

S. Brenner  
Spring 2001

**CRIMINAL PROCEDURE - POLICE PRACTICES  
FINAL EXAMINATION  
April 30, 2001**

This is an essay examination. Listed below are three questions, each of which is worth 200 points.

As I said in class, in answering the questions you can use any inanimate resources, e.g., your casebook, class hand-outs, notes, outlines, commercial outlines and study aids, etc.

Write as legibly as possible. **Use a separate bluebook (or separate bluebooks) for each question and label each bluebook to indicate which question is answered in it.**

Remember, the purpose is to test your ability to spot issues and apply the principles we discussed to them. Read the directions presented for answering each question and answer accordingly. Analyze a question in terms of **every issue** that could pertain to the problem presented. If you believe an issue would not be important in resolving the problem, note that and briefly explain why this is your conclusion. Also, remember to analyze each question from the perspective **both** of the defendant and the prosecutor.

You may find it helpful to refer to certain cases by name, i.e., "under *Miranda*," but it is not necessary to cite cases or to quote from them.

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## **QUESTION #1 (200 points):**

Officer Edmonds and her partner, Officer Doe frequently patrolled the neighborhood of East 173rd Street and Rogers in the City of Tulsa. The neighborhood was known to officers as an area of widespread illegal drug activity.

While on patrol in the early evening of January 24, the two officers observed a blue and gold Chevrolet pickup truck parked in the middle of the intersection of East 173rd and Rogers surrounded by three male pedestrians. The vehicle matched the description given to Edmonds by an anonymous informant three weeks earlier; the informant said the driver of a green and gold Chevy pickup truck supplied drug dealers on Rogers and lived on Rogers. As the officers approached, they observed one pedestrian standing at each side of the truck with his hands inside its open windows. The officers had observed drug transactions in the past that looked like what they now saw. The pedestrians ran when they saw the police approach and the driver took off. The officers activated their lights and siren and chased the truck at high speeds for two miles before it eventually stopped. During this chase, Doe ran the vehicle's license and learned the truck was registered to Bob Keller, whose residence was listed to an address on Rogers.

Officer Edmonds later said she had meant to stop the truck to issue Keller a citation for impeding the flow of traffic at the intersection of East 173rd Street and Rogers in violation of Tulsa Codified Ordinance 433.04. After Keller finally stopped, the officers walked up to the truck, one on either side. Edmonds ordered Keller and his passenger, Joan Smith, to get out of the vehicle; they complied. Edmonds and Doe patted Keller and Smith down for weapons, finding none. Edmonds asked Keller for his license and registration, and Keller handed them over. Edmonds then put the two in the back seat of their squad car; they were not handcuffed, and Edmonds said "we'll be back in just a minute – I want to check out your truck." While Edmonds and Doe were patting Keller and Smith down, Edmonds and Doe noticed a black 35 millimeter film container in the middle of the window ledge behind the seats in the passenger compartment of the pickup truck. From her prior experience, Edmonds knew that 35 millimeter film canisters were used to carry crack cocaine. Edmonds did not see any photographic equipment in the vehicle. Standing outside the truck, Edmonds reached inside and picked up the film canister; she lifted it, deciding it was too heavy to be empty. She then shook it several times; it rattled, which indicated to Edmonds that there were several hard substances inside. Edmonds opened the container, and found 39 rocks of crack cocaine which weighed approximately 8.84 grams.

Edmonds then informed Keller that he was under arrest for possession of cocaine. Edmonds and Doe searched the pickup truck, finding a sawed-off shotgun under the front seat; it was used to charge Keller with possession of an unlawful weapon. Doe cut open the truck's spare tire, which was in the bed of the pickup, and found marijuana inside. Edmonds searched a knapsack lying on the floor of the truck's cab, and found jewelry that proved to have been stolen earlier that evening; the knapsack belonged to Smith, though Edmonds did not know that at the time she searched it.

Keller and Smith move to suppress all the evidence recovered as a result of Edmonds' and Doe's actions. Write a memo for the court analyzing the arguments the defense can make in support of suppression and the arguments the prosecution can make in response. Note how you think the suppression motion should be decided as to each item of evidence.

**QUESTION #2 (200 points):**

A federal grand jury in Hammond, Iowa is investigating price-fixing in violation of federal criminal anti-trust laws. John Brewster is a veterinarian in Hammond where he has practiced for the past 10 years. He has his own clinic, and is not affiliated with any other veterinarians. Brewster has received a subpoena from the federal grand jury directing him to appear at 10:00 a.m. on Wednesday, May 16, at the federal courthouse in Hammond to answer questions from the grand jury. The subpoena also directs Brewster to produce the following for the grand jury's use:

- (a) all business records generated by, in the possession of and/or received by the Brewster Veterinary Clinic during the past 5 years;
- (b) all personal correspondence written or received by John Brewster during the last 20 years; and
- (c) any other business or personal records, files or correspondence in possession of and/or generated by John Brewster regardless of whether it is related to the conduct of the Brewster Veterinary Clinic.

