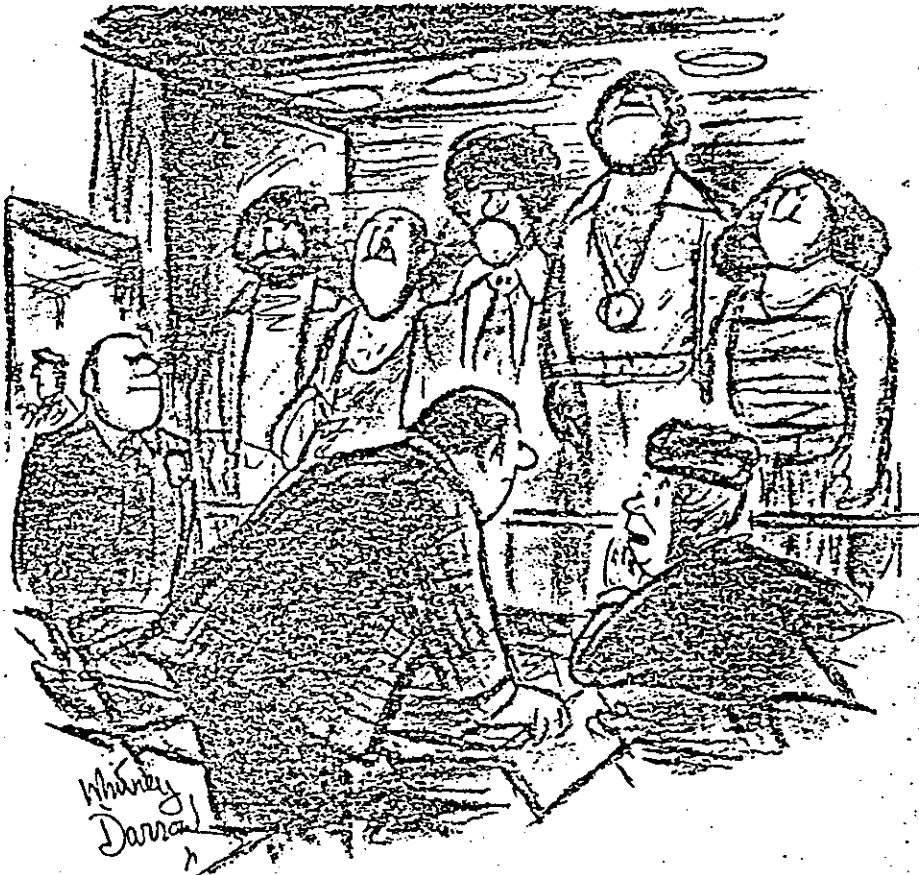


CRIMINAL LAW AND PROCEDURE  
SECTION B3

Final Examination  
May 7, 1984

Three Hours  
1:00-4:00



"None of them is it, but I don't like the looks of the one on this end."

OPEN BOOK

Instructions

The four problems are of equal weight. Budget your time accordingly.

Answer all the questions reasonably raised in each problem even though your resolution of a prior issue in the same problem may technically make decision of other issues immaterial. If you believe that you need more facts than are presented to adequately resolve an issue, indicate specifically what facts you believe you need and why.

Specific citations to cases are welcome but not as a substitute for thinking, i.e. do not use citations instead of clearly stating the relevant point of law.

## I.

The Idaho Court of Appeals recently considered the following facts:

"Moulds, a prison inmate, was interviewed at the prison by police detectives concerning crimes with which he is now charged. . . .

"The [trial] court found that the detectives had informed Moulds of his Miranda rights and had given him a waiver form explaining those rights. Moulds placed his initials next to each statement of rights on the form; but he hesitated when asked to initial a statement that he was willing to talk to the police. He asked for more information concerning the crimes being investigated. A detective said he knew where Moulds had lived, when he was not in prison, and that Moulds had been involved in a particular robbery. However, the detective refused to give Moulds more information. Moulds indicated that he would talk to the detectives. He initialed the rest of the form, including a statement that he waived his rights, and he signed the form at the bottom. . . .

"Moulds then repeated his request for more information about the crimes under investigation. While a detective was giving Moulds this information, Moulds interrupted him and said, 'Maybe I need an attorney,' or 'I think I need an attorney.' One of the detectives responded that Moulds did have the right to an attorney, but that the decision was his to make. The detective then proceeded, in the district court's words, 'to tell [Moulds] about their case and how he could make a written statement without mentioning the name of an accomplice.' After listening to these additional remarks by the detective, Moulds made statements tending to incriminate him with respect to several alleged crimes."

State v. Moulds, 673 P.2d 1074 (Idaho App. 1983).

After a brilliant career prosecuting people accused of crimes against potatoes in Boise, you have recently been appointed by the Governor to the Idaho Court of Appeals. Considering the facts recited above, what tenable arguments can Moulds make in an attempt to suppress these incriminating statements? Why? How will you decide this case when Moulds' attorney seeks suppression on the basis of the claims you have noted? Why?

