

CRIMINAL PROCEDURE  
PROFESSOR KRAVITZ  
FALL SEMESTER--1994

FINAL EXAMINATION

This examination consists of twenty questions. They are each worth five points. Some 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. Do not use facts that appear subsequent to the questions asked.

There is a one page (both sides, if necessary) limit on each question. Answer the question and state your reasoning directly and concisely. Budget your time.

Although some of the events described below may have some similarity to recent news media accounts of a trial in California, be advised that some of the facts have been revised for this examination. For the purpose of this examination, you should draw no conclusions from recent rulings of the Court in California.

LEGIBILITY IS APPRECIATED

There are ten 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.

QUESTION NUMBER ONE

At approximately 1:00 a.m. on June 13, 1994, L.A.P.D. homicide detective Mark Poorman received notification from his supervisor of a double murder at 1000 Bundy in the Brentwood area of Los Angeles. He was informed that one of the victims was Paul James ("PJ") Timson's ex-wife, Michelle.

Detective Poorman and police colleagues drove to the Bundy residence, arriving at 2:10 a.m. They were greeted by L.A.P.D. patrol officer Buntz who gave them an overview of how the bodies were discovered and did a walk-through of the scene. Detective Poorman was taken to a position from which he could view the bodies at close range. He observed a dark brown or black glove near the body of Ronald Silverman. He also saw bloody shoe prints leading away from the victims with drops of blood to the left side of the prints. He called homicide and the squad, including Detective Van, arrived at 3:00 a.m. one of the victims was identified as PJ's estranged wife.

Detectives Poorman and Van went to PJ's home which was a tenth of a mile down the street. The residence is fully enclosed by walls and fences, and is entered through two electronically

controlled gates, both of which were locked. After ringing a button at the intercom system adjacent to one of the gates and receiving no response, they contacted the private security company which protects the premises. They were given the telephone number of the residence, called, and reached an answering machine. Rather than leave a message, Detective Poorman climbed over the five-foot wall protecting PJ's residence, opened the gate, and admitted Detective Van and other members of the homicide squad.

The squad assumed control of the premises, entered the pool area in the rear of the premises, made inquiries of PJ's daughter and a house guest, Oddjob, who had living quarters within the compound, and conducted an intensive search of the area outside the house. While on the grounds, the police discovered a bloody glove matching one found at the homicide scene and what appeared to be drops of blood on the driveway inside the compound.

(1) PJ was ultimately charged with two counts of murder. His attorneys have moved to suppress the bloody glove and the drops of blood on the driveway. You are the trial judge. Rule on the motion.

#### QUESTION NUMBER TWO

Inside the compound, Detective Poorman walked around a Ford Bronco and noticed that it was parked in a haphazard manner. He called the Bureau of Motor Vehicles and determined the Bronco was registered to Hertz, a company which employed PJ. He walked around the Bronco with a small flashlight and saw a red stain above the chrome handle of the driver's door, which he assumed was blood. He looked inside with the flashlight and saw a package in the rear cargo area addressed to P.J. Timpson. Detective Poorman opened the door of the Bronco and searched the interior passenger compartment of the Bronco, including the opening of the package. The package contained a receipt from a sports store, which noted that PJ had purchased a stiletto type knife two weeks earlier.

(2) PJ's attorneys have moved to suppress all the evidence found during Detective Poorman's search of the car. As trial judge, rule on the motion.

#### QUESTION NUMBER THREE

PJ's twenty-two year old daughter, Darnelle, was living within the compound in a guest house adjacent to the main home. Detective Van knocked on Darnelle's door and told her there was an emergency and they needed to get in touch with her father. She answered by explaining that her father had a scheduled meeting in Chicago and wasn't expected back for several days. Detective Van asked if there was a key to the house. She stated that PJ often left a key in the flower pot next to the door. Detective Van explained to Darnelle that he was concerned about PJ's safety and requested to search the home for PJ. Darnelle gave then consent to search the home.

Detective Van used the key to enter the home and immediately began to look throughout the house for PJ. Darnelle entered after the detective and directed them through the twenty-room home.

In one of the guest bedrooms, he found a ski mask, which the prosecution now wants to introduce into evidence.

- (3) PJ's attorneys have moved to suppress the ski mask. You rule on the motion.

#### QUESTION NUMBER FOUR

In the meantime, Detective Poorman remained with Oddjob because he didn't know who Oddjob was and was not sure if he was even supposed to be there. Detective Poorman noticed that sticking out of one of Oddjob's pockets was a baggie containing white powder. Detective Poorman asked if he and OddJob could wait inside Oddjob's living quarters at the compound. Oddjob agreed.

Once inside Oddjob's residence, Detective Poorman asked what was in the baggie. Oddjob gave the baggie to the detective and related it contained cocaine. Oddjob was placed under arrest. He was handcuffed to a table in the living room while the detective went through each room of the residence to determine if other individuals were present. In a closet in the bedroom was found a kilo of cocaine.

