

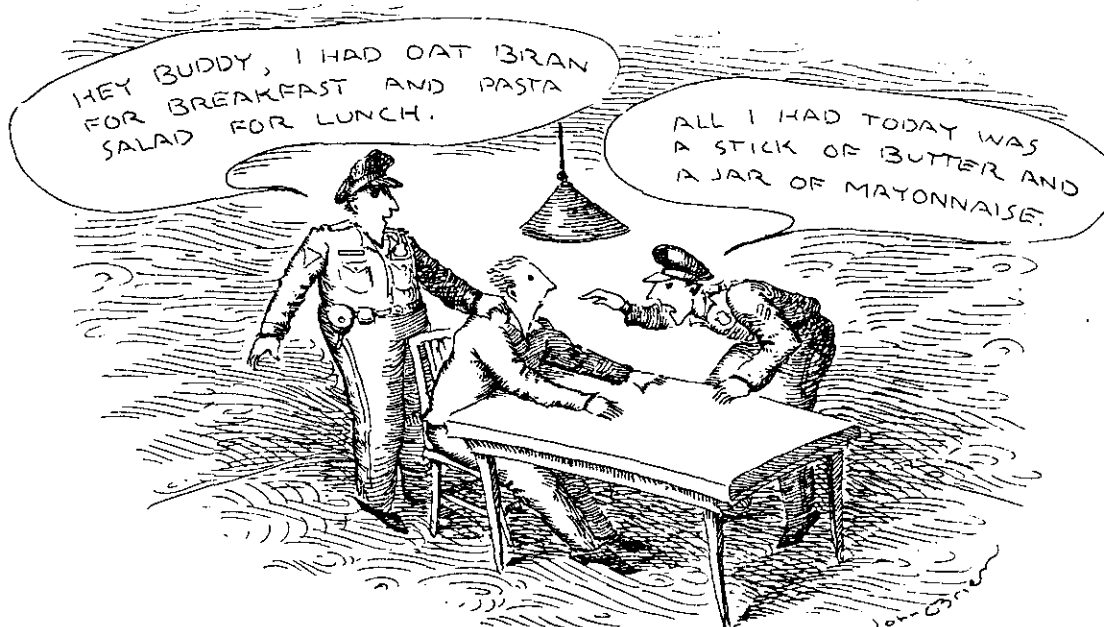
CRIMINAL PROCEDURE
SECTION A

Final Examination
May 2, 1991

Two and ½ Hours
1:00-3:30

THIS EXAMINATION MUST BE RETURNED WITH YOUR BLUEBOOKS

GOOD COP BAD COP



OPEN BOOK
Instructions

The three problems are of unequal weight. They will be graded in proportion to the suggested time limits. 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 the 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)

Consider the following scenario:

"On June 16, 1987, an informant notified the Henrico County[, Virginia] Police Department that Paul Stanley would be driving a car in Henrico County. The informant reported that the car would contain drugs and that Stanley might have weapons in his possession. Stanley was a fugitive and a warrant for his arrest for a probation violation was outstanding. This information was relayed to Officers Von Canon and Jackson. Officers Von Canon and Jackson were advised by police investigators that they needed to establish their 'own reason why . . . [they] had suspicion to stop . . . [Stanley's] vehicle, regardless of what they [had been] told. . . .' They were instructed not to stop the car unless they observed a traffic violation.

"Later that day, Officers Von Canon and Jackson, who were driving separate cars, observed Stanley driving a car on Staples Mill Road in Henrico County. Albert P. Harris was a passenger in the front seat of Stanley's car. Von Canon saw 'a lot of overt movement in the vehicle' with its occupants reaching and 'bobbing around.' The officers could not see what, if anything, was being moved.

"The officers stopped Stanley's car because the right brake light was not operating. Jackson approached Stanley and Von Canon approached Harris. Jackson asked Stanley to get out of the car, confirmed his identity, and arrested him. Von Canon asked Harris to get out of the car because the driver had been arrested and an inventory would be taken of the car's contents. Harris, after being asked twice to get out of the car, refused to move. Von Canon again asked Harris to get out of the car and informed Harris that if he refused, he would be forcibly removed. Harris then got out of the car.

"Von Canon frisked Harris for weapons. During the frisk, Von Canon felt a bulge in Harris' pocket. He removed a film canister from Harris' pocket. Von Canon asked Harris, 'What's in the film canister?' Harris

replied, 'Film.' Von Canon opened the film canister, and it contained white powder later identified as cocaine. Harris thereupon blurted out: 'Don't you be touching our dope.' Von Canon arrested Harris and searched him. During this search, Officer Von Cannon found another film canister and a small plastic bag. The canister and plastic bag contained white powder later identified as cocaine. A third film canister containing cocaine and drug paraphernalia was discovered during a subsequent search of the car."

Cf. Harris v. Commonwealth, 400 S.E.2d 191 (Va. 1991).

You have succumbed to the Virginia tourism advertising campaign ("Virginia is For Lovers") and have moved to Henrico County where you are waiting for tourists and working as a public defender. You have been assigned to represent Stanley and Harris who have both been charged with possession of cocaine with intent to distribute. You have filed a motion to suppress the cocaine, the drug paraphernalia, and the statement made by Harris to the arresting officers. What are your chances of success with this motion? Why?

