

CRIMINAL PROCEDURE
PROFESSOR KRAVITZ
FALL SEMESTER--1992

*****FINAL EXAMINATION*****

IN ORDER TO RECEIVE A GRADE, THIS EXAM MUST HAVE YOUR NUMBER ON IT AND MUST BE TURNED IN WITH YOUR BLUEBOOK.

This examination consists of twenty questions. There are ten multiple choice questions and ten short answer essay questions. They are each worth five points.

The multiple choice questions require you to circle the letter next to the best answer provided.

Some of the essay questions may require more time to answer than others. The longest answers are not always the best. Organization is very important. Read the questions carefully. Answer in the order that they are asked.

There is a one-page limit on each essay question. Answer the question and state your reasoning directly and concisely. Budget your time.

You have three hours for the examination. Once finished, forget about the exam and enjoy the holidays.

STUDENT NUMBER _____.

Mr. Yellow, Mr. Green, Mr. Blue, Mr. Red and Mr. Pink robbed a jewelry store. Despite their detailed planning, a clerk at the store set off a silent alarm, which alerted the police. The police arrived and a shootout ensued. Two police officers were killed and Mr. Green was wounded but managed to escape with the other robbers.

Mr. Green was bleeding profusely from his wound. The other robbers decided that he would not survive his wounds and tossed him from the car. He was found by police and denied any involvement with the robbery.

He was taken to a local hospital where it was determined that the bullet which was lodged in his shoulder might link Mr. Green to the robbery. Mr. Green would have to be anesthetized for a four hour operation. The surgery would require probing of muscle tissue which could cause injury to the muscle, blood vessels and other tissue. The doctor noted the wound was not life-threatening.

Mr. Green was unconscious. The police request the doctor to remove the bullet which he does. Should the bullet be suppressed?

M1:

- A. The bullet should be admitted because there was probable cause to search and it was an emergency situation.
- B. The bullet should be suppressed because a person's body should not be surgically invaded to recover evidence.
- C. The bullet should be admitted because it is not testimonial evidence.
- D. The bullet should be suppressed because a search warrant was not obtained.

After surgery, two detectives were stationed outside Mr. Green's hospital room to ensure that no one could enter or exit. Mr. Green was being fed intravenously, was heavily medicated and needed a respirator to breathe. The detectives questioned Mr. Green without reading him his Miranda rights. Mr. Green would tap once on the table to answer "yes" and tap twice to answer "no."

Mr. Green has filed a timely motion to suppress these statements.

M2:

- A. The statement should not be suppressed because Mr. Green had not been arrested and warnings need not be given.
- B. The statements should be suppressed because they were not voluntarily given due to Mr. Green's medical condition.
- C. The statements should be suppressed because Mr. Green was taken to the hospital by the police suffering from a gunshot wound and therefore Miranda warnings needed to be given.
- D. The statements should not be suppressed because tapping in response to questions is not a statement under Miranda.

The police secure a search warrant for Mr. Blue's apartment based on the following affidavit:

Mr. Blue's girlfriend, Jennifer Weed, related that Mr. Blue was planning a jewel robbery for two months. Within the past 72 hours, Ms. Weed observed maps hidden in the mattress of Mr. Blue's bed outlining the plan. Ms. Weed relates that Mr. Blue has two prior convictions for robbery and is on parole. Ms. Weed is a concerned citizen who was afraid she might be charged as an accomplice if she did not come forward. In addition, two witnesses from the robbery have positively identified Mr. Blue from a photo array as one of the robbers.

All statements in the affidavit attributed to Ms. Weed were made by Mo. Weed, however Ms. Weed had not seen the map in the mattress for over 30 days rather than 72 hours. In addition, Ms. Weed related that at the time she saw the map, she was under the influence of LSD and cocaine.

The execution of the search warrant revealed the map in the mattress. Mr. Blue filed a timely motion to suppress the map.

M3:

- A. The motion should be granted because warrants should not be issued based on the word of a chemical abuser.
- B. The motion should be denied because the police did not know that Ms. Weed lied when she said she saw a map within 72 hours.
- C. The notion should be denied because the map was where Ms. Weed said it would be.
- D. The notion should be denied because the police conveyed sufficient information to the judge exclusive of No. Weed to justify the warrant.