- (4) Oddjob's attorney has moved to suppress the seized cocaine. You are the trial judge. Rule on the motion.

#### QUESTION NUMBER FIVE

At 7:00 a.m. Detective Poorman applied for a warrant to search the home of PJ. Detective Poorman related the facts contained in Questions One through four in the affidavit in support of the warrant. Detective Poorman stated that PJ had "rather suddenly taken flight to Chicago after the homicides." The affidavit also made the unequivocal assertion that blood had been found on PJ's vehicle when, in fact, no tests had been conducted on the spots found on the Bronco. Detective Poorman did not incorporate into the affidavit that he had found a travel itinerary in PJ's home which revealed that PJ had scheduled his trip to Chicago a month earlier.

The search warrant was issued and an extensive search of the home took place. During the search a note was found from Michelle regarding his breakup with PJ and which detailed prior occasions when PJ had hit her.

- (5) PJ's attorney has moved to suppress the note. Rule on the motion to suppress. Regardless of your answers to prior questions, assume the entry over the wall to the compound and the prior warrantless search of PJ's home have been held valid.

## QUESTION NUMBER SIX

The search warrant authorized a search of the following areas for the following property:

- (1) Any and all garages or outbuildings associated with the residence to which the occupants have access.
- (2) Paperwork indicating the identity of the occupants of the residence to show dominion and control of the residence.
- (3) Presence of traces of human blood, clothing, surfaces, or any material that may contain blood, any object that may have been used to inflict fatal injuries, including but not limited to objects capable of inflicting blunt force, trauma, firearms or knives.

The warrant was executed by a team of thirty officers and nearly two hundred items were taken. Among the items seized were:

- (1) Personal papers relating to PJ's employment with Hertz;
  - (2) Fibers from carpet with red stains in PJ's bedroom;
  - (3) A videotape of a TV pilot called "Frogmen" in which PJ had played a role;
  - (4) A videotape of the wedding of Michelle and PJ; and
  - (5) Fibers from the carpet of the Ford Bronco.
- (6) PJ's attorney moved to suppress the above items. As trial judge, rule on the motion to suppress.

## QUESTION NUMBER SEVEN

PJ returned from Chicago on June 14th. The L.A.P.D. were waiting for PJ when he arrived in Los Angeles. As several officers approached PJ, he jumped over the aisle railing and ran through the airport with the police giving chase. As he passed a trash container, he tossed an envelope in which contained jewelry that Michelle wore on the night she was killed. At trial, PJ's attorney moved to suppress the jewelry.

- (7) You are the trial judge. Rule on the motion to suppress.

## QUESTION NUMBER EIGHT

PJ returned from Chicago to attend Michelle's funeral on June 18th. By arrangement with PJ's attorney, the police agreed not to arrest nor speak to PJ until after the funeral.

After the funeral, the police attempted to arrest PJ for murder, however his friend, Pal Howling, helped PJ elude the detectives. Subsequently PJ and Pal were spotted by helicopter traveling on the Santa Monica Freeway in Pal's Cherokee Jeep. Within minutes, there were several police cars in front and behind the Jeep. A homicide detective called PJ on Pal's car phone and engaged him in conversation and urging him to give up because he was completely surrounded and could not escape. During a two hour conversation between PJ and the homicide detective, PJ made

several incriminating statements. Shortly thereafter, Pal stopped the vehicle and both were arrested.

(8) PJ's attorney moved to suppress the statements of PJ. As trial judge, rule on the motion to suppress.

#### QUESTION NUMBER NINE

Pal's Jeep eventually stopped and PJ and Pal were taken into custody. Subsequently, at PJ's trial for murder, PJ testified that on June 13th, he went to Michelle's house to visit. He encountered Silverman viciously stabbing Michelle. He intervened, wrestled the knife away from Silverman, and stabbed him to death in the struggle in self defense and in the defense of Michelle.

The prosecution cross-examined PJ and asked why he didn't come forward and explain the circumstances prior to the funeral and his subsequent arrest. PJ's attorney objected to the question.

(9) You are the trial judge. Rule on the objection.

#### QUESTION NUMBER TEN

PJ was taken into custody, advised of his Miranda rights, refused to waive his rights and requested counsel. After PJ and the officers arrived at the stationhouse, PJ asked the booking officer, "Well, what is going to happen to me now?" In response, the officer said that PJ didn't have to talk to him and, because he had requested counsel, he didn't want PJ to talk to him unless he wanted to. PJ said he understood.

General conversation followed, in the course of which there was a discussion about where PJ was being taken and the crimes for which he was charged. The officer reiterated his own theory concerning the deaths of Silverman and Michelle and suggested to PJ that he take a lie detector test. PJ agreed.

The next day, prior to the lie detector test, PJ was given a fresh set of Miranda warnings and PJ signed a waiver. PJ then declined to take the test but engaged in conversation in which incriminating statements were elicited. PJ's attorney moved to suppress the statements.

(10) You are the trial judge. Rule on the motion to suppress.

