

CRIMINAL PROCEDURE
FINAL EXAMINATION

PROFESSOR BLUTH
FALL, 1989

INSTRUCTIONS

There are seven additional pages to this examination. You have three hours.

Do not change the facts. Do not challenge any stated legal conclusions. For example, if I state that an arrest was lawful or that proper warnings were given, do not tell me what would have happened if the arrest was unlawful or if the warnings were not given.

Please answer the specific questions asked in the order they are asked. Support each answer with appropriate legal reasoning. Citations are not necessary. The questions I have asked do not require long dissertations.

As subsequent facts are introduced after each series of questions, do not assume that they imply the answers to earlier questions. They do not.

Legibility will be appreciated.

GOOD LUCK!

In recent years, the Medellin drug cartel has found it increasingly difficult to transport cocaine to the United States. In addition to the widely publicized efforts of the U.S. Government to extradite drug dealers, to gain the cooperation of the Columbia government, to intercept drugs at the border and to enact tougher laws, our government has also undertaken several covert steps including the recent insertion of American soldiers to destroy cocaine processing plants and the use of air-to-air missiles when planes suspected of carrying drugs take evasive actions. The cartel organized a three-prong plan to counter the American initiatives: they have started a terror campaign in Columbia in order to weaken the political resolve of the Columbia government, they have planned a series of terrorist type attacks in the United States, and they have sought suitable land in the United States to begin growing coca plants.

Juan Valdez has been dispatched from Columbia to the United States to locate potential sites to grow and process coca plants. After an extensive search in California and Hawaii, he selected a location on the southeastern slope of the Sierras in Central California as agriculturally most similar to Columbia. He hires local realtors and lawyers to acquire a 1,000 acre parcel of land telling them that he represents a reclusive European industrialist. All purchases are paid for with checks drawn on a Swiss bank. The perimeter of the property is fenced and work is begun on a processing laboratory that has been designed to look like a house. The construction workers were all flown

in from Columbia and all supplies are brought to the site by helicopter. With money being no object, the lab is completed in six months and a year later the first crop is ready to harvest. While not as potent as the Columbian variety, California cocaine yields more plants per acre.

Distribution of finished product is along traditional lines. The cocaine is flown by helicopter to a small regional airport where it is transferred by truck to a wholly owned luggage manufacturing company. The cocaine is hidden in secret panels of certain pieces of luggage which are then shipped by United Parcel Service to the cartel's wholly owned luggage stores around the country. Wholesalers then purchase these loaded suitcases for cash. Most suitcases contain 10 kilograms of cocaine and are sold on the wholesale level for \$200,000.00. Some of the cash is deposited in the luggage store's account while the rest is carried back to California by employees of the cartel.

Prior to the processing of the first crop of California grown cocaine, the United States government believed it was winning its war against drugs. Troops had destroyed a dozen drug processing sites in Columbia, Air Force pilots had shot down two dozen planes, and Congress had passed laws authorizing the death penalty for persons convicted of serious drug offenses and had authorized warrantless searches of all houses where drug dealers were arrested. As a result of these activities, the street price of cocaine had doubled indicating decreased supply. With the introduction of the California crop, the price of cocaine on the street started to decline and the Drug Enforcement Administration became concerned. Instructions went out to all field officers to find the source of the cocaine.

Ike N. Spottem has been employed by the Florida Highway Patrol for over ten years. During that time, he has developed a system for identifying drug couriers. He believes that drug couriers can be identified by either an obvious incongruity; i.e., young people driving Corvettes at 55 miles per hour or by studied attempts to be inconspicuous; i.e., being in the middle of a group of five mobile homes all travelling together. He spots just such a caravan of mobile homes and follows it for a while. The middle vehicle driven by Alan Able pulls into a service area off the highway without signaling. Spottem, who would normally ignore such a violation, pulls Able over and orders him out of the vehicle. He locks Able in the back seat of the cruiser and enters the rear of the mobile home where he finds Betty Baker asleep. He wakes Baker up and tells her to leave the vehicle. She reaches for her purse and he tells her to leave it where it is and get out of the vehicle.

