

CRIMINAL PROCEDURE
SECTION A

Final Examination
May 14, 1993

Two ½ Hours
1:00-3:30

THIS EXAMINATION MUST BE RETURNED WITH YOUR BLUEBOOKS



*"Get involved with community
service after law school."*

*"Accident cases!
Accident cdses!"*

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)

On November 7, 1990, Officer J.L. Pace, of the Montgomery, Alabama Police Department, was dispatched to 2643 W. Edgemont. The police had received an anonymous telephone call that several males were in the backyard of that address disassembling a possibly stolen vehicle. Officer Pace was dispatched to the address and parked his automobile next door, where he could see into the backyard of 2643 W. Edgemont. From his position, Pace could see some objects propped up against the house.

Pace walked toward the house and upon entering the backyard, saw the front clip of a vehicle, a trunk lid, fenders, and bumpers. While Officer Pace was in the yard, he heard someone in the house yell, "The police is outside." Officer Pace then left the backyard to go to the house to get some information. Pace walked around to the front door and saw that it was open. As he opened the screen door, Pace met Patrick Bell, the owner of the house, and several others, including Lisa Liberty, who were attempting to leave the house. To prevent them from leaving, Pace asked Bell and the others to step back.

While standing in the opened door, Officer Pace observed boxes of car stereos all over the floor inside and, based on his experience and his observation of the activities occurring in the backyard, he believed that the stereos were stolen. There also appeared to be no furniture in the house. Office Pace entered the house, secured the area, and called for backup.

When the backup officers arrived, they had secured a warrant to search the house. They also took Bell away to the stationhouse and gave Liberty and the others Miranda warnings. Liberty asked to see a lawyer and the officers told her to sit down, that she would be there for a long time. Two hours later, Liberty asked one of the officers what was happening, why couldn't she leave? The officer responded that she was going nowhere until they figured out where the stereos came from. Liberty then blurted out: "Bell stole them. I don't know nothing." The car stereos were in fact later found to be stolen. The search of the house subsequently turned up a small quantity of marijuana hidden in a soap dish in the bathroom.

Cf. Bell v. State, 611 So. 2d 1167 (Ala. Ct. Crim. App. 1992).

You are an Assistant District Attorney in Montgomery, Alabama, drawn to the South because of your love of Southern cooking. Bell and Liberty have been charged with possession of stolen property (the car stereos) and possession of marijuana. Their attorney has filed a motion to suppress the stereos, the marijuana, and Liberty's statements to the police. After sitting down and enjoying a light lunch of Southern health food (country fried steak, fried chicken, mashed potatoes with red-eye gravy, hush puppies, collard greens, fried okra, and chocolate cake) with the District Attorney, Jim Bob Seeburger, Seeburger asks you what arguments you anticipate defense counsel will make in support of her motion to suppress? What is your answer? How will you respond to these arguments? Who is likely to be successful? Why? (Finally, if you keep eating like that, how long can you truly expect to live?)

II.
(60 minutes)

Officers of the Tyler, Texas Police Department conducted a surveillance of suspected drug dealing at the Tyler Courts Motel. The officers conducted their surveillance from one of the cabins within the small motel. Their attention was primarily focused on Apartment Number 18, occupied by Jimmy Jordan, a known drug dealer. Undercover agents had previously purchased cocaine from Jimmy Jordan at that location.

During the day, the undercover agents observed numerous persons, many of them known drug users, enter Number 18, stay a couple of minutes, and then leave. Some of those leaving Number 18 were seen putting crack cocaine rocks in their mouths, while others divided cocaine rocks on the premises in full view of the undercover officers. Still others smoked the crack between the cabins, in one instance, only eighteen inches outside the window from which the officers were watching.

While the surveillance operation was in progress. Regina Lott and Larry Little arrived on a motorcycle. Lott went to Number 18 and knocked on the door. Jimmy Jordan came to the door, and Lott entered and remained inside for perhaps a minute or a minute and a half. She then came out and rejoined Little. Jordan came out of Number 18, got into his car, and left. Lott and Little sat on an old car seat near their motorcycle. Jordan returned within fifteen or twenty minutes and re-entered his apartment. Lott also re-entered Number 18 almost immediately thereafter. She remained inside for approximately two minutes, came out, spoke to Little briefly, hugged him, and then she walked away. Little thereafter departed by himself on the motorcycle. There was no doubt in the minds of the officers observing these events that Lott had just bought drugs. The undercover agents transmitted by radio a description of Lott and of Little and the motorcycle Little was riding to uniformed officers in the area.

