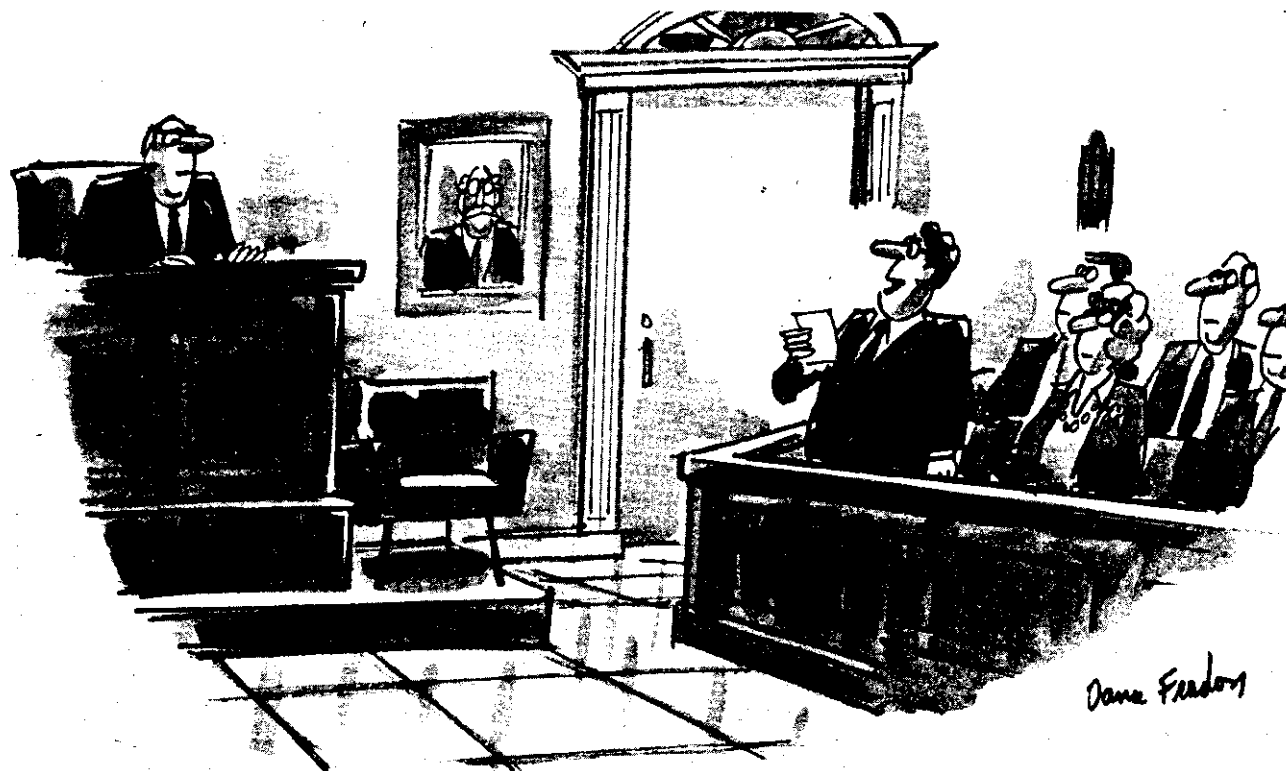


CRIMINAL PROCEDURE
SECTION B

Final Examination
May 2, 1986

Two and ½ Hours
1:00-3:30



"We find the defendant guilty, and, what's more, the Founding Fathers and Ed Meese would have found him guilty, too."

OPEN BOOK

Instructions

The three problems are of unequal weight. Each is worth an amount in grading proportionate to its suggested time allotment. 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. (60 minutes)

5/19/81
"On September 29, 1981, Detective Robert Turner of the Denver Police Department observed three individuals attempting to cover a large, apparently heavy object in the trunk of a car. Detective Turner drove past the car and then returned for another look. He found the car empty with a safe visible in the trunk. Detective Turner radioed a description of the individuals he had seen trying to conceal the safe and shortly thereafter police officers apprehended someone who matched one of the descriptions, Joan Jones. Jones was taken to the police station and asked if she had recently placed a safe in a car. After admitting that she had, Jones was given Miranda warnings and immediately thereafter told Turner that she had participated with two others in the burglary of a residence in the vicinity of Second Avenue and Colorado Boulevard. According to Detective Turner, she also told him that she thought the safe contained money and drugs.

"Another detective located a house that appeared to have been broken into in the neighborhood described by Jones to Detective Turner. The front door of the house was open and the door jamb was splintered. Detective Turner arrived, shouted "police" into the residence, and then entered He then conducted a search of the premises. On the lower floor of the house, Turner noticed marks in a small room or closet indicating where the safe had been located. In the same closet, he observed a scale, a mirror, two teaspoons, and a playing card, all bearing a white residue.

"Shortly after the discovery of these items, the homeowners, Darrell and Darlene Unruh, returned home. They confirmed the fact that their safe had been stolen, and Detective Turner informed them that the safe had been recovered and taken to police headquarters for safekeeping.

"Detective Turner suspected that the safe contained drugs because of Jones' statements, the scale, spoons, playing card, and mirror found in the room where the safe had been located, and the fact that the defendants' names sounded familiar. Turner returned to the police station and contacted a detective in the vice bureau who produced from his files a card on a Darrell Norman Unruh. The card listed Unruh's address as the house which Turner had returned from and indicated, in an entry dated September 24, 1979, that Darrell Norman Unruh was a suspected cocaine dealer.