Spottem, along with other officers he has summoned, search the interior of the vehicle and discover \$250,000.00 in cash hidden in a cabinet. They also search Betty's purse and find a loaded gun. Able is questioned about the cash and replies "Since when is it a crime to be rich?" Able is released but his vehicle is followed. Betty is arrested for carrying a concealed weapon and given full Miranda warnings. The

questioning detective offers a deal. If Betty will disclose the source of the cash, the gun charge will be dropped. She agrees and tells the police that the cash was picked up at Carlos' luggage shop in Miami and they were driving it to a Holiday Inn in Los Angeles, California where they were to be contacted by a Ms. Demeanor. Betty disclaims any knowledge of drug trafficking. Arrangements are made with the DEA to follow the vehicle to California, an investigation is begun to locate Ms. Demeanor and the luggage store in Miami is placed under surveillance.

Two weeks worth of surveillance reveals a store with relatively few customers. Located in a largely residential area of Miami it appears 6-11 people a day enter the store and in two weeks the officers only observe 10 sales. Yet a check with the neighborhood bank reveals that Carlos' luggage store deposits \$10-20,000 in cash on a weekly basis. Surveillance is increased and each customer is followed. One customer, Frank Fetcher, leads the officers to an apartment in Miami Beach. They observe many people entering and leaving the apartment including Jerry Junky, a known cocaine addict. Based on the foregoing information, they apply to a federal judge for a search warrant for the Miami Beach apartment.

Q-1 Did Spottem lawfully search the motor home?

Q-2 Did Spottem lawfully search Betty's purse?

Q.3 Should the federal judge issue the search warrant for the Miami Beach apartment?

The search of the apartment disclosed 1 kilo of cocaine and \$300,000.00 in cash. Fetcher, Junky and Sam Seller, the leasee of the apartment, are arrested for cocaine possession and given Miranda warnings. Junky suffers a heart attack on the way to the station and is transported to the hospital instead where his condition is stabilized and he is placed in a private room with police guards outside the door. To his great surprise, the telephone in the room works and he calls his lawyer to inform him of his arrest. The lawyer tells him not to say anything until he gets there and then calls the Prosecuting Attorney and inform her that he represents Junky who has been hospitalized and that he does not want Junky questioned without counsel present. The District Attorney assures Junky's lawyer that no questioning will take place without him. The Prosecuting Attorney then calls the detective in charge of the case and tells him that Junky's lawyer has called, that the telephone in his room is to be immediately disconnected, and that interrogation of Junky is to proceed at once. The detective goes to Junky's room, rereads him the Miranda warnings and asks him what he knows about the cocaine in Seller's apartment. He replies that it is new California stuff and that Seller and Paul Purveyor are the only ones in Miami selling the stuff.

A federal search warrant is obtained for Paul Purveyor who lives in a 12-room house in Miami. The officers arrest Paul at home, handcuff him and lead him out of the house. Acting pursuant to the recently enacted

federal statute authorizing the search of any residence where an arrest warrant for a cocaine offense has been executed, the officers search Purveyor's home and find five kilos of cocaine and \$150,000.00 in cash in an upstairs bedroom.

0.4 May Junky's statements to the detective be introduced in the government's case is chief?

Q.5 Should the cocaine found in Purveyor's home be suppressed assuming the arrest warrant was properly issued?

