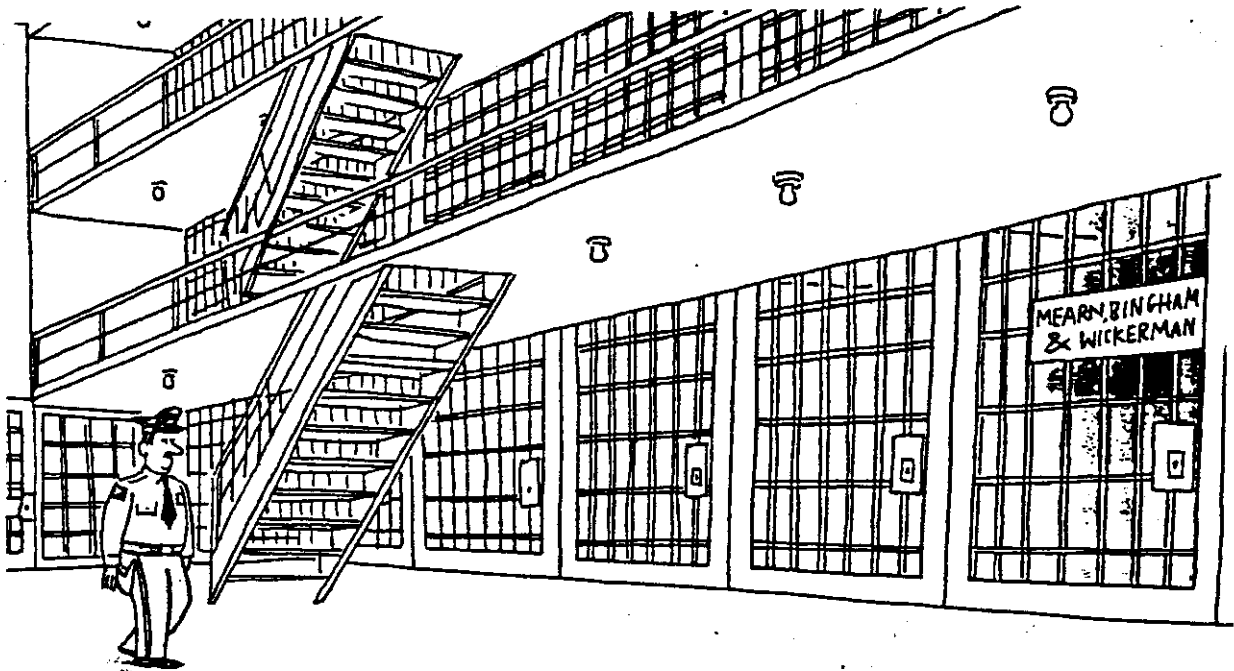


CRIMINAL PROCEDURE
SECTION A

Final Examination
April 30, 1998

2½ Hours
9:00-11:30

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 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 facts:

“DEA Special Agent Dave Marzullo was conducting a wiretap operation pursuant to a federal court order on November 3, 1995. During this operation, Marzullo intercepted a call which indicated 300 kilograms of cocaine were to be delivered to 2641 Jackson Street, a residence in Carson, Los Angeles County. Orange County Sheriff’s Investigator Thomas Dove related this information to Narcotics Officer Scott McKnight, who was parked on the west side of the 2600 block of Jackson Street for 24-hour surveillance of the location.

“Shortly after 10:20 on the morning of November 5, McKnight observed Roberto Ramirez arrive at the 2641 Jackson residence in a blue Ford Tempo. Ramirez drove his car into the driveway and behind the house until he disappeared from Officer McKnight’s view.

“Ramirez stayed inside the house for 40 to 50 minutes, after which he drove away in the same car with a passenger who emerged from the house when Ramirez came out. Believing Ramirez possibly picked up a supply of cocaine from the Jackson residence, McKnight began to follow the car at a distance of 50 to 75 yards. Although McKnight did not look at his speedometer or clock the speed of the vehicle, he estimated it was traveling at a speed of 30 to 35 m.p.h. in a residential area with a posted speed limit of 25 m.p.h.

“Officer McKnight advised over his police radio to other surveillance team members—Investigator Dove and Sergeant John Ortega—he believed Ramirez’s vehicle was speeding. He also related to Investigator Dove he thought Ramirez was ‘hauling ass.’ Dove had previously arranged with his sergeant to have a marked patrol unit in the area in the event any cars needed to be stopped. Upon learning Ramirez was getting away at a high speed from the Jackson residence, Dove relayed this information to Sergeant Ortega. When Ortega saw the vehicle turn northbound on Dominguez, he directed Los Angeles Sheriff’s Sergeant Brown to make a stop of the vehicle in order to conduct a narcotics investigation.

“After making the stop, Ortega stepped up to the vehicle and asked Ramirez in Spanish if he would be ‘so kind and be cooperative and allow us to search the vehicle so that we don’t have to go and get a warrant to search it.’ Ramirez responded by saying ‘yes’ in Spanish and handed his car keys to Sergeant Ortega. Ortega also instructed Ramirez and his passenger, John Smythe, to step out of the vehicle. When Ortega opened the trunk, he found 50 kilograms of cocaine wrapped in green, opaque plastic bags and said to Ramirez: “You must have some habit to use all of this, huh?” Ramirez responded in Spanish: “Where did that shit come from?” Ramirez then immediately asked for an attorney and refused to sign the consent form Ortega had prepared.”