"The detectives thereupon decided to submit the safe to a sniff by a narcotics detection dog. According to Detective Turner, when the dog was brought into the room at the police department where the safe was being kept, the dog "immediately responded to the safe and pawed at it" In an affidavit seeking a warrant to open the safe, Detective Turner relied upon the results of the dog sniff. After obtaining the warrant, the police officers had the safe pried open with hydraulic tools. Inside, they discovered, among other things, 126 grams of cocaine

and 1.2 kilograms of marijuana." Cf. People v. Unruh, 713 P.2d 370 (Colo. 1986).

In search of the famed "Rocky Mountain High," you have left Pittsburgh and established a lucrative criminal defense practice in Denver mostly representing individuals who are alleged to have sold "Rocky Mountain Highs."

- (1) As counsel for Joan Jones who has been charged with burglary and theft, what tenable arguments can you make seeking to suppress any and all evidence that might be offered against her? Are you likely to succeed with these arguments? Why or why not?
- (2) As counsel for Darrell and Darlene Unruh who have been charged with possession of the narcotics found in the safe, what tenable arguments can you make seeking to suppress those narcotics? Are you likely to succeed with those arguments? Why or why not?
- (3) Assuming that you unsuccessfully represented Jones and the Unruhs at their respective suppression hearings and trials, do any of the three defendants have a good argument for ineffective assistance of counsel based on the fact that you represented all three of them? Why or why not?

II. (60 minutes)

The Spittsburgh Police Department received an anonymous tip that an individual named Kenny Khaddafi was engaged in the sale of heroin from his home located at 16 Gulf of Sidra Drive. Officer Knute Reagan proceeded to that address in his patrol car but could see nothing wrong from outside the house. Next door to the house was a vacant lot. Reagan got out of his car, walked on to the vacant lot and took a closer look at the house. He could see lights on and hear a radio playing, but nothing at all suspicious. However, as Reagan walked farther into the vacant lot, he began to smell the odor of marijuana which appeared to emanate from a car parked in the driveway of the home he was watching.

Investigating the marijuana odor, Reagan left the vacant lot and thoroughly searched the car. In the unlocked trunk of the car, Reagan found a safe [the same safe from Problem I!] which he forced open, discovering inside an Uzi submachine gun. Reagan seized the gun as he knew that it is a crime to possess such a weapon without a license and he radioed back to the police station the car license number and the house address in order to find out who owned the car and the home. When he was told that one Doctor Baby Duvalier owned both the car and the home, he asked for an arrest warrant for Duvalier to be obtained. Vice Detective Bush arrived 10 minutes later, saluted, grovelled, and handed him the warrant.

Reagan and Bush then went to the door of 16 Gulf of Sidra Drive to arrest Duvalier. They knocked on the door and heard no response except for a toilet flushing inside. They thereupon knocked the door down (with a "Harpoon" missile), entered the house, and immediately saw two individuals, Ferdy and Mimi Marcos. Reagan, not knowing who they were, asked them their names. Ferdy answered that he was Duvalier. Not knowing any different, Reagan arrested Ferdy, searched him, and found a small amount of marijuana concealed in his shoe. Ferdy claimed the marijuana belonged to Mimi and she was also arrested, searched, and a small amount of marijuana was found in her shoe. Both Ferdy and Mimi Marcos were thereupon given their Miranda warnings. Both declined to say anything more and asked to talk to their lawyers, Paul and Eleanore Gettleman.

On the way to the stationhouse, in the patrol car, Ferdy Marcos blurted out: "You know, I'm not really the tyrant you were looking for. Duvalier is still in France." Officer Bush responded: "Gee whiz, who are you then and why were you in Duvalier's house?" Mimi Marcos answered by telling him their real names, adding that "we were only visiting Duvalier to trade him our Uzi submachine gun for more shoes to put our marijuana in."

All of the foregoing events occurred in the state of Spennsylvania. You are the Spallegheny County District Attorney and have charged Ferdy and Mimi Marcos with a firearms violation and possession of marijuana. Their lawyers, the Gettlemans, have, however, moved to suppress the Uzi submachine gun and the marijuana and Mimi Marcos' statement as the fruits of unconstitutional police conduct. Are the Gettlemans likely to win their suppression mbtion? Will two more guilty people be freed on a "technicality" (i.e. the Constitution)? Why or why not?

III. (30 minutes)

"In an effort to give 'clear rules' to the police while maintaining a degree of flexibility, the [Supreme] Court has failed on both counts. Each 'clear rule' has left unanswered questions which have turned it into an unclear rule. Yet the application of these rules as if they were bright line rules ('you can search cars without a warrant') leads to injustices in many cases--either the injustice of allowing governmental intrusions into areas where one reasonably expects privacy or that of excluding evidence based on 'technicalities' where the police have tried to follow the unclear rules." Bradley, "Two Models of the Fourth Amendment," 83 U. Mich. L. Rev. 1468, 1479 (1985).

Do you agree or disagree with Professor Bradley's analysis? (Please explain including references to cases discussed this semester.)

Professor Burkoff