Assume the same facts as in question number 3. Assume further that the law enforcement manual used by the officers who secured the search warrant stated: "Under no circumstances may a law enforcement officer draft and apply for a search warrant without first consulting and receiving the permission of a prosecutor. The failure to comply with this directive will result in disciplinary action, including the possibility of suspension from the police department. Assume the officers in question number 3 did not comply with this directive.

M4:

- A. The motion to suppress should be granted due to the bad faith of the officers.
- B. The motion to suppress should be granted because the affiant withheld noncompliance with the directive from the issuing magistrate.
- C. The notion to suppress should be denied because the constitution was not violated.
- D. The motion to suppress should be denied based on the good faith exception of United States v. T-P-on.

Mr. Yellow was dropped off by the other robbers at his home where he promptly buried the gun he used. Mr. Yellow's three acre home is bordered by a stream on one side, steep cliffs on two sides and a white picket fence around the property. There are twenty "No Trespassing" signs posted on the white fence. There is an electric wire on top of the fence with a small electrical current running through it.

The police wade across the stream, climb over the fence and locate the freshly dug hole containing the gun in the ground near the fence.

Mr. Yellow files a timely motion to suppress the gun.

M5:

- A. The motion should be denied because the police may search open fields.
- B. The motion should be granted because the police may not climb over a fence to enter your property.
- C. The motion should be granted because Mr. Yellow had a reasonable expectation of privacy over his homestead.
- D. The motion should be denied because Mr. Yellow did not adequately camouflage the hole.

Two days after the robbery, the police investigation has developed probable cause to believe Mr. Red was one of the robbers. The police enter Mr. Red's home without a warrant and arrest Mr. Red. They seize stolen diamonds on the table next to where Mr. Red was sitting. Mr. Red files a timely motion to suppress the diamonds. After being advised of his Miranda rights and waiving them, Mr. Red incriminates himself concerning the robbery.

M6:

- A. The diamonds should not be suppressed because the diamonds were in plain view.
- B. The diamonds should not be suppressed because the police had probable cause to arrest Mr. Red.
- C. The diamonds should be suppressed because the police needed an arrest warrant to arrest Mr. Red at home.
- D. The diamonds should be suppressed because the police needed a search warrant to seize the diamonds.

Mr. Red files a timely motion to suppress the statement.

M6:

- A. The statement should be suppressed because Mr. Red was arrested without a warrant.
- B. The statement should not be suppressed because Mr. Red was arrested with probable cause.

C. The statement should not be suppressed because Mr. Red was given full Miranda warnings.

D. The statement should not be suppressed because Mr. Red made the statement in his own home.

After arresting Mr. Red, the police escort Mr. Red to a waiting cruiser. In the cruiser, Mr. Red was once again advised of his Miranda rights and waiving them, he admitted he participated in the jewel robbery.

M7:

A. The statement made in the cruiser should be suppressed because it was involuntary.

B. The statement made in the cruiser should not be suppressed because Mr. Red's sixth amendment right to counsel had not attached.

C. The statement made in the cruiser should not be suppressed because there was probable cause for the arrest and Miranda was complied with.

D. The statement made in the cruiser should be suppressed as the fruit of the poisonous tree.

Two days after the robbery Mr. Pink was driving north on Reservoir Avenue when he encountered a police roadblock. He made an illegal U-turn and was pursued and caught by the police. As he left his car he stumbled, the police smelled an odor of an alcoholic beverage on his breath and he was arrested for OMVI. The police found three empty beer cans in the passenger compartment of his car. Mr. Pink filed a timely motion to suppress the beer cans.

M8:

A. The beer cans should be suppressed because a citizen has a right to avoid a roadblock.

B. The beer cans should be suppressed because once Mr. Pink was in police custody the need for a warrantless search ended.

C. The beer cans should be suppressed because the police may only search without a warrant in order to recover weapons.

D. The beer cans should not be suppressed because the police may search the passenger compartment of a car incident to a traffic arrest.

Following the identification the police thoroughly search Mr. Pink's car, which is still in the police impound lot. In the trunk, in a locked briefcase, they find a map showing the jewelry store and the best routes away from it. Mr. Pink moves to suppress the map.

M9:

A. The map should be suppressed because the police needed a search warrant to search the trunk of the car.

B. The map should not be suppressed because cars may be searched without a warrant whenever there is probable case.

C. The map should not be suppressed because the police may search cars that have been impounded.

D. The map should be suppressed because the search is the fruit of Mr. Pink's illegal interrogation.

At trial, Mr. Green testified that he was in the vicinity of the jewel robbery and was struck by a stray bullet. Regardless of your prior answer to Question 2, assume the trial court suppressed Mr. Green's statements. The prosecution wants to introduce Mr. Green's responses to the detective at the hospital to impeach Mr. Green's testimony. Mr. Green objects.

