

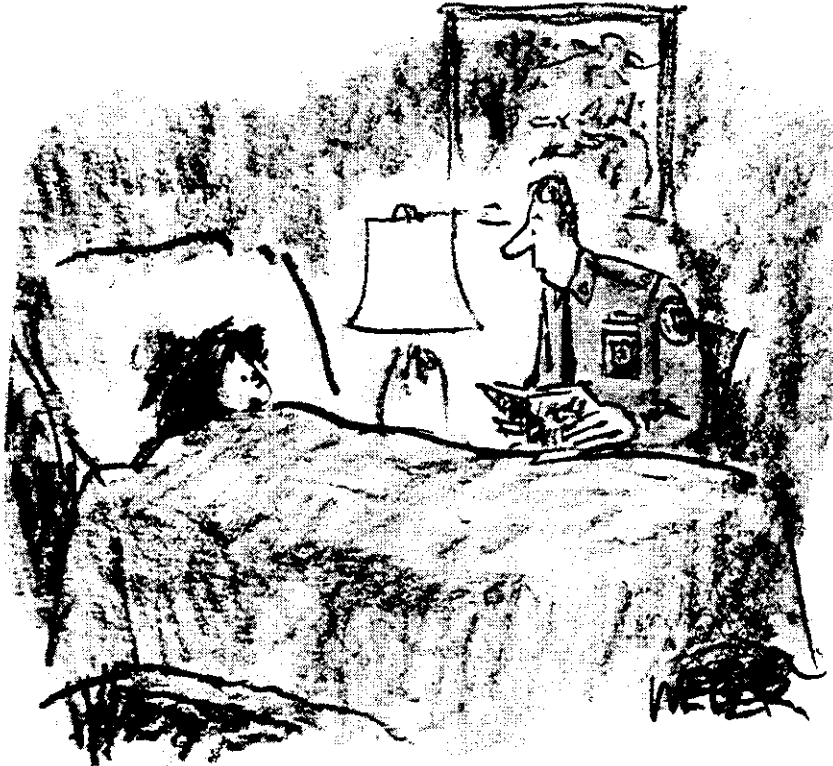
EXAM NO. _____

CRIMINAL PROCEDURE
SECTION A

Final Examination
May 6, 2002

2½ Hours
9:00-11:30

OPEN BOOK



"Again? I read you your Miranda rights last night."

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 facts:

“On March 14, 2001, Officer Michele Van Arsdall of the City of Lawrence Police Department stopped a car driven by Terrence Crabtree (‘Terrence’) because the occupants were not wearing seatbelts. Jeffrey, Terrence’s brother, was a front-seat passenger in the car. Officer Van Arsdall asked for Terrence’s license and registration for the vehicle, but Terrence was not able to supply either document. Officer Van Arsdall conducted a registration check on the license plate and found that the plate on the car driven by Terrence was not registered to that vehicle. Officer Van Arsdall also ran a check on Terrence’s license and discovered that it had been suspended.

“Officer Van Arsdall then walked back to the vehicle and noticed an odor of marijuana emanating from it. Officer Van Arsdall asked Terrence if there were any narcotics in the vehicle, to which Terrence responded, ‘No, I would never drive with my weed in my car.’ [Statement #1] She then placed Terrence under arrest for driving with a suspended license.

“Officer Mark Osborn of the City of Lawrence Police Department, assisting Officer Van Arsdall as back up, approached the vehicle in which Jeffrey was still sitting as a passenger. Officer Osborn asked Jeffrey if he had any weapons. When Jeffrey answered that he did not have any weapons [Statement #2], Officer Osborn asked him to step out of the vehicle for a pat-down search.

“As Jeffrey either stepped out or was ‘pulled out’ of the vehicle, Officer Osborn patted him down and found a clear baggie, containing green leafy vegetation, in the front ‘pouch’ of Jeffrey’s sweatshirt. Before removing the baggie, which turned out to contain marijuana, Officer Osborn searched Jeffrey for weapons and found an 8 inch-long knife strapped against his lower right leg. After seizing the knife and placing Jeffrey under arrest, Officer Osborn asked Jeffrey whether there was any more marijuana in the vehicle. Jeffrey responded that there was more marijuana in the trunk. [Statement #3] Officer Osborn then opened the trunk and seized the marijuana inside it.”