Lott was never found. But the motorcycle driven by Little was stopped almost immediately by Tyler Police within a mile of the motel. Little was asked if he possessed drugs. He denied having drugs, but appeared "unusually nervous." Sergeant Wells, seeing a little wrapper of paper protruding slightly from Little's pocket asked, "is that cocaine right there?" When Little stepped away from the officer, another policeman took hold of his arms. Little then said, "OK, OK, you can take my crack." Sergeant Wells then pulled the little wrapper of paper from Little's pocket. The wrapper contained a rock of crack cocaine. A subsequent search of a "trunk-like" compartment of the motorcycle turned up a nylon bag which, when opened at the scene, was found to contain a tiny safe, which, when blown open, contained a small quantity of marijuana. When the police later checked out the registration of the motorcycle, it was found to be registered in the name of Regina Lott.

Cf. State v. Lott, 844 S.W.2d 917 (Tex. Ct. App. 1992).

You originally came to Waco, Texas trying to put together a movie deal for David Koresh. Koresh got "burned up" with your activities on his behalf and "fired" you, so you have gone into private practice in Tyler, Texas, and now represent Larry Little who has been charged with possession of narcotics (the cocaine and the marijuana). You are considering making a motion to suppress the narcotics and Little's statements to the police after he was stopped on his motorcycle. What arguments can you make in support of this motion? How do you anticipate the prosecution will respond? Are you likely to be successful? Why or why not? (Finally, would these facts make a good made-for-TV movie?)

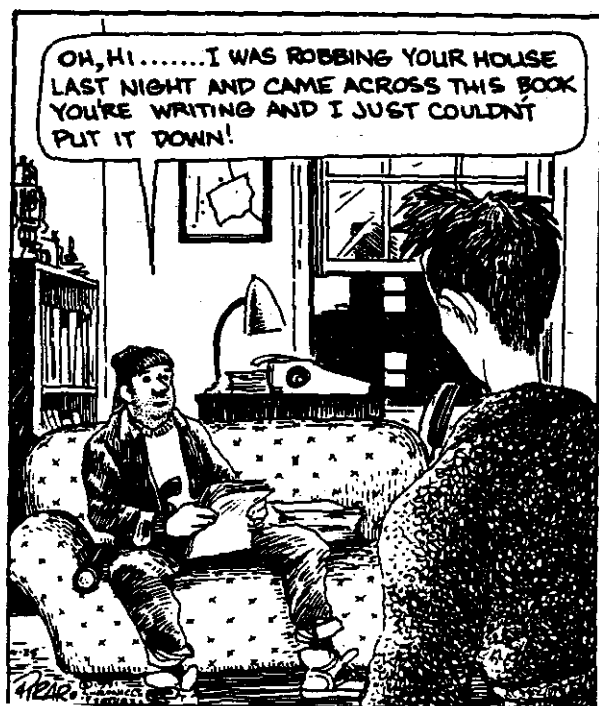
III.
(30 minutes)

William Skennedy Smythe, a medical student, has been charged with rape in Spennsylvania state court. The District Attorney has found hairs and stains on the sheet in the bed in the victim's apartment where the alleged rape took place. The hairs and the stains have been analyzed by a government expert who is planning to testify at trial that the hairs are from Smythe's body and that the stains came from his semen. Smythe is indigent. He has denied that he committed the rape or that he was ever in the victim's apartment. But, he does not have the money to hire his own experts to analyze this physical evidence to prove that it is not his.

(1) Can Smythe force the State of Spennsylvania to pay for an independent expert to analyze this evidence? Why or why not?

(2) If Smythe's public defender, Oriana Hatch, fails to request the appointment of such independent experts and Smythe is subsequently convicted of rape, can Smythe successfully appeal his conviction on grounds of ineffective assistance of counsel? Why or why not?

Professor John Burkoff



"We don't have a search warrant. The judge says it's hidden in your apartment somewhere."