M10:

A. The objection should be overruled because a defendant should not be allowed to lie.

B. The objection should be sustained because Mr. Green's statements in the hospital were not under oath.

C. The objection should be sustained because Mr. Green's statements in the hospital were not voluntary given the circumstances.

D. The objection should be overruled because you can always impeach a witness with an inconsistent statement.

Jennifer Petals, a semi-successful writer and model, has long been fascinated with child pornography and especially in movies or pictures of young teenage boys engaged in sexual behavior. From the time she turned 18 in 1980 until May of 1984 she was a subscriber to the Boys-R-Us magazine, a publication featuring teenagers engaged in sexual activity and had purchased several movies from the Boys-R-Us catalogue. All of Ms. Petals purchases were legal when made. Boys-R-Us ceased publishing in May 1984 when a new law went into effect making it illegal to transport in interstate commerce any material depicting sexual activity between minors.

In November, 1984, Ms. Petals received a letter from the We Like Kids Society which claimed to be a citizens group dedicated to the repeal of all laws restricting the distribution of child pornography. She was urged to join and complete a survey. She completed the survey but did not join. In June, 1985 Ms. Petals took a business trip to Denmark where she viewed some of the latest child pornography films. Upon returning home she wrote the We Like Kids Society and asked to join. Over the next several years she received several more surveys from the We Like Kids Society and every six months would receive a catalogue listing movies featuring children engaged in sexually explicit behavior. Until June, 1990 she refrained from making any purchases. However on a trip to Europe in May, 1990 she saw a film that totally captured her imagination. When this film was listed in the catalogue she received in June, 1990 she ordered 2 copies of the film. One she had sent to herself and the other she had sent to her friend Willy Razor.

Unbeknownst to Petals the We Like Kids Society was operated by the FBI who sent letters to all of the-former subscribers to Boys-R-Us and similar magazines. Similarly, each of the catalogues

received by Jennifer was sent by the FBI. When the order was received the FBI sent the films to both Petals and Razor and filmed then receiving the packages. An investigation was started. The investigation revealed that Petals and Razor owned a joint bank account in the name of Somali Enterprises and that each month a check would be sent to a Somalia company for \$15,000 and each month approximately \$50,000 would be deposited in the account in small denomination bills. The FBI suspected drug activity.

Petals was indicted by a federal grand jury on November 20, 1990 for possessing child pornography. She was arrested on November 22, 1990 at her family's Thanksgiving dinner where she was handcuffed and given Miranda warnings in front of her entire family. After Petals was taken away the family decided that she needed a lawyer and called Dean Freed an expert on child pornography. Freed immediately called the FBI office where Petals was being held and informed Special Agent Erskine that he represented Petals and that Petals was not to be questioned without him being there. Erskine said nothing. Freed immediately went to the FBI office and asked for Petals. He was told by agent Hoover that Petals was not there.

When Freed first called, Erskine had Petals moved to the county jail where she continued to be questioned by a team of agents. While at the county jail she admitted to possessing the film and explained how she had seen it in Europe and just had to have it. She indicated that Razor was an old friend who she thought would enjoy- -the film and denied any knowledge of Somali Enterprises.

She was brought before a magistrate the next morning and bail was set at \$100,000 which she could not make. She met with Freed who told her not to speak with anyone. She was then sent back to the county jail. Her cellmate was Sue Snooper an undercover FBI agent. Snooper's job was to gather information from Petals both about child pornography and Petals' possible involvement with Somali Enterprises. Petals asks Sue what she is in for and Sue replies smuggling marijuana. Over the next few weeks Petals explains to Sue her fascination with teenage boys and how it goes back to when she was 21 and started buying magazines and films. Sue just listens. Petals also tells her that it is stupid to smuggle marijuana or cocaine because law enforcement is always looking for those drugs and that there are other equally potent drugs out there where enforcement is lax. Sue responds "Like what?" and Petals tells her about a plant widely used in Somalia called khat which has an effect somewhere between cocaine and marijuana.

