issue is if this conspiracy can include those non-Cell III members who support civil disobedience that only includes disruption of pro-choice meetings
   5. Issue is if this conspiracy charge can include Fallguy

c. How expect case will likely be decided

5. Conspiracy by Cell I members to "block traffic in the intersection"
   
a. Basis of charge
      1. Facts said the 15 remaining members divided into three cells of five people each and met separately to plan their particular roles in the confrontation
      2. Neil Down, the head of Cell I, told his members that "he felt blocking traffic in the intersection and holding signs saying "Abortion is Genocide" might be the most effective from of protest"

b. Problems
   1. Issue is if this conspiracy charge can include those members of Cell I who did not agree or participate in the decision to block traffic
   2. Issue is this conspiracy charge can include those members of Cell I who did not block traffic
   3. Issue is if this conspiracy charge can include those non-Cell I members who are the others that "favor only demonstrations that are arguably lawful, though they refuse to condemn more extreme actions by their sisters and brothers"
   4. Issue is if this conspiracy can include those non-Cell I members who support civil disobedience that only includes disruption of pro-choice meetings
   5. Issue is if this conspiracy charge can include Fallguy

c. How expect case will likely be decided
6. Conspiracy be members of Cell II to “disrupt the operation of the abortion clinic”

   a. **Basis of charge**

      1. Facts said that “Cell II, headed by Valeria Vandel, discussed ways that might disrupt the operation of the abortion clinic.

   b. **Problems**

      1. Issue is if this conspiracy charge can include those members of **Cell II** who did not discuss the ways to disrupt and did not show any assent or agreement to any particular ways

      2. Issue is this conspiracy charge can include those members of **Cell II** who did not throw rocks

      3. Issue is if this conspiracy charge can include those **non-Cell II** members who are the others that “favor only demonstrations that are arguably lawful, though they refuse to condemn more extreme actions by their sisters and brothers”

      4. Issue is if this conspiracy can include those **non-Cell II** members who support civil disobedience that only includes disruption of pro-choice meetings

      5. Issue is if this conspiracy charge can include **Fallguy**

   c. How expect case will **likely be decided**

7. Conspiracy to commit other objects, such as **obstruct justice** or **civil disobedience**

   a. **Basis of charge**

      1. Integrate relevant facts from all previous conspiracies, **supra**

   b. **Problems**

      1. Integrate relevant facts from all previous conspiracies, **supra**

   c. How expect case will **likely be decided**
MISCELLANEOUS CHARGES

Attempted Murder

1. Assumption
   a. Some or all of the other members of Cell I were close enough to the Cell I road-blocker when she was run over and killed

2. Charge
   a. One or as many as four counts of attempted murder against the ambulance driver, Hardy Fool
   b. Alternatively can charge one or as many as four counts of assault with a deadly weapon

3. Problems
   a. Mens rea
      1. See discussion of premeditation for the death of the Cell I road-blocker, supra
   b. Actus reus
      1. Points for discussing how close the other members of Cell I were to the Cell I road-blocker who was killed when Hardy Fool ran over and killed the person

4. How expect case will likely be decided

Liability for Criminal Acts Done To the Fetus

1. Assumption
   a. Jurisdiction makes a fetus of unknown age the potential victim of some criminal offenses
   b. Fetus that Reckonwith was about to abort shows the fetus was sufficiently viable or non-viable to fall under these offenses

2. Charge
   a. Potential attempted kidnapping of the fetus or attempted false imprisonment

3. Problem
   a. Whether approaching one to escort her out of the clinic constitutes a sufficient actus reus for attempt
   b. If the jurisdiction accepts an unequivocality approach, DA will claim the very strong intent to kill ["hold her prisoner until she could no longer legally have an abortion] means that do not need a very strong act for an attempt

4. How expect case will likely be decided
**Burglary**

1. Members of the **Cell I** who broke into the clinic are directly guilty of burglary
   a. Points here if not discussed before

2. Issue is whether the members of Cell I, the members of Cell II, Fallguy and any other members of the Struggle for Life Organization could also be guilty on a vicarious liability theory

3. How expect case will **likely be decided**

**Blocking Traffic**

1. Members of the **Cell I** who did actually block traffic are directly guilty of this crime
   a. Points here if not discussed before

2. Issue is whether the other members of Cell I, the members of Cell II, the members of Cell III, Fallguy, and any other members of the Struggle for Life Organization could also be guilty on a vicarious liability theory

3. How expect case will **likely be decided**

**Attempted Destruction of Property**

1. Members of **Cell I** who did actually throw rocks at the clinic are directly guilty of this crime
   a. Crime may also be viewed as one of actual vandalism if the actual breaking into the clinic by members of **Cell III** did constitute such vandalism
   b. Points here if not discussed before

2. Issue is if other members of Cell II, members of Cell I, members of Cell III, Fallguy and any other members of Struggle for Life could also be guilty on a vicarious liability theory

3. How expect case will **likely be decided**
**Solicitation**

1. Issue is if the benediction by Fallguy constituted a solicitation to do crimes "necessary to protect against even greater violence"
   a. Benediction ended with "buy you, as his soldiers, must put your lives on the line"

2. Issue is if the words of Neil Down to the Cell I members re "felt blocking traffic" might be most effective form of protest constitute a solicitation to do that crime

3. Issue is if words of Scott Free to Cell III members re "we might even have to break fingers and hands that perform these murders" constitutes a solicitation to do those bodily crimes

4. Issue is if any others in the group could be charged as accomplices to any such solicitations

5. How expect case will likely be decided

**Reckless Driving**

1. If Hardy is not charged with or found guilty of some homicide offense, issue is whether he then could be guilty of reckless driving

2. How expect case will likely be decided

**Theft of Property**

[Do Not Expect or Desire]

1. Members of Cell II who "collected [rocks] from a construction site" may be directly guilty of the theft of those rocks
   a. Issue is if such rocks constitute property under the theft laws or whether are deemed to be like abandoned property
   b. Issue is if probable that such rocks were specially ordered for the construction project -- and hence were worth something

2. Issue is whether the other members of Cell II, the members of Cell I, the members of Cell III, Fallguy and any other members of the Struggle for Life Organization could also be guilty on a vicarious liability theory

3. How expect case will likely be decided
Fleeing The Scene of the Crime

1. While did not want discussion of this crime, Hardy Fool can be charged with fleeing the scene of a crime if did assume that he kept speeding after ran over a Cell I road-blocker.

2. Facts said that Fool sped through, but the facts did not say if he ever stopped.

3. How expect case will likely be decided

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<thead>
<tr>
<th>Death of Road Blocker</th>
<th>Injury of Maimer</th>
<th>Assault of Doctor</th>
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<tbody>
<tr>
<td>Hardy Fool</td>
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Attempts Re Patients

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| All Other Members | 1+ |

**Conspiracy Charges**

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**Miscellaneous Crimes**

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