#### QUESTION NUMBER ELEVEN, TWELVE AND THIRTEEN

Pal Howling was arrested for obstruction of justice - a misdemeanor. He was advised of his Miranda rights and refused to waive his rights. Officers then conferred outside Howling's presence and decided that the need for information concerning PJ's case was so great that they should disregard the lack of waiver and continue to interrogate PJ.

The officers went back in the room and asked Howling questions concerning PJ. Howling quickly related that as they were proceeding down the Santa Monica Freeway, PJ had discarded a white manila envelope as they passed over a bridge.

Officers immediately scoured the area and found the manila envelope. Inside the envelope was a bloody knife.

(11) Howling's attorney moved to suppress his client's statements. You are the trial judge. Rule on the motion.

(12) Howling's attorney moved to suppress the manila envelope and knife. You are the trial judge. Rule on the motion.

(13) PJ moved to suppress the manila envelope and knife. You are the trial judge. Rule on the motion.

#### QUESTION NUMBER FOURTEEN

PJ was arraigned on June 14th. His bond was set at \$1,000,000.00 and he was returned to his cell.

Meanwhile, Detective Poorman had arranged for Earfull to be placed in PJ's cell. Poorman instructed Earfull to listen closely to anything PJ said and to report any incriminating conversation. Detective Poorman stated to Earfull that he would receive \$100.00; for every statement he overheard. In addition, Detective Poorman told Earfull that he would receive a reduction of his numerous, pending drug charges to one misdemeanor provided substantial, incriminating statements were discovered.

That night, Earfull engaged PJ in general conversation about their conditions of confinement and life in general. PJ then related that he was at the Bundy Street address and had confronted Silverman and Michelle. Earfull dutifully reported this conversation to Detective Poorman.

(14) PJ's attorney moved to suppress this conversation. You are the trial judge. Rule on the motion.

#### QUESTION NUMBER FIFTEEN

PJ assembled the best legal talent available. Numerous pleadings were filed and substantial time was consumed in preparation and presentation of pretrial motions. PJ's funds were quickly depleted.

Soon thereafter, it became apparent that an expert was needed to examine the DNA results of the prosecution.

(15) How should PJ's attorneys proceed? What is the law that governs such requests?

## QUESTION NUMBER SIXTEEN

Howling went to trial on obstruction of justice charges. The statutory scheme provides that if an offender has a prior obstruction of justice conviction, the offense is escalated from a misdemeanor to a felony.

Three years earlier, Howling was convicted of obstruction of justice when he interfered with the arrest of another friend. He requested counsel in the prior case, however the request was denied because the judge determined he would not impose jail time.

The prosecution has now alleged that Howling committed a felony when he helped PJ elude police because of the prior obstruction of justice charge. Howling has moved to strike the prior offense specification on the ground that the prior is an invalid, uncounseled prior which cannot be used to establish guilt or enhance punish.

(16) You are the trial judge. Rule on the motion to strike.

## QUESTION NUMBER SEVENTEEN

After indictment, the police found a potential eyewitness to the homicides. Detective Poorman arranged a photographic array containing PJ's picture and five others and went to the residence of the witness. After displaying the array, the witness identified PJ as the man he saw running from Bundy Avenue.

(17) PJ's attorney moved to suppress the photographic array. Rule on the motion.

## QUESTION NUMBER EIGHTEEN

Prior to PJ's trial, the defense determined that white, women jurors would not be sympathetic to PJ. They decided to exercise all of their peremptory challenges during the voir dire examination against white, women jurors.

During the voir dire examination, the prosecutor objected to the exercise of these peremptory challenges.

(18) What is the law and procedure that the judge should use in determining whether to permit these challenges? Should the judge permit these challenges?

## QUESTION NUMBER NINETEEN

At Pat Howling's trial, the prosecution decided to exercise peremptory challenges against all Catholics on the prospective jury panel. Howling's attorney objected to these challenges and the judge overruled the objection, noting that the United States Supreme Court has not held Batson v.

Kentucky applicable to challenges on the basis of religion.

Howling was convicted and raised this issue before the California Court of Appeals and the California Supreme Court. Both courts also held Batson inapplicable to challenges based on religion. The United States Supreme Court denied certiorari.

Assume the United States Supreme Court subsequently held Batson applicable to peremptory challenges based on religion. Howling's attorney immediately files for federal habeas corpus and requests a new trial based on the new United States Supreme Court case,

(19) You are the district court judge. Rule on the habeas corpus petition.

#### QUESTION NUMBER TWENTY

Howling was sentenced to five years in the penitentiary. The years were suspended provided that he serve one year in the county jail and five years probation. After serving the year, he was released on probation. Shortly thereafter, he was alleged to have committed a probation violation by harassing witnesses from PJ's trial.

Howling claimed that his conduct was protected by the first amendment. Howling, who by now was destitute, requested counsel for his probation revocation proceeding. He was denied counsel and probation was revoked and the court ordered that he serve the remainder of his sentence. Howling appealed, pro se, to the California Court of Appeals.

(20) Rule on Howling's appeal.