

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

I.

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 \$1,000,000.00 per month to allow the cartel to operate freely in Cocaville and to use its banks to launder their money.

The United States Drug Enforcement Administration has 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 have discovered that the president of the Bank of Cocaville, Charles Cheating, flies weekly on Cocaville to Miami where he meets with three Miami businessmen, Moe, Shep, and Larry, spends a night at a local hotel and flies back the next day. The agents also know that a tall red haired 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 and to search Mr. Cheating's hotel room in order to gather evidence against Moe, Shep and Larry. On November 12, 1990 Ms. Mendez flew from Cocaville to Los Angeles. In Los Angeles she boarded a flight to Chicago under the name of Joanne Schwartz. Two DEA agents ordered the plane with her. When her flight arrived in Chicago she went straight to the nearest phone booth and made a phone call. This aroused the suspicion of the Chicago police officers stationed at the airport. Two Chicago officers in plain clothes approached

Ms. Mendez-Schwartz and asked if they could see her ticket and some identification. She complied. They then asked her why she was traveling under the name of Schwartz when her passport identified her as Mendez. Before she could reply, the two DEA agents rushed up and asked what was going on. The Chicago police replied: "This is a drug investigation. Bug out." They turned to Ms. Mendez-Schwartz and asked her: "Will you come with us for a few minutes?" She replied: "I guess." They led her to a security office where they asked her if they could search her carry-on bag. She replied-"What the hell, if it's not you guys it will be the DEA." A search of her suitcase uncovered 10 kilo of cocaine.

On Cheating's next trip to Miami the DEA hired an extremely attractive prostitute to make sure that Cheating was out of his hotel room from 8:00 p.m. until 11:00 p.m. During this time the agents picked the lock on his hotel room door and searched the room. They found Cheating's locked suitcase, picked the lock and photographed the contents. The documents in the suitcase established that Moe, Shep and Larry had collected millions of dollars of drug proceeds each week and given them to Cheating for transfer to the Bank of Cocaville. In addition to the documents Cheating's suitcase contained \$12 000 000.00 in cash. The agents took five \$100.00 bills to test her fingerprints.

Armed with the evidence from the hotel room the investigation shifts to focus on Moe, Larry and Shep. Moe is observed meeting on a regular basis with Carlos Curley who lives on a palatial estate on Palm Island in Miami Harbor. Luxury boats are seen arriving and departing Curley's home at all hours of the day and night. Pleasure boats are kept away from the island by private security guards. Unable to get close to the island the DEA decides to use its latest weapon in the war against drugs, the Super Sniffer. This machine reproduces and magnifies chemically the olfactory power of a trained dog. The result is a machine able to detect cocaine from a range of 200 feet through walls, floors, etc. The DEA mounts the Super Sniffer in a helicopter and flies over Curley's estate. The machine positively identifies the odor of cocaine being present. Based upon the machine's readings, the agents seek a search warrant for Curley's house.

The agents learn that Larry was recently divorced from his wife of 12 years, Lucy. Witnesses at the divorce hearing portrayed Lucy as a particularly nervous person who caved in on the property settlement when Larry threatened to seek custody of the children. Nevertheless Lucy received \$1,000,000 in cash and monthly child support of \$20,000.30. Having reasonable suspicion that Lucy possesses information implicating Larry in criminal activity the agents stop Lucy while she is driving on Biscayne Blvd., order her out of her car and ask her if she will answer some questions about Larry. Lucy responds that she will never do anything to hurt the father of her children. As she is getting back in the car a small vial containing white powder falls from her pocket. An agent picks it up, tests it for cocaine, and arrests Lucy for possession of cocaine.

Observation of Shep's house reveals that a young woman, using her own key, enters the house every evening around 8:00 p.m. She usually leaves the house between 4:00 a.m. and 6:00 a.m., although occasionally she stays all day. One morning they observe the woman storm out of the house around 1:00 a.m. Believing they have just witnessed the aftermath of a lovers quarrel they follow her to a bar where a female agent goes in to see if she can befriend the woman. The agent sits next to the visibly angry woman at the bar and says to her: "Tough night" to which the woman replies: "Men are pigs. They all want the same thing. The guy has millions. I spend every night in his 12 million dollar house and oh well, you know what they're like". The agent replies: "Yeah you're right. They're pigs. Hey I've never seen a 12 million dollar house. Could you show it to me?" The woman responds:

"Yeah, I have a key. Let's go. I want to get some things anyway." The woman leads the agent to what is clearly an office in the house where work papers are spread out on a desk. The agent can

tell from the papers that they are records of a money laundering operation, and puts some in her purse. She then learns from the woman that she is employed by Shep, as a bookkeeper on the evening shift and has just been turned down for a raise.

