UNIVERSITY OF GEORGIA SCHOOL OF LAW
FINAL EXAMINATION

INTERNATIONAL CRIMINAL LAW MINI COURSE
FALL SEMESTER 2002
PROFESSOR ELLEN S. PODGOR

1.　　This examination is a take home examination. It is an open book examination and you may use any written or web materials you would like in answering the question. Although you are permitted to use materials outside of those used for this course, grading will be based only on the materials required for this class. **During this examination time, you may not discuss this question with anyone, including students in the class and individuals outside the class.** There are **three (3) pages** to this examination. Please make certain that you have all of the pages.

2.　　Your answer may not exceed **ten (10) pages** double-spaced, using one inch margins on all sides (including top and bottom), using Times New Roman or a comparable typeset and point size of either 11 or 12. Do not feel compelled to write 10 pages.

3.　　Your answer to this examination must be returned to me **no later than Wednesday, October 16th at 6 P.M.** by email to epodgor@gsu.edu in either Wordperfect, Word, or as part of the text of an email. Within 48 hours of sending your examination to me, you should receive a confirmation from my secretary, Christine Nwakamma. If you fail to receive a receipt, please resend it or contact her by telephone at 404-651-2059. To protect anonymity, my secretary Christine Nwakamma will be removing the exams from my email system and assigning them internal numbers so that I can grade them anonymously. After I have graded the exams, she will provide me with the names so that I can submit the grades to the School of Law registrar.

4.　　I will not answer questions during this examination period. If your answer is contingent upon information not provided in the exam question, explain what that information is and how it would affect your answer. If an emergency should arise, and you are unable to complete your exam in a timely manner, contact Associate Dean Kurtz.

IN TAKING THIS EXAMINATION, YOU ARE REQUIRED TO COMPLY WITH THE SCHOOL OF LAW RULES AND PROCEDURES FOR FINAL EXAMINATIONS

QUESTION:

After a trial by jury in a federal district court, Solomon Poodell was convicted of the following crimes: Count I -Wire Fraud (18 U.S.C. § 1343); Count II - Conspiracy to Commit Wire Fraud (18 U.S.C. § 371).

The following was presented during pre-trial motions to the court:

Solomon Poodell, age 35, is a citizen of Country A. Up until three months ago, he spent the last 30 years continuously residing in the United States. The FBI heard through an unsubstantiated rumor that Solomon Poodell might be bringing cigarettes into the United States to avoid the heavy taxation on the sale of cigarettes in Country A. The United States FBI contacted the police in Country A to inform them of the tip that they received. The police from Country A immediately wiretapped Solomon Poodell's telephone, recording a conversation between Solomon Poodell in Country A and his brother, Abraham Poodell, who was in Country B. This wiretap was obtained without a warrant and without probable cause. This was legal in Country A, which permits its police to use wiretaps at the police officer's discretion.

Immediately after securing a recording of the telephone call between Solomon Poodell and Abraham Poodell, the police in country A charged Solomon Poodell with the crime of evading cigarette tax, a misdemeanor in Country A. Solomon Poodell pled guilty to this offense and received a fine equivalent to $100 U.S. dollars. Solomon Poodell was not charged with any other crimes in Country A and Country A does not have any crimes that resemble the U.S. crimes of wire fraud or conspiracy to commit wire fraud.

The police in Country A were disappointed that Solomon Poodell only received a conviction for a misdemeanor, so they sent a copy of the recording of the telephone conversation between Solomon Poodell and his brother, Abraham Poodell to an Assistant United States Attorney (AUSA) in the hope that this attorney would proceed against Solomon Poodell. The AUSA decided to charge Solomon Poodell in the U.S. with the crime of wire fraud (18 U.S.C. § 1343) since the activity involved a scheme to defraud and the wires were used in furtherance of that scheme. Because Country A does not have an extradition treaty with the United States, the AUSA waited until Solomon Poodell was visiting with his brother in Country B, and then filed a request to country B to extradite Solomon Poodell to the United States for the crime of wire fraud. The AUSA did not include the charge of conspiracy to commit wire fraud in the request for extradition. Although Country B does not have a wire fraud statute, they do have a fraud statute that prohibits any individual from engaging in acts of fraud.

Country B agrees to extradite Solomon Poodell to the United States on the charge of wire fraud. It is only after Solomon Poodell is extradited to the United States that the AUSA amends the charge to include the additional charge of conspiracy to commit wire fraud (18 U.S.C. § 371). A representative of Country B testifies at a pre-trial hearing that Country B does not consent to the adding of this additional charge because their country does not recognize the crime of conspiracy.

The following is a summary of the evidence presented at trial:

> Solomon Poodell made a telephone call in Country A, to his brother Abraham Poodell who was in Country B. In this telephone call Solomon Poodell and Abraham Poodell discuss their intent to bring into the United States cigarettes from Country A. The scheme that they devised would allow them to avoid taxation on these cigarettes in Country A.
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> An FBI agent testified that Solomon Poodell shipped cigarettes to his cousin Tamar Poodell, who lived in the United States and that Tamar Poodell sold these cigarettes in the United States to avoid Country A's taxation on cigarettes.

There was no evidence presented at Solomon Poodell's trial that the shipment of these cigarettes to the United States was illegal under United States law and Solomon Poodell was not charged with illegally importing cigarettes into the United States.

The jury convicted Solomon Poodell of both the wire fraud and conspiracy to commit wire fraud charges, and Solomon Poodell received a sentence of 12 to18 months in prison. Over the objection of the defense, the court increased Solomon Poodell's sentence based upon a prior felony conviction for fraud received by Solomon Poodell in Country B. Solomon Poodell's present attorney argued at sentencing, that it was improper to enhance his sentence based upon this prior conviction in Country B, in that Solomon Poodell did not receive a trial by jury and did not have an attorney representing him on the felony fraud charge. Country B had only provided Solomon Poodell with the assistance of a first year law student.

Solomon Poodell argues on appeal the following issues: (1) that he was deprived of rights under the United States Constitution; (2) that the district court did not have proper jurisdiction over these charges; (3) that he was improperly tried for the crime of Conspiracy to Commit Wire Fraud; and (4) that his sentence was improperly enhanced. Solomon does not raise any issues regarding the sufficiency of the evidence to convict him of the crime of wire fraud and conspiracy to commit wire fraud.

Write the appellate court's opinion that includes reference and discussion to <u>all</u> issues that you feel Solomon Poodell might have raised under these four arguments. (It is only necessary to discuss issues covered in this minicourse.) **Make certain that your opinion explains <u>in</u> <u>detail</u> the rationale for your ruling as to each issue. Assume that defendant Solomon Poodell made all necessary motions to properly preserve issues presented for appeal. If you prefer to accomplish the above though concurring or dissenting opinions, you are welcome to do so. It is not necessary, however, to have other than a majority opinion as long as the majority opinion includes a <u>detailed and full</u> discussion of all issues presented in this case.**

Note -- Assume that all parties in this question are human beings.
(If your answer is contingent upon information not provided, explain what that information is and how it would affect your answer.)