

CRIMINAL PROCEDURE
PROFESSOR KRAVITZ
FALL SEMESTER -- 1997

*****THE FINAL EXAMINATION*****

This examination consists of 14 questions. They are each worth 10 points. Some may require more time to answer than others. Read the questions carefully. Answer in the order that they are asked. Do not use facts that appear subsequent to the questions asked.

There is a one page, one side limit on each question. Therefore, organization is very important. Answer the questions and state your reasoning directly and concisely. It is important that all conclusions be supported by appropriate legal reasoning. Budget your time.

LEGIBILITY IS APPRECIATED

**YOU MUST RETURN THIS EXAM WITH YOUR BLUEBOOK(S).
THIS EXAM WILL BE GIVEN THROUGHOUT THE DAY.
DISCUSSION OF THIS EXAM WITH STUDENTS WHO ARE WAITING
TO TAKE THIS EXAM CONSTITUTES AN HONOR CODE VIOLATION.**

There are 7 pages to this examination including this cover page. You have three hours for the examination. Once finished, forget about the exam and enjoy the holidays.

The Republic of Cocaville, strategically located between Panama and Honduras, has long been suspected of being a country through which cocaine flows from Columbia to the United States. The president of Cocaville, Muriel Nowayman, is thought to have connections to the Medellin cartel and to receive \$1,000,000 per month to allow the cartel to operate in Cocaville and to use its banks to launder their money.

The United States Drug Enforcement Administration decided to investigate the Cocaville drug connection. As a first step all flights from Cocaville to the United States are placed under surveillance. After two months of surveillance the agents discover that the president of the Bank of Cocaville, Charles Cheating, flies weekly from Cocaville to Miami where he meets with three Miami businessmen, Moe, Curley and Larry, spends a night at a local hotel and flies back the next day. The agents also know that a tall redhaired woman makes weekly flights between Cocaville and Los Angeles. From Los Angeles, she flies to a number of different American cities including New York, Detroit and Chicago. Her trips never last more than 2 days and she never checks any baggage. The name on her passport is Juanita Mendez but she travels out of Los Angeles under a variety of names including June Brown, Joanne Schwartz and Joan O'Grady.

The DEA has decided to follow Ms. Mendez on her next trip to America to see if she will lead them to any Americans who may be involved in illegal activities. The also decide to search Mr. Cheating's hotel room in order to gather evidence against Moe, Curley and Larry.

On November 12, 1996, Ms. Mendez flew from Cocaville to Los Angeles. In Los Angeles she boards a flight to Chicago under the name of Joanna Schwartz. Two DEA agents board the plane and persuade the stewardess to let them sit on either side of Ms. Mendez. Once in the air, both DEA agents attempt to engage Ms. Mendez in general conversation, however she is unresponsive. After an hour into the flight, the agents begin to talk to each other about their undercover work as DEA agents. One agent discusses the tragedy of babies addicted to cocaine at birth while the other notes the number of teenagers who have died from cocaine addiction. Ms. Mendez begins to fidget in her seat and breaks out in a sweat. The agents then discuss the onerous criminal penalties for cocaine trafficking and note that the only way to avoid these penalties is to cooperate with law enforcement. Ms. Mendez grabs her purse and begins to unbuckle her seat belt. Both agents then note that cocaine couriers often travel under assumed names. Both agents then turn to Ms. Mendez and ask her opinion about cocaine trafficking in the United States. She blurts out, "What do I have to do to get out of this. There's 10 kilos of cocaine in my suitcase." She is placed under arrest and when the plane lands in Chicago, she is taken to jail.

In Chicago, Ms. Mendez is taken to jail. That evening, DEA agent Ursula Undercover is put in the cell with Ms. Mendez. Undercover is wearing a t-shirt, short shorts, high heels and is posing as a prostitute. Undercover asks what Ms. Mendez is arrested for and is told "cocaine." Undercover replies, "Whew, that's bad. You'll probably never get out of jail. You know what the guards here do to female cocaine couriers. Its bad. Stick with me and if they come for you, I'll help you fight them off." After further conversation, Ms. Mendez proceeds to reveal the details of an international drug conspiracy. No Miranda warnings are ever given by Undercover to Ms. Mendez.

On Cheating's next trip to Miami, the DEA hires an extremely attractive prostitute to make sure that Cheating is out of his hotel room from 8:00 p.m. until 11:00 p.m. During this time, the agents pick the lock on his hotel room door and search the room. The find Cheating's locked suitcase, pick the lock and photograph the contents. The documents in the suitcase establish that Moe, Curley and Larry collect millions of dollars of drug proceeds each week and give them to Cheating for transfer to the bank of Cocaville. In addition to the documents, Cheating's suitcase contains \$5,000,000 in cash. The agents take five \$100 bills to test for fingerprints. Moe's fingerprints appear on the bills.