Question 1: Was the cocaine lawfully seized from Ms.Mendez's suitcase?

Question 2: May the documents seized from Cheating's suitcase be introduced by the Government against Moe in his trial for money laundering?

Question 3: Should a judge issue a warrant to allow the DEA to search Curley's house for cocaine?

Question 4: May the government use the cocaine that fell out of Lucy's pocket in its subsequent prosecution of Lucy for possession of cocaine?

Question 5: May the government use the records seized by the agent from Shep's home in its case against Shep?

As a result of the foregoing investigation the federal grand jury indicts Moe, Shep, Larry and Muriel alleging violations of numerous federal statutes including a recently enacted one that makes money laundering a federal crime and provides that conviction shall carry a penalty of 10 years in prison without parole or probation provided that the penalty shall be 5 years for any defendant who pleads guilty and cooperates with the government. The defendants challenge the constitutionality of this statute. The United States Army is dispatched to Cocaville to capture Muriel and return her to the United States for trial. The government also seeks to freeze all of Muriel's assets pursuant to the forfeiture statute.

Upon her return to 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 as premature although conceding that Muriel did earn some lawful money as president of Cocaville and before that as a colonel in the Cocaville army. However, the government believes that Muriel's lifestyle as President far exceeded her legitimate income and that all of her wealth was the result of illegal activity. The government estimates her net worth at 50 million dollars. Pensive refuses to do any more legal work for Muriel until he is paid.

Q6. Is the recently enacted federal money laundering statute constitutional?

Q7. How should the trial judge rule on Pensive's motion for the release of funds for attorney fees?

While the court is considering Pensive's motion and the defendant's constitutional challenge to the statute the Federal Broadcasting Company begins broadcasting tapes recorded by the government of conversations between Muriel and Pensive that indicate in some manner Muriel's involvement in illegal activities. The tapes were broadcast by FBI notwithstanding an injunction obtained by the government prohibiting their broadcast. Muriel moves to dismiss the charges based on prosecutorial misconduct and interference with her right to counsel.

Q8. How should Muriel's motion to dismiss based on prosecutorial misconduct and interference with her right to counsel be decided?

Six months after her arrest the trial court upheld the constitutionality of the money laundering statute, ordered the government to release \$250,000.00 to Pensive and dismissed the case for prosecutorial misconduct. The government appealed the latter two rulings. While the case was on appeal Moe, moved to have his case tried at once. The government opposed the motion saying it

would cost too much to have two trials if Muriel's case was reversed on appeal. The trial judge agreed with the government. Two years later when all appeals were exhausted in Muriel's case the government commenced the trial of Moe, Shep and Larry. Larry moved to dismiss based on the delay between indictment and trial charging that Lucy was now willing to testify against him because their youngest child was now 18 whereas she would not have testified had the trial been held shortly after his indictment.

Q9. How should the court rule on Larry's motion?

The trial of Moe, Shep and Larry lasted 2 weeks. After four hours of jury deliberations the jury reported that they could not reach a verdict. The judge instructed them to continue deliberating. One hour later, without any further indications from the jury, the judge on his own initiative declared a mistrial.

Q10. May Moe, Shep and Larry be tried again following the mistrial?

II.

The City of Latipac has decided to reclaim its main park from the criminals who make it unsafe to use after dark. Increased police patrols are assigned to the park including officers acting as decoys, a hotline is established for public tips and more detectives are assigned to solve park crimes. One such decoy pretends to be a homeless person asleep on a park bench with a twenty dollar bill sticking out of a back pocket. Peter Pathetic, an unemployed, 22 year old, high school dropout sees the decoy, grabs the twenty dollar bill and runs. He is promptly arrested, charged with theft, and given Miranda warnings. While in jail awaiting arraignment he gets into a fight with another prisoner and suffers a broken arm. A doctor is summoned and drugs are administered to ease the pain so the arm can be set. Unbeknownst to the doctor, Pathetic has an allergic reaction to the drug so that the drug has the effect of a truth serum. Two hours later Pathetic is questioned by police officers about crimes in the park and confesses to three other muggings. He also tells the police that Henry Hobo is the ski masked bandit and that the Sampson gang controls the park receiving a piece of each crime committed.