Able's mobile home is followed to Los Angeles where he arrives at noon. He places a phone call from a phone booth, drives to Honest Harry's used car lot where he sells the mobile home, takes a taxi to the airport, and buys a first class ticket on the next flight to Cartagena. Fearing that this part of the investigation was at an end, the agents rushed to the Holiday Inn identified by Betty and ask if a Ms. Demeanor is registered there. They learn that she checked in two days ago and has rented the room for one week. The agents ask to see her room and are allowed into her room by the manager. In the room, the agents find a piece of paper in the wastebasket with the following notation:

- "1. Advise Able to abort and return home.
2. Meet next courier at Ramada Hotel tomorrow.
3. Meet Ken G. Pin day after tomorrow at usual place."

The Ramada Inn is contacted and the officers learn that a Ms. Demeanor checked in at 10:00 a.m. for four days. They rush over there to question her. When they knock on her door and identify themselves, she pulls out a gun and takes a chambermaid hostage. The police evacuate the building and surround it. A hostage negotiator is brought in to talk to Ms. Demeanor. After several hours of conversation, she breaks down, releases the hostage, and confesses to the negotiator her part in the drug operation. She is then placed under arrest and given Miranda warnings for the first time.

Q.6. Did the police lawfully search the room at the Holiday Inn?

Q.7 May Demeanor's statements to the negotiator be admitted at her trial assuming a timely motion to suppress?

They learn from Demeanor that cocaine is now being grown somewhere in California and that the operation is run by Ken G. Pin. Directly under Pin is Dru G. Dealer and working for Dealer are seven subdealers. Demeanor only knows four of the subdealers: Sneezy, Happy, Grumpy and Bashful. A search is begun for the site of the California cocaine farm. Planes and helicopters criss-cross those parts of the state that are climatically suited to growing coca plants. Aerial photographs are analyzed and potential sites carefully examined from helicopters flying at 200 feet above the ground. In this way they locate the land

purchased by Valdez. The aerial surveillance is used to secure a search warrant. A search of the property reveals acres of coca plants and a complete processing laboratory. Records seized indicate that attorney Manny Talents was primarily responsible for assembling the land and negotiating the construction contracts. The investigator seeks a search warrant for Talents' files concerning the acquisition and construction of the cocaine site.

Q.8 Was the aerial surveillance conducted by the police violation of Valdez' fourth amendment rights?

Q.9 Should the warrant for Talents' files be granted?

Pin, Dealer, Sneazy, Happy, Grumpy and Bashful are all arrested for growing and distributing cocaine. Pin and Dealer are charged under a provision of the law dealing with major drug entrepreneurs. This section allows the government to appeal any sentence of less than thirty years. The arrests are effectuated without incident and the six are taken to the local DEA office. Bashful is warned that he has the right to remain silent, if he gives up that right anything he says will be used against him, that he has the right to counsel during questioning and if he cannot afford counsel, one will be appointed for him when he gets to court. Bashful asks the officer what if he wants to talk to a lawyer now and the officer responds that the police department does not employ lawyers for arrestees; he will just have to wait until he gets to court. Rather than waiting, he confesses.

The police decide to interrogate Pin before Dealer. Pin is brought to an interrogation room, given proper Miranda warnings, and interrogated about the cultivation of the cocaine. Over a nine-hour period, he refuses to answer any questions. Dealer is kept in a holding cell while Pin is interrogated. After two hours of waiting, he yells at the jailer, "I want lunch and my lawyer." They bring him a sandwich. When they are done with Pin, Dealer is brought to the interrogation room and given Miranda warnings for the first time. He signs a rights waiver and confesses. The next morning, agents from the Internal Revenue Service come to question Pin about the money generated by the sale of cocaine. They give him new Miranda warnings and get him to identify the bank accounts used by the cartel.

Q.10 May the government use Bashful's confession in their case in chief or for impeachment purposes?

Q.11 May the government use Dealer's confession in its case in chief?

Q.12 May the government use Pin's confession in its case in chief?