Cf. People v. Ramirez, 70 Cal. Rptr. 2d 341 (Cal. Ct. App. 1997).

Lured to the region by the desirability of living near John Wayne International Airport, you are currently a public defender in Orange County, California, where you have been assigned the defense of Ramirez and Smythe, both of whom have been charged with possession of the cocaine found in the car. You have filed a motion to suppress both the cocaine and Ramirez’s statement about the cocaine which the prosecution seeks to use to establish that Ramirez knew what was in the bags. Discuss your arguments in support of your motion and the chances of success you will have with this suppression motion.

II. (60 minutes)

Officer Kenneth Sparr of the City of Spittsburgh Police Department was walking his beat late one night when he heard an unusual noise coming from the first floor of a nearby residential apartment building. Not sure what the noise was, Sparr walked into the front garden area of the building and tried to peer into a first-floor window. Unable to see, he took an abandoned crate from a trash pile nearby and standing on top of the crate on his tiptoes he managed to see into the apartment through a small tear in the drawn blind. What he saw, to his surprise, was Bill Scinton, the Spresident of the United States smoking a thin, hand-rolled cigarette (and apparently inhaling).

Because the cigarette was hand-rolled, Sparr suspected that it contained marijuana and he radioed police headquarters and asked Officer Linda Stripp to obtain a search warrant for the ground-floor apartment based on that information. Sparr waited outside the building until Stripp showed up with a search warrant two hours later; the warrant specified that the Spittsburgh Police could search the ground-floor apartment located at the apartment building’s street address for marijuana. Sparr immediately entered the apartment building and noticed that there were two ground-floor apartments. He knocked on the door of the apartment that contained the window

into which he had looked, and yelled: "Police! Let us in!" After 10 seconds had passed, Sparr heard a toilet flush inside the apartment and had Officer Stripp break the door down.

Entering the apartment, Sparr rushed to the bedroom and discovered Bill Scinton naked, asleep in bed. The door to the bathroom opened and a surprised Monica Slewinsky emerged, wearing a nightgown. Sparr woke up Scinton and then asked him: "What in the world are you doing here in Spittsburgh?" Bill responded: "I like to visit my constituents here in the Marijuana Capital of Western Spennsylvania." [Statement #1] Monica added: "And I'm one of his favorite constituents; he likes to stay here in my apartment." [Statement #2]

Sparr and Stripp thereafter searched the apartment and discovered two hand-rolled marijuana cigarettes inside Monica's purse. Sparr then asked Scinton and Slewinsky to put their clothes on as he was "taking you downtown." As Slewinsky was getting dressed, Sparr searched the pockets of her clothing in her bedroom closet and discovered one additional marijuana cigarette in a suit jacket pocket. Sparr said: "And is this marijuana yours, too, Monica?" To which, Monica said nothing but Bill responded: "You know its her marijuana. I never touch the stuff." [Statement #3]

Scinton and Slewinsky were taken to the station house, given *Miranda* warnings, and booked on charges of possession of marijuana and conspiracy to possess marijuana. At the station house, after being *Mirandized*, Slewinsky immediately asked to see her lawyer, William Sginsburg, and then asked Sparr: "Why in the world are you going to all this effort over Bill's three measly marijuana cigarettes?" [Statement #4] Scinton also asked to see his lawyer, William Sbennett. Sparr said: "We'll call him, but do you really think that he will get you off this time?" To which, Scinton replied: "You'll never be able to prove that I possessed that marijuana even if I did possess it. Nyaah, nyaah, nyaah!" [Statement #5]

You are an assistant to the assistant Assistant Special Prosecutor in Spittsburgh. Sginsburg and Sbennett have filed a joint [no pun intended] suppression motion, seeking to suppress the admission of the three marijuana cigarettes and the five statements noted above against their clients. Discuss your chances of successfully defeating all of the tenable arguments that defense counsel may make in support of this suppression motion.

III. (30 minutes)

In defending Ted Kaczynski, accused of being the Unabomber, his two defense attorneys refused to present his proposed defense of justification (i.e. that it was justifiable to send bombs to people who are an integral part of our increasingly technological society) and—over Kaczynski's objections—planned to use an insanity defense. As you may know, the insanity defense is rarely a successful defense. Of course, there was no trial as Kaczynski ultimately accepted a plea bargain.

- (1) Had there been a trial and had his attorneys presented an insanity defense over his objections and the defense was, indeed, unsuccessful, would Kaczynski have had a good argument that his Sixth Amendment rights were violated? Why or why not.
- (2) If his court-appointed attorneys refused to make the defense that Kaczynski wanted them to make, should the trial judge have granted his request to replace them with counsel who was available and was willing to make such a defense on his behalf? Why or why not.

Professor Burkoff