Cf. Crabtree v. State, 762 N.E.2d 217 (Ind. Ct. App. 2002).

Lucky you! You are now a Hoosier. Whoopee! After graduation from Pitt Law School, you moved to Lawrence, Indiana, in order to live a simple Midwestern life centered around following the University of Indiana basketball team. As an Assistant District Attorney in Lawrence, you are now prosecuting Terrence and Jeffrey for possession of marijuana and Jeffrey for possession of an instrument of crime (the knife). You anticipate that their defense counsel will move to suppress all of the marijuana seized, the knife, and Statements #1, #2 and #3 above. What arguments do you anticipate defense counsel will make? What are your responses? Do you expect that the evidence will be suppressed? Why or why not?

II. (60 minutes)

The Spennsylvania Task Force on Organized Crime (“Task Force”) suspected that an individual named Tony Spoprano, who lives in Spittsburgh, Spennsylvania, was involved in racketeering activities. In order to confirm or dispel these suspicions, an undercover agent working for the Task Force (who was selected because of her excellent hearing) rented office space next door to the office of Tony’s psychiatrist, Dr. Smelfi. Because the walls were paper thin, without the use of any sophisticated sense-enhancement device but simply by placing the open end of an ordinary water glass on the wall and listening at the closed end, the undercover agent could hear some words and phrases (sometimes garbled) through the adjoining wall that were part of conversations between Tony and Dr. Smelfi. Among the things this agent thought that she heard was Tony saying he was upset because he had had to—something like—“whack with Uncle Junior.”

In addition, an informant (“CI #1”) reported to another member of the Task Force that she had heard “on the street” that Uncle Junior, Tony’s uncle, also a suspected organized crime figure who lives in Spittsburgh, was missing and presumed dead. CI #1 had never previously provided information to law enforcement agencies. Around the same time, a second informant (“CI #2”) reported to a totally different member of the Task Force that he had heard that Uncle Junior had been cutting into Tony’s gambling receipts and that Tony had sworn to do something about it. CI #2 had previously given information to the Task Force on two separate occasions, which information had proven to be accurate both times (although unrelated to organized crime activities) and which resulted in the Task Force paying him \$1,000 on each such occasion. On the basis of the information obtained from these three individuals—the undercover agent and CI #1 and CI #2—a Spennsylvania State Trooper, working with the Task Force, prepared an affidavit and obtained a warrant to search Tony’s home for “evidence relating to the possible homicide of Uncle Junior.” The affidavit for the warrant listed all of the information set out in the preceding paragraph accurately, except that the affiant reported that the undercover agent heard the words “whack Uncle Junior” instead of “whack *with* Uncle Junior.”

The law enforcement agents executing the warrant proceeded to Tony Spoprano’s home, knocked on the door and yelled “Police” and “Search Warrant” loudly. They then immediately heard—from somewhere nearby—a loud whirring noise. Upon hearing that noise, the officers immediately broke down the door and ran into the house. After looking all around the first floor of the house and seeing nothing (but still hearing the noise), the police opened the back patio sliding-glass door and, in the backyard, they saw Uncle Junior and Carmela Spoprano, Tony’s wife, both armed with “weed whackers,” using these devices to harvest a small field of growing marijuana plants.

Carmela and Uncle Junior were immediately placed under arrest and given *Miranda* warnings. Carmela told the police she wasn’t going to say anything to them until she had talked to a lawyer. Uncle Junior said: “F*** you, you f***** a*****,” and some other unprintable things, including telling the officers that “my lawyer will stuff your ***** up your *****.” One of the officers who arrested him responded: “You can say what you want, old man. We got

you this time, you m*****!" Uncle Junior responded, "This is kid stuff. Marijuana. You can't do **** to me because you found my marijuana!"

As the officers had rushed through the first floor of the house, they had seen a cute ceramic pot (with the words "First Floor Pot" glazed on it) containing a marijuana plant. After arresting Carmela and Uncle Junior, they returned to the first floor and seized that plant. They also briefly looked around the second floor of the house before leaving, finding and seizing another cute ceramic pot (with the words "Second Floor Pot" glazed on it) containing a marijuana plant which they found in a second-floor bedroom.