Pin hires attorney E.X. Pensive to represent him. Pensive tells Pin his fee is \$50,000 and demands cash. The next day, a courier brings Pensive the cash and Pensive notifies the court that he is representing Pin. Upon learning that Pin has hired Pensive, the U.S. Attorney writes Pensive a letter saying that the government believes that all of Pin's assets come from the sale and distribution of

cocaine and are subject to forfeiture by the government. Pensive seeks to withdraw as Pin's counsel. While the motion is under consideration, Pensive seeks to have the cocaine seized from the farm analyzed by a chemist at government expense. He believes that the chemical formulation of California grown coca may be different than Columbia grown coca thereby not meeting the statute's definition of cocaine. This will require sophisticated chemical analysis and cost \$10,000.00.

Q.13 Should Pensive be allowed to withdraw as Pin's counsel?

Q.14 Should the court approve Pensive's request to have the evidence analyzed?

Bashful and Sneezzy jointly hire attorney C. Noevil to represent them. When Noevil enters her appearance, the trial judge sets a hearing on her own initiative on whether the joint representation will be allowed. At this hearing both Bashful and Sneezzy insist on the joint representation. The government takes no position on the issue.

Q.15 Should the trial judge allow the joint representation?

Happy hired attorney I.M. Sobusy to represent him. A local rule of court prohibits any lawyer from taking on new criminal cases where he or she has more than ten criminal cases that are more than one year old. The rule was adopted when local backlogs increased dramatically and the local judges realized that a few attorneys represented most of the drug defendants making scheduling cases very difficult since these, same few attorneys were always in trial. The rule was adopted by a joint committee of the court and bar. Sobusy already has ten criminal cases that are more than one year old and the trial judge refused to allow him to represent Happy. The judge told Happy to either hire a new lawyer or if he refused, the court would appoint attorney N.X. Perienched who had never tried a case before, let alone a serious drug case. Happy told the judger "I want Sobusy." He got Perienched.

During jury selection at the joint federal trial of Bashful, Happy, Sneezzy and Grumpy all of whom are black the prosecuting attorney removes six black men from the jury using all six of his peremptory challenges. Noevil objects. Perienched does not object. In response to Noevill s objection the prosecutor responds that she just wanted to insure that the jury was composed of equal numbers of men and women. The trial judge overrules Noevil's objection. These defendants are all convicted. Sneezzy and Grumpy receive ten years in prison, Bashful receives six years, and Happy receives two years. The Los Angeles District Attorney outraged at Happy's sentence, immediately indicts Happy on state charges. Happy's lawyer, Sobusy files a motion to dismiss based on double jeopardy.

Q.16 Was the court justified in refusing to allow Sobusy to represent Happy?

Q.17 Should Sneazy's conviction be reversed on appeal?

Q.18 May the State of California prosecute Happy?

Pin was tried apart from the others involved in this case. In following up on Pin's involvement, the police learn that Pin lived with Demeanor and her five-year old son, Upright. It turns out that Upright overheard Demeanor and Pin discussing the drug business and saw suitcases full of money in the apartment. Upright is scared to death of Pin who has repeatedly told the child that he is to talk to no one outside the family or Pin will kill Demeanor. The prosecutor decides Upright's testimony is crucial and seeks to have Upright qualified as a witness. The judge, upon being advised of Upright's fear of Pin, holds the competency hearing in chambers with only Pin's counsel, the prosecution, and the child being present. After examining the child, the court rules that he may testify. Upon the request of the prosecution and over the objection of Pin's counsel, the child's testimony is video taped outside the presence of both Pin and the jury. At trial before Pin and the jury, the child breaks down when Pin scowls at him and refuses to answer questions. The government then offers the videotaped testimony into evidence.

Q.19 Should the videotape of Upright's testimony in chambers be admitted into evidence?

Pin is convicted and is sentenced to 25 years in prison. The government appeals challenging the length of the sentence as too lenient. Pin responds that the government is barred by the double jeopardy clause of the Fifth Amendment from appealing his conviction and sentence.

Q.20 May the government appeal the 25-year sentence imposed on Pin?