II.

(60 minutes)

The Spittsburgh Police Department received a call stating that a law student, Fred Felonius, was running amok at Spitt Law School, brandishing a rifle, firing into the air, and disrupting exams by yelling at the top of his lungs: "If law is what the judge ate for breakfast, let's all go on a hunger strike!" A PSWAT team was immediately dispatched to the Law School by the Spittsburgh Police Department. Students and faculty gathered outside the Law School building informed the police that Felonius was holed up in the locker area of the building, located in the basement.

The police immediately proceeded to the basement of the building, but did not see Felonius anywhere. The only person they saw was a custodian who was pretending to clean up the student lounge area. The police officers asked the custodian if she had seen or heard Felonius and she said she didn't know who he was, but that she had heard someone in the locker area who sounded like he was trying to squeeze himself into one of the lockers. "Go ahead and search my lockers," she added, "but if you find that crazy law student, don't you get blood on my nice, clean floors."

At that, the officers started breaking open the locker doors. After they had searched more than one hundred lockers, they finally found Felonius squeezed into one. As they pried Felonius out of the locker (which turned out to be his locker which he

shared with another law student, Minny Misdemeaner), a pile of books spilled out onto the floor.

Officer Doright, the officer who pulled Felonius from his locker, turned to Felonius and said: "OK, where's the rifle, Reverend? If you don't tell me where it is, I'll turn you into a handicapped child." Felonius responded "It's over there," pointing to another locker which Doright immediately forced open, discovering inside the rifle which was right next to a teeny, tiny marijuana plant which was under an even teenier grow-light. This locker turned out to belong to another law student, Sally Summaryoffensio.

The books which had tumbled out of Felonius' and Misdemeaner's locker turned out to be--upon detailed inspection by Officer Doright--stolen Gilbert's Torts outlines. When Felonius was taken back to the police station, he was given Miranda warnings, at which point he blurted out: "You should warn Minny. She stole all the Torts outlines in Spittsburgh so that our study group would have an edge on everyone else in Section A."

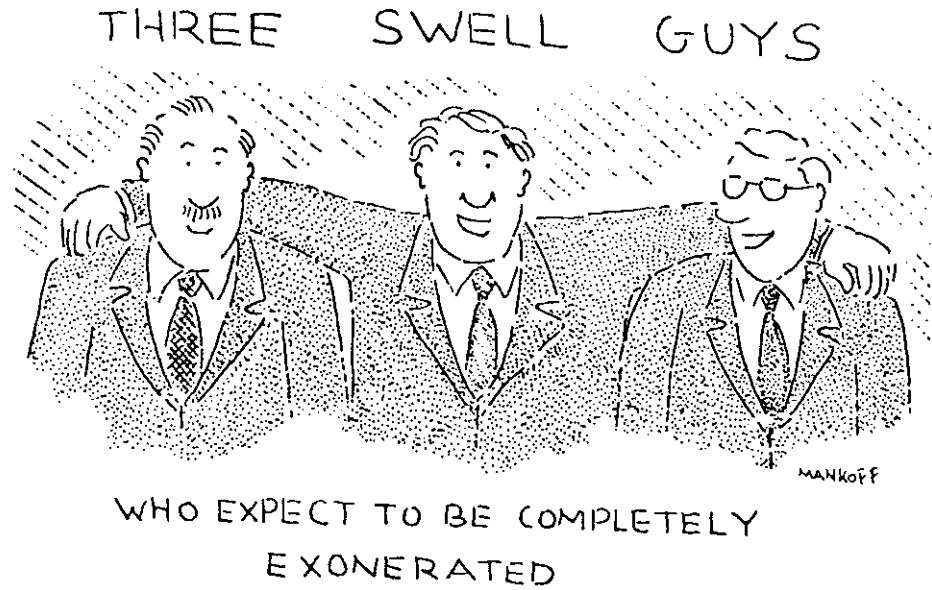
You are an assistant district attorney in Spallegheny County, Spennsylvania, where all of the events set out above took place. Your office has charged Felonius with possession of an instrument of crime (the rifle) and possession of stolen property (the outlines); Misdemeaner has been charged with possession of stolen property (the outlines); Summaryoffensio has been charged with possession of marijuana. All three law students are represented by the same attorney, Lorraine Flybynight, who has filed a motion to suppress all the physical evidence and the statements made by Felonius. What are your chances of defeating her motion? Why?

III.
(30 minutes)

"The right to counsel is so important that state supreme courts should require all trial courts, as a matter of constitutional law, to: (1) appoint the particular criminal defense attorney an indigent accused person chooses to represent him or her; and (2) provide investigators (at state expense) to do whatever investigation the indigent accused and/or his or her appointed attorney desires in connection with the charges filed against the accused."

Smartofsky, "Right to Counsel: Panacea or Pasta Fagirole?," 62 U. Fuzz. L. Rev. 1251, 1252 (1984).

Do you agree or disagree? Referring to topics discussed in this class, explain why or why not.



Professor Burkoff