Sue reported to Erskine and Hoover what she had learned in the jail from Petals and the FBI decided it was time to talk to Razor. They went to Razor's home armed with a warrant for his arrest for possession of child pornography. When they arrived they told him they were with the FBI and would like to ask him some questions. He invited the agents in and offered them some coffee. The agents mentioned they had a warrant for his arrest. When everyone was comfortable agent Erskine asked Razor if he enjoyed watching dirty movies and Razor replied "Sometimes." Erskine then asked if he ever watched dirty movies involving teenagers and Razor replied "Sometimes." Erskine then asked if Razor had any teenage movies in the house and Razor replied "Sure."

Razor was then arrested and taken to the county jail. At the jail he was given Miranda warnings and asked to sign a statement admitting the possession of child pornography. He signed. Later that afternoon he was questioned by Assistant U.S. Attorney Paine about Somalia Enterprises. Razor was reluctant to talk. Paine told Razor that if he told all he knew about Somalia Enterprises that Paine would recommend to the judge that Razor receive probation on the child pornography charge. Razor believing that he was to receive probation on all charges told Paine that he and Petals had been importing khat from Somalia for two years and that khat was stored in a personal warehouse rented

by Omar Cayam and was distributed locally by Red Carnation and Blue Rose, two budding entrepreneurs.

The agents immediately go to the warehouse identified by Razor, break down the door, and seize 500 pounds of khat and documents linking Petals, Cayam, Carnation and Rose to the operation. Petals, Cayam, Carnation, Rose, and Razor are charged with the federal offense of possession of khat with intent to distribute. Carnation appears in the U.S. District Court for the District of Euphoria with Hillary Able a nationally recognized criminal defense attorney. Ms. Able asks permission to represent Carnation in the District of Euphoria where she is not licensed to practice law. Judge Homebody denies the notion and when Carnation states that if he can't have Able he will represent himself Judge Homebody replies "So Ordered." Petals and Rose move to suppress the evidence recovered from the warehouse. Carnation fails to join the motion. Cayam's lawyer also fails to file a motion to suppress the evidence seized from the warehouse.

At joint trial ensues. During the voir dire examination, Petals objects to Razor's exercise of a peremptory challenge against a black juror. Petals and Razor are Caucasian. Petals claims that Razor was exercising the peremptory in a racially discriminatory manner. Razor argues that a co-defendant cannot object to his use of a peremptory challenge.

Petals, Razor, Cayam,, Carnation and Rose are each convicted by a jury of possessing khat with intent to distribute. Razor was acquitted. Petals, Cayam, Carnation and Rose received 10 year prison sentences. The federal government then declared its intention to violate his probation on the child pornography charge based on his possession of khat. Razor requested counsel at the probation revocation hearing on the grounds that he had a deal with the prosecution and because the probation revocation is barred by the double jeopardy clause of the fifth amendment. Judge Homebody denied counsel stating that in a probation revocation proceeding counsel was not necessary. He then revoked probation and sentenced Razor to 2 years in prison on the federal pornography charge.

Last month Cayam whose appeal was denied in early 1991 realized that his attorney had failed to file a motion to suppress with respect to the evidence seized from the warehouse. He has filed a federal postconviction remedy petition, the federal equivalent of a writ of habeas corpus, in which he has alleged he was denied 6th amendment right to counsel at trial. The government has responded that Cayam is really trying to litigate a lapsed fourth amendment claim and therefore the petition should be dismissed.

Q1 Please evaluate Petals' entrapment defense.

Q2 Should Petals' statement to the FBI in the county jail on November 22, 1990 be suppressed assuming a timely motion to suppress?

Q3 Should Petals' statement to Sue Snooper concerning the child pornography charges be suppressed assuming a timely motion to suppress?

Q4 Should Petals' statements to Sue Snooper concerning her involvement with khat be suppressed assuming a timely motion to suppress?

Q5 Which, if any, of Razor's statements to the FBI concerning child pornography should be suppressed assuming a timely motion to suppress?

Q6 Should Petals' and Rose's timely motion to suppress the evidence seized from the warehouse be granted?

Q7 Should Carnation's conviction be reversed because Judge Homebody refused to allow Ms. Able to represent him?

Q8 Was Judge Homebody required to appoint counsel for Razor at his probation revocation hearing assuming Razor was then indigent?

Q9 Does Petals have standing to challenge Razor's exercise of the peremptory challenge? How should the court proceed?

Q10 Please rule on Cayam's petition for post conviction relief.