The subpoena also tells Brewster that he will be required to "write letters, numerals, certain names and phrases as dictated by the grand jury foreperson."

Brewster has retained the senior partner of the law firm for which you clerk. The partner has told you the above information and has directed you to prepare a memorandum, which analyzes the arguments Brewster can make in an attempt to avoid complying with the grand jury subpoena. The partner tells you to analyze all the arguments that can be made for Brewster and the arguments the government can make in opposition. The partner also wants you to give your assessment of how successful each argument will or will not be.

The senior partner has also told you the following additional information: Brewster has not participated in the price-fixing conspiracy the grand jury is investigating, but he does have information about it. His friends are involved, and they have told him about the conspiracy.

The partner has also told you that "Brewster" is an alias being used by Diedrich Brandt, who attended veterinary college with Brewster. Brandt, who robbed two banks as part of an eco-terrorist group's activities in the 1980's, assumed Brewster's identity after years fleeing federal authorities. (Brandt had been indicted on federal bank robbery charges.) Brandt took Brewster's identity when Brewster died in 1990. Brandt has a file of correspondence written by the real Brewster, whose handwriting differs from Brandt's (though Brandt tries to write like Brewster). Brandt/Brewster told the partner he wrote the notes used in the bank robberies, and thinks he miss-spelled some words, including "currency," which he still spells as "curency."

Brewster told the partner that he has been selling animal drugs on the side, in violation of federal law. His personal records include a hand-written notebook in which he recorded each sale, including the drug sold, the amount paid, the date of the sale and the purchaser's name.

Finally, Brewster told the senior partner that he has three diaries he has kept for the last 15 years (5 years each). They record all of his activities.

### QUESTION #3 (200 points):

On October 9, 2000 an indictment was returned in Green County District Court charging John Curtis with child abuse, i.e., beating his son so badly the boy had to be hospitalized. At 4:00 a.m. on October 10, Hobart police officer Chris Wolf approached Curtis in the waiting area of the hospital where his son was being treated. Wolf said, "Mind coming to the station for an interview?" Curtis said, "No." Wolf patted him down and found cigarettes and a lighter, which he took. Wolf drove Curtis to the police station in the back seat of his police cruiser. During the 5 minute drive, Curtis asked, "are you taking me to jail?" Wolf said "no, we're going to the station to talk." Curtis said he was cold, and mumbled, "I shouldn't have been drinking."

After arriving at the police station, Wolf told Curtis to wait in an interview room while he found Officer Bucy. Wolf still had Curtis' cigarettes and lighter. After 10 minutes, he came back with Bucy; they began interviewing Curtis at 4:45 a.m. At 5:30 a.m., Curtis said, "You guys just couldn't let me go home and get sleep could you?" Bucy responded, "No, we need to get this handled now." Wolf said, "I couldn't let you go home and go to bed. We need to talk to you." Bucy said, "we get this and then you can go home and go to bed, we just need to know what happened." The interview continued; at 5:54 a.m., Bucy briefly left the interview room and was told the victim had died.

The first break came at 6:45 a.m.; Curtis was allowed to use the restroom and get a drink of water. The interview resumed at 6:58 a.m.; at 7:31 a.m., Curtis was told of his son's death. After hearing his son had died, Curtis said, "My God! I should never have hit him so hard." They took a break at 7:48 a.m.; Curtis and Bucy went into the alley so Curtis could smoke a cigarette. Curtis also got a drink of water before the interview resumed at 8:56 a.m. The next break came at 9:42 a.m. Curtis was allowed to smoke in the alley while accompanied by Bucy. Curtis was given a soft drink and put in a large area where the detectives' desks are located. At 11:40 a.m., the interview resumed. Bucy administered a *Miranda* warning to Curtis. This interview finally ended at 1:17 p.m.; throughout, Curtis repeatedly said his mind was getting numb, he could not remember because he was tired, all he wanted to do was sleep, he felt like he was "drained," there was "nothing left," he was "empty" and "hollow," and he wanted to "just jump off a ... 10 story building" because the officers would not leave him alone.

Curtis remained in the interview room until 5:08 p.m. When Bucy returned, Curtis was asleep on the floor in a fetal position. Awakened, Curtis asked when he could leave; Bucy said Curtis could not leave. At around 6:00 p.m., Curtis was taken to an officers' lounge and allowed to sleep on a full-length couch. At 7:45 p.m., Bucy woke him and told him he was to be interviewed by Officer Hall. Hall identified himself, and asked Curtis if he wanted to use the restroom or get a drink of water or something to eat, to which Curtis said "no." Hall administered *Miranda* warnings and Curtis waived his rights. Hall interviewed Curtis until 10:04 p.m. During the interview, Curtis made incriminating statements about beating his son.

Curtis moves to suppress "any and all incriminating statements he made to Wolf, Bucy and/or Hall." Write a memo for the court analyzing the arguments the defense can make in support of suppression and the arguments the prosecution can make in response. Note how you think the suppression motion should be decided as to each item of evidence.