Armed with the evidence from the hotel room, the investigation shifts to focus on Moe, Larry and Curley. Agents apply for a search warrant for Moe's residence. The affidavit in support of the warrant details the evidence found in Cheating's hotel room concerning Moe and relates that Moe's fingerprints are on the bills taken from the room. In order to insure that the warrant is issued, agents falsely inform the magistrate that Moe's passport reveals numerous trips to Cocaville where he was seen in the company of members of the Medellin cartel.

At the time of the search of Moe's residence, additional agents proceed to Larry's residence. Believing that probable cause exists for the search of the residence, they enter without a warrant and begin to search. Bank records are seized which reveal large amounts of money being deposited and withdrawn in Larry's bank accounts. Canceled checks are discovered which link Larry to a drug and money laundering conspiracy.

Another set of agents proceed to Curley's home. Possessing probable cause, they enter the residence and arrest Curley for drug trafficking. Without warnings being given, Curley is asked whether he is involved in drug trafficking. He relates that he is getting ready to get out of the business and move to Paraguay. He is transported to jail and slated. Later, he is properly given his Miranda rights and executes a proper waiver. He further relates details of the drug/money laundering conspiracy he is involved in.

The agents then inform Curley he is suspected in a homicide. Curley states, "Well, maybe I should have an attorney." The detectives ignore Curley's response and proceed to ask Curley to review two documents. The first says, "Curley is (1) a cold-blooded killer, (2) has no regard for human life, (3) kills drug dealers for fun, (4) has been looking to kill someone for a long time, (5) and would kill again because he liked it, and (6) killed Gomez because he hates Gomez." In contrast, the other document states, "During September, Gomez was accidentally killed during a drug transaction. Curley has (1) had a tough life, (2) loves his family, (3) was trying to support his family which is why he was dealing drugs, (4) unfortunately became hooked on drugs, (5) was threatened by Gomez when he went to buy drugs from him, (6) is sorry in his heart for killing Gomez, and (7) wishes he could change what happened. The agents inform Curley there are two ways of characterizing him -- either as Mr. Good or Mr. Evil. Curley states he wants to be Mr. Good and confesses to killing Gomez. He also relates that the murder weapon is in a trash can. The agents recover the gun which has Curley's fingerprints on it.

While DEA agents are conducting the searches of the residences of Larry, Curley and Moe, IRS Agent Shep is deciding how to proceed on the money laundering aspect of the investigation. When informed that incriminating bank records were seized from Larry's home, IRS Agent Shep issues a subpoena for the same records from Larry's bank, as well as for additional financial information which turns out to be incriminating. Agent Shep later testifies that the finances of suspects is always investigated and that it is common practice to subpoena bank records. He states that this is usually done at the end of an investigation rather than at the initial stages of an investigation, however in this case, he accelerated his procedure since he already knew it would be productive to do so.

Q1: Ms. Mendez has moves to suppress her statements made to DEA agents while traveling from Los Angeles to Chicago. You are the trial judge. Rule on the motion.

Q2: As trial judge, rule on the statements made by Ms. Mendez to Ursula Undercover.

Q3: As trial judge, rule on Moe's motion to suppress the search of his residence.

Q4: As trial judge, rule on Curley's motion to suppress his statements.

Q5: As trial judge, rule on Curley's motion to suppress the gun in the prosecution's case-in-chief and for impeachment purposes.

Q6: As trial judge, rule on Larry's motion to suppress the financial information obtained by the IRS Agent Shep.

As a result of the foregoing investigation, the federal grand jury indicts Moe, Shep, Larry and Muriel Nowayman alleging violations of numerous federal statutes, including racketeering, drug trafficking and money laundering. The United States Army is dispatched to Cocaville to capture Muriel and return her to the United States for trial. The government also freezes all of Muriel's assets pursuant to the forfeiture provisions of the criminal RICO count in the Indictment.

Upon entering the United States, Muriel is held without bail in a federal detention facility. She attempts to hire E.X.Pensive, a trial lawyer of great repute and great cost. Pensive files a motion in the trial court to require the government to unfreeze \$500,000 in Muriel's funds in order to pay legal fees. The government opposes the motion and suggests that adequate representation can be provided by the local public defenders office. The government asserts that Muriel's lifestyle as President far exceeded her legitimate income and that her wealth was the result of illegal activity. The government estimates her net worth at 50,000,000. Muriel and Pensive have a meaningful attorney-client relationship, however Pensive refuses to do any more legal work for Muriel until he is paid.

