

CRIMINAL PROCEDURE  
SECTION CFinal Examination  
April 27, 20012½ Hours  
1:00-3:30OPEN BOOK

GOOD COP, GREAT COP

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 factual scenario:

“Broward County Sheriff Perez responded to Stephanie Drysdale’s home after a 911 hangup call. Upon arrival, Drysdale told Perez that her home had been invaded and she had been robbed at gunpoint. While speaking to Drysdale at her open front door, Perez noticed the smell of marijuana. Without asking Drysdale’s permission, Perez made a cursory search of the home in order to secure the crime scene. Perez then had no further involvement with the investigation.

“Detective Young subsequently arrived to investigate the home invasion and found Drysdale outside crying hysterically. After learning details of the robbery from Drysdale, Young told her he needed forensics to come into her home and search for evidence. At first she refused, but when he started to leave, she became more upset. Young then obtained a consent form for a search which Drysdale signed. Young testified that Drysdale only consented to a forensic search for fingerprints and to take photographs. Drysdale walked Young and Detective Ingalls, a forensics officer, through the rooms of her home that the intruders entered. While in the living room, Young spotted marijuana seeds in the carpet.

“Broward County Sheriff Massucco of the regional narcotics K-9 unit was also dispatched to the scene to search for narcotics in the house. When he arrived with his dog, Bingo, he spoke with an unnamed deputy and was told he had consent to search the residence. Massucco entered the residence with Bingo and went to the master bedroom. He started to search but heard the voice of Drysdale saying that she didn’t want the dog in the house. Bingo had not alerted to any narcotics and Massucco returned the dog to his car. Massucco testified at the suppression hearing that he had no knowledge that this was an investigation of a home invasion robbery; however, he returned to the house to assist the deputies. He then observed some marijuana cigarettes in an ashtray. Massucco also found some cocaine inside Drysdale’s purse.

“Drysdale was charged with possession of cocaine and misdemeanor possession of cannabis.”

*Cf. State v. Drysdale*, 770 So. 2d 301 (Fla. Ct. App. 2000).

(a) You moved to Broward County to assist the Pat Buchanan presidential campaign in its effort to obtain a recount of the 2000 Florida presidential vote in order to demonstrate that voters were confused and actually intended to vote for Buchanan. Having failed at that endeavor, you have taken a job as an Assistant District Attorney in Broward County, and are now charged with prosecution of Drysdale. Drysdale's defense counsel, Antoinette Scalia, has told you that she is going to move to suppress the cocaine and marijuana seized from your client's residence. What tenable arguments can Scalia make supporting suppression? How will you respond to those arguments? Is the evidence likely to be suppressed? Why or why not?

(b) Suppose that Scalia fails to file a suppression motion on Drysdale's behalf because she decides that since Drysdale actually possessed narcotics, she is a criminal and doesn't "deserve" to have them suppressed. Suppose further that Drysdale was subsequently convicted of possession. On appeal, does Drysdale have a good claim for reversal of her conviction due to Scalia's failure to file the suppression motion? Why or why not?

## II. (60 minutes)

On April 10, 2001, the Registrar at the University of Spittsburgh Law School received an anonymous telephone call, informing her that a first-year Spitt law student, Georgette W. Bush, was on her way to the Law School and that she would be bringing with her a backpack full of narcotics which she would be storing in her locker, Number J22. The caller further noted that Georgette would be dressed in a black leather jumpsuit, and that she would also be wearing a pink nylon jacket and a leopard-skin pillbox hat. The Registrar checked the list of students using school lockers, and discovered that Locker Number J22 was being used by a second-year law student, Jebette Bush.

The Registrar immediately informed the Associate Dean, John Burkoff (played in the movie version of this question by Tom Cruise, . . . OK, OK, Tom Cruise after he had put on just a little bit of weight), who went and hid himself inside a vacant locker. From this locker, he could see out the vents at the top and determine who arrived at and used Locker J22. About ten minutes after he hid himself, Burkoff saw a young woman arrive at and open Locker J22 and noted that she was wearing a cerise nylon jacket and a leopard-skin pillbox hat. When she took off her jacket, he noted further that she was dressed in a black leather jumpsuit. He could not see, however, what, if anything, she put in the locker. Burkoff called the Spittsburgh police who quickly arrived and he told them everything that had occurred. The police immediately brought in the police narcotics-sniffing dog on duty, Lola (played by "Bingo" from Question I), who sniffed the entire locker area, but only "alerted" on the locker next to Locker J22, Locker J23. (Lola also urinated on Lockers N47 and N48.)