## II.

"At about 11 A.M. on April 22, 1982, an armed robbery took place at Schoch's Market. Schoch, the store owner, and his sister, a clerk, were accosted by a man with a knife. In response to his threats they turned over to him \$260 and he left the store. The robber was described as black, wearing a beige coat and a nylon stocking over his face. Schoch followed the robber out of the store, hailed a passing van and requested the occupants to follow the robber which they did. Schoch returned to the store and summoned the police. The occupants of the van, Jose and Anita Huerta, gave chase to the robber after he left the store. The robber had passed in front of their van and was wearing a camel coat and a nylon stocking over his head and carried a knife. They lost the robber when he ran down an alley and then into a fenced backyard. After waiting on the street, they saw another black male, having the same height, weight, build and color as the robber, come out of the building into the backyard of which the robber had run. This second black male, who was dressed differently from the first, then got into a car and drove away.

"After watching the house for a few more minutes and seeing nothing else happen, the van occupants returned to Schoch's Market and told the police about following the robber to the house at 924 South Warren. Three police officers then went to the house pointed out by the van occupants. Officer Hoskins first knocked on the screen door but received no answer from inside. Hoskins then opened the screen door and knocked on the main door a couple of times. When the door opened by itself, the officers asked if anyone was there. Getting no response, they entered and conducted a complete search. During the search they discovered and seized a coat, nylon mask and a knife which items were later

introduced as evidence and identified by the victims as being associated with the robber."

People v. Mason, 456 N.E.2d 864 (Ill. App. 1983).

- (1) You represent the defendant Mason against whom the prosecution seeks to introduce these items of evidence at trial. Mason was seen entering 924 Warren two hours after the search in question and the homeowners of 924 Warren later identified him as an acquaintance who was staying there while looking for an apartment to rent. Mason's fingerprints were found on the knife. What tenable arguments can you make to have these items suppressed? What chance of success do you have with these arguments? Why?
- (2) Time passes. Life goes on. Meanwhile, back in Illinois, Mason has now been convicted of robbery. Trial counsel (you in an earlier, less competent incarnation) did not file a suppression motion with respect to the evidentiary items noted above. You are now Mason's newly appointed appellate counsel. Does Mason have a tenable argument of ineffective assistance of counsel based on the failure of his trial counsel to file a suppression motion? Why or why not?

### III.

Officer Mondale, a traffic patrol officer employed by the City of Democraticsburgh Police Department, State of Hyperbole, stopped motorist Hart when Mondale observed him making an illegal left hand turn. After pulling Hart over, Mondale came to the window of the car and asked to see Hart's driver's license. Hart handed over his wallet opened to his license and in doing so, Mondale noticed an object barely protruding from the bill section of the wallet. Mondale reached in and retrieved the object which turned out to be a hand-rolled "cigarette." Ordering Hart out of the car, Mondale then observed a thin volume resting on the front passenger seat, stamped on the front "Personal Diary." Mondale picked up the book and opened to the first page which contained a handwritten title: "Pot Smoking: Some New Ideas for the 80's." Hart was taken to the police station, the cigarette was unrolled there and found to contain a small amount of low-grade marijuana, much like that grown in Colorado.

Hart was convicted in Hyperbole state court of possession of marijuana. The marijuana from the cigarette and the diary (which contained no writing other than the handwritten title) were the only physical evidence introduced against him. Hart's request to the trial court for court appointment of a handwriting expert to prove that he had not written the "title" in the diary was denied. Hart asked for a jury trial and was given a ten person jury in accordance with Hyperbole state law. The jury convicted him 9 to

1. (Non-unanimous jury verdicts in criminal cases are also permitted under Hyperbole state law.)

You are related to Hart through marriage--he's married to your youngest sister, Jessica Jackson, and she has insisted that you represent Hart in this criminal case although you usually only take cases involving veterinary malpractice. What tenable arguments can you make in Hart's behalf? What are your chances of success? Why?

#### IV.

In discussing both the Supreme Court's decision in Brewer v. Williams, 430 U.S. 387 (1977) (the "Christian burial speech case") and the Supreme Court's grant of certiorari in the same case, pending this Term, Williams v. Nix, cert. granted, 103 S. Ct. 2427 (1983) (raising the issue whether an "inevitable discovery" exception to the exclusionary rule should be adopted), Professor Phillip Johnson of Berkeley has argued:

- (1) "[T]he 'inevitable discovery' exception is easier to defend in principle than some other well-recognized exceptions to the exclusionary rule--the standing limitation, for example. When the police are allowed to use against B evidence which they obtained by flagrantly violating the constitutional rights of A, such violations are thereby encouraged. In contrast, a properly administered inevitable discovery exception gives the authorities only what they would have had if they had not violated the Constitution."
- (2) "The fact that constitutional law is complex and technical suggests to me that it should be enforced with a sense of proportion. Granting that Captain Leaming [who delivered the 'Christian burial speech'] crossed a certain line that the Supreme Court has drawn, and even granting that he ought to have known better, his misdeed was what we criminal lawyers call malum prohibitum, rather than malum in se. Legalisms aside, what he did was to appeal to the conscience of a suspected murderer to do the only decent and honorable thing: to reveal where he had hidden the body, so the police could recover it and return it to the grieving family for burial. Perhaps the police ought not to be allowed to

make such an appeal to a suspect in their custody, but in my opinion somebody ought to do it."

Johnson, "The Return of the 'Christian Burial Speech' Case," 32 Emory L.J. 349, 364, 381 (1983).

Do you agree with proposition (1)? Why or why not? Do you agree with proposition (2)? Why or why not?

Professor Burkoff