Hobo lives in a remote part of Latipac under a freeway overpass on a public easement. He has stretched a hammock between the girders of the overpass, put up canvass and cardboard windscreens and uses the girders as shelves to store his possessions. He has lived there for two years and except for the occasional foraging animal has pretty much been left alone. The police go to Hobo's abode, search the place, find a ski mask and toy gun, and arrest Hobo when he returns home. Hobo files a motion to suppress.

Q11. May Pathetic successfully raise the defense of entrapment to the charge of theft?

Q12. Is Pathetic's confession admissible either in the state's case in chief or for impeachment?

Q13. Should the items seized from Hobo's abode be suppressed?

An anonymous caller on the hotline tells the police that a young white male, about 5'11", 175 pounds, wearing a pink denim jacket, plaid shorts and a Cleveland Browns helmet and standing under the statue of Peter Pumpkin, the first mayor of Latipac, has an Uzi machine pistol concealed under the jacket. Officers are dispatched to the park, spot a person exactly matching the description furnished by the caller, approach him, push him up against the statue, pat down his outer clothing and discover

the Uzi. He is arrested on the weapons charge and in an effort to mitigate his punishment tells the police that Able, Baker and Charlie are the park's principle rapists having raped two women in the last month, killing one of them. While one team of officers went to arrest Able, Baker and Charlie, another went to contact Debra Dearhart the surviving rape victim.

Ms. Dearhart had originally told the police that she was attacked at night, that she did not get a good look at her assailants, but that each had a beard and each wore jeans. The officer who contacted her following the tip told her that arrests had been made and asked if she would accompany him to see if she could identify the suspects. Able and Baker were already at the police station when Dearhart arrived and they were the only two people in the lineup. She identified both based on their clothing. The officers explained their failure to show her other men by stating they were the only two men in the city jail with beards. Able, Baker and Charlie were charged with rape and murder. In order to bolster the state's case the prosecution offered Charlie the opportunity to plead to attempted manslaughter if he would testify against Able and Baker. Charlie agreed and testified against Able and Baker. When he attempted to plead guilty to attempted manslaughter the trial judge refused to accept the plea stating: "In this state manslaughter is an accidental killing. You can not attempt to have an accident because an attempt is an intentional act. The law forbids me from allowing you to plead guilty to a crime that does not exist."

Q14. Did the police lawfully seize the Uzi?

Q15. Should Ms. Dearhart's identification of Able and Baker be suppressed?

Q16. Was the judge correct in refusing to accept Charlie's plea?

The investigation of the Sampsons results in the indictment of the three principals of the gang, Homer, Marge and Bart who live in a nondescript house in suburban Latipac. The police armed with appropriate warrants go to the house, arrest Bart, Homer and Marge on the first floor and take them to a waiting patrol car. Other officers sweep through the home including the upstairs and the basement in order to insure that other members of the gang are not on the premises. In the basement the officers observe two machine guns which are seized and in the bedroom the officers observe a ledger which contains the financial records of the Sampson gang. It too is seized.

Before being given Miranda warnings Bart turns to the arresting officer and says: "Hey dude, I want a lawyer." The officer responds: "We'll talk about that at the station." When they get to the station Bart is given full Miranda warnings and confesses to sharing in the proceeds of the park crime syndicate. Marge and Homer are taken to separate jails. Homer is promptly given a phone call and calls the family lawyer Percy Mayson. He tells Mayson what has happened and tells him to contact Marge. Mayson immediately calls the station where Marge is being held and informs the desk sergeant that he represents Marge and tells him not to question her until he gets there. The sergeant immediately gives Marge Miranda warnings and gets her to confess without ever telling her of Mayson's phone call.

Marge, Homer and Bart are tried together. Homer testifies in his own defense. Mayson concludes his direct examination of Homer just before 5:00 p.m. on Friday afternoon. The trial is recessed for the weekend and the trial judge instructs Mayson not to speak with Homer over the weekend. Mayson objects.

Q17. May the ledger seized from the Sampson's home be introduced by the government at the trial?

Q18. May Bart's confession be used in the government's case?

Q19. May Marge's confession be used in the government's case?

Q20. Did the trial judge commit reversible error when she prohibited Mayson from talking with Homer during the weekend recess?