The government has also restrained property in the United States worth several million dollars which is owned by Muriel pursuant to a civil forfeiture action. Muriel has requested the appointment of counsel in order to file a claim and defend this suit. Muriel has also requested that this property be released in order for her to defend herself in the criminal proceedings.

Q7: As trial judge, rule on Muriel's motion to release assets restrained by the forfeiture count in the criminal indictment. What type of hearing, if any, should be held to properly address the concerns of Muriel and the concerns of the government?

Q8: As trial judge, rule on Muriel's motion to appoint counsel and release assets presently restrained in the civil forfeiture action?

Larry, Curley and Moe appear at their arraignment, request court-appointed attorneys, have attorneys appointed to represent them and enter pleas of not guilty to all charges in the indictment. Moe and Larry are released on bond. Curley is held in jail because he has expressed his desire to flee to Paraguay.

Moe is seen by DEA agents at a restaurant. They confront Moe and ask him questions concerning the murder of Gomez. They inform him that Curley has already confessed and implicated Moe in the homicide. Moe states that Gomez was trying to "muscle in" on their drug operation and he had to be "whacked" to protect the operation and to warn other would-be traffickers not to bother them.

A superseding indictment is brought which now alleges a death penalty murder count against Curley and Moe in addition to the drug trafficking, money laundering and RICO counts.

Q9: As trial judge, rule on the admissibility of Moe's statements to DEA agents at the restaurant and explain how your ruling will affect the upcoming trial on the superseding indictment.

Curley's attorney files a motion for a psychiatric expert at state expense and serves the prosecutor with the motion. The judge schedules a hearing on the motion. The state opposes the motion, noting that Curley has not pled not guilty by reason of insanity. Nevertheless, the court orders that funds be made available for a psychiatric expert.

Curley is later convicted of murder. At the penalty stage of the proceedings, Curley does not call his psychiatric expert as a witness. The prosecution then subpoenas the expert as its witness. The expert testifies that Curley is sane and a hopeless sociopath who will commit lawless, violent future acts in both prison and if eventually released from prison. Curley is sentenced by a jury to death.

Q10: As appellate counsel, what arguments would you make on Curley's behalf concerning the admission of expert psychiatric testimony at Curley's trial.

Assume the statutory scheme in effect at the time of Moe's trial on drug trafficking charges provides for an additional ten year penalty if the defendant is convicted of three prior drug offenses. Assume further that evidence is introduced that Moe has three prior drug convictions. At the end of the state's case, Moe moves for acquittal on the enhancement provision of the drug statute, noting that he received a governor's pardon on one of the prior drug convictions and therefore the prior cannot be used in an attempt to enhance his sentence. The trial court overrules his motion for acquittal. Ultimately Moe is convicted and receives an additional ten years in jail due to the priors.

Assume a governor's pardon of a conviction makes the conviction inapplicable for enhancement purposes. On appeal, Moe argues that the enhancement portion of his sentence should be reversed and retrial is barred by principles of double jeopardy.

Q11: You are the appellate court. Rule on the motion.

Larry is also convicted of RICO, money laundering and drug trafficking. After trial, he moves for acquittal because there is insufficient evidence in the record to sustain a verdict of guilty. The trial court grants his motion on all charges and the prosecution appeals. On appeal, Larry moves to dismiss the government's appeal, noting that retrial is barred by principles of double jeopardy.

Q12: You are the appellate court. Rule on the motion.

Ms. Mendez pleads guilty to drug trafficking charges. The government argues at sentencing that the federal sentencing guidelines mandate a sentence of 84 months for her crimes and that the court is without authority to specify a lesser sentence. The trial court, noting the cooperation of Ms. Mendez during the investigation and her lack of a prior record, sentences Ms. Mendez to jail for 24 months. The government appeals the sentence. Ms. Mendez moves to dismiss the appeal based on principles of double jeopardy.

Q13: You are the appellate court. Rule on the motion of Ms. Mendez.

Regardless of your answer to Q4, assume the trial judge excluded Curley's statements for failure to comply with Miranda v. Arizona. From his jail cell, Curley files a civil rights action for damages pursuant to 42 U.S.C. 1983 for the violation of his constitutional rights with regard to the taking of his statement concerning the homicide. The government moves to dismiss the case.

Q14: You are the trial judge. Rule on the government's motion to dismiss.