As you will recall, you graduated magna cum laude from Spitt Law School, where you were Speditor-in-Schief of the Spitt Law Review. Having done so well at law school, you have now been retained by Tony Spoprano to defend both Carmela and Uncle Junior, who have been charged with possession of all of the marijuana seized (inside and outside). What tenable arguments do you have to suppress: (1) all of the marijuana; and (2) Uncle Junior's statement about "my marijuana"? What response to these arguments do you expect from the prosecutor? Do you think you will be able to suppress this evidence? Why or why not?

III. (30 minutes)

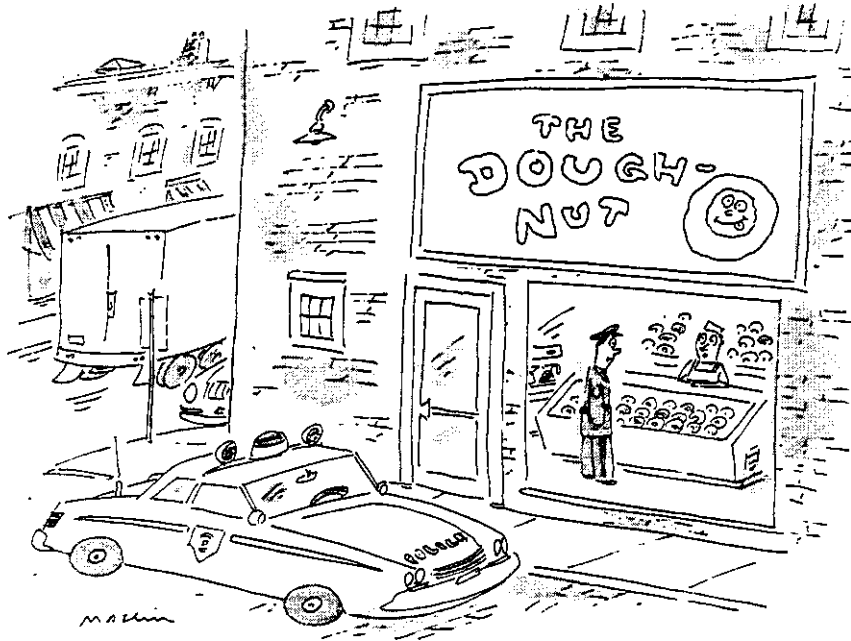
Consider the following excerpt from Deborah Rhode, *The Constitution of Equal Citizenship For a Good Society: Access to Justice*, 69 *Fordham Law Review* 1785, 1790-91 (2001):

"Much of the problem in securing broader access to justice stems from the public's failure to recognize that there is, in fact, a problem. A wide gap persists between popular perceptions and daily realities, particularly for criminal cases. Most Americans are convinced that the legal system coddles criminals and that defense lawyers get far too many defendants off on technicalities. The trials featured in entertainment media reinforce this perception. In the courtrooms that the public sees, zealous advocacy is the norm. O.J. Simpson's lawyers left no stone unturned. But they were charging by the stone. Most defense counsel cannot—and it matters. In recent studies, between half and four-fifths of counsel entered guilty pleas without interviewing any prosecution witnesses, and four-fifths did so without filing any defense motions.

"The rationalizations for such inadequate efforts occasionally surface with chilling candor. In one Texas case, a defendant managed to win release after seven years of imprisonment. His court-appointed attorney had seen no reason to go to 'sleazy bars to look for witnesses,' since he assumed, without investigation, that his client was guilty. In a recent North Carolina case, a court-appointed lawyer acknowledged that he had deliberately failed to file a timely appeal because he felt that his client 'deserved to die.'"

(a) Do you agree with Professor Rhode's analysis? Discuss why or why not.

(b) Assuming the accuracy of the descriptions of the Texas and North Carolina cases in the second paragraph above, are these examples of reversible error due to ineffective assistance of counsel? Discuss why or why not.



*"You have the right to a glazed doughnut and a cup of coffee.
If you can't afford a glazed doughnut and a cup of coffee, a glazed
doughnut and a cup of coffee will be provided for you."*

Dean Burkoff