One of the police officers, Sergeant Bjork, left to obtain a search warrant to search Locker J23 for narcotics. She returned soon thereafter with a lawfully-issued warrant, and broke the locker door in. Inside the locker, the officers discovered that the bottom part of the partition between Lockers J22 and J23 had been removed, and that six rows of shelving had been affixed to the back of each locker. On each shelf was a tray of clear, miniature cups containing what appeared to be jello.

After ascertaining that Locker J23 was assigned to a third-year law student, Hillary Scinton, Sergeant Bjork ascertained that Scinton was currently in class, attending a seminar on “Law and State Terrorism,” being taught by Visiting Professor Yomama bin Laden. Bjork, accompanied by two other, beefy Spittsburgh police officers, ran to bin Laden’s class and, interrupting the class, shouted from the doorway: “Would Ms. Scinton kindly get her ass out here in the hallway.” When Scinton came out, one of the three officers took her by the arm and moved her over to and inside an empty classroom, the officers closed the door behind them, and Bjork asked her: “What in the hell do you have in your locker?” Scinton replied, “Those are just our ‘jello shots.’ No problem. Georgette and I are giving a party tonight.” [Statement #1] Bjork responded, “What are ‘jello shots’?” At which point, Scinton said, “Hey, I’m not talking with you. I know my rights.”

Bjork then detained Scinton for 25 minutes in the empty classroom while a chemist came and did a field test on the “jello-like” containers. It turned out that these items were not in fact jello and alcohol (“jello shots”), but rather were a jellied form of geliggazoontite, an explosive mixture, which it is unlawful to possess under Spennsylvania law. Scinton was immediately given her Miranda warnings, and when asked if she wanted to talk, she shrieked, “I’m not talking to any of you until I’ve had a chance to consult with my law professor, Professor bin Laden, about this. He knows the law. He’ll know this is all madness!” Sergeant Bjork responded that bin Laden “had his own problems” and that Scinton could not speak with him, and asked, “just why do you want to talk with bin Laden now anyway?” Scinton mumbled that “he told me that this stuff was just a special Afghani recipe for jello shots, using special Talibanese jello.” [Statement #2]

Due to your excellent reputation in all gelatin-related criminal matters, you have been privately retained by Bush, Scinton, and bin Laden, each of whom has been charged with: possession of geliggazoontite; attempted violation of various Spennsylvania liquor laws; and with desecration of a university locker (a serious felony in Spennsylvania). What are your chances of filing a suppression motion which would lead to the successful suppression in the prosecution of these charges against all three defendants of the geliggazoontite and the two identified statements made by Scinton? Discuss.

### III. (30 minutes)

Consider the following excerpt from William J. Stuntz, *O.J. Simpson, Bill Clinton, and the Transsubstantive Fourth Amendment*, 114 HARVARD LAW REVIEW 842, 843-44 (2001):

The most common justification for searches is this: the police have probable cause to believe that evidence of crime will be found in a particular place. What that justification means depends on what “crime” means. Yet Fourth Amendment law mostly ignores substantive criminal law; distinctions among crimes are usually irrelevant when it comes to regulating criminal investigations. This blindness to difference among crimes . . . lies at the heart of several large, unresolved problems in Fourth Amendment law. Subpoena doctrine allows prosecutors to invade the privacy of suspects and witnesses without sufficient cause; this sometimes permits white-collar investigations to run amok. The law

governing traffic stops allows police to pull over anyone for any reason. Because limitless discretion leads naturally to discrimination, it hardly seems surprising that complaints about racial profiling have focused on traffic stops. More broadly, Fourth Amendment doctrine permits sharply different styles of drug enforcement in different neighborhoods. Where the neighborhoods have racial identities (as neighborhoods often do), those different styles lead to more complaints of police discrimination. All these problems arise from Fourth Amendment law's inability to distinguish among crimes.

Do you agree with Professor Stuntz's description and analysis of Fourth Amendment law as set out above? Discuss why or why not.



*"You look like this sketch of someone who's thinking about committing a crime."*

Professor Burkoff