

**CRIMINAL PROCEDURE
FINAL EXAMINATION**

This is an essay examination. Listed below are three questions; the point value for each question is given at the beginning of the question. You have three hours to complete the examination.

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. You **cannot** obtain advice or assistance from another person.

Write as legibly as possible. If you use bluebooks use a separate bluebook (or 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** you think can pertain to the problem presented. If you believe an issue would not be relevant in resolving the problem, note that and briefly explain why this is your conclusion. Also, in your analysis, remember to address the arguments that can be made by **both** the defendant and the prosecutor.

As you read a question, if you find the facts ambiguous or if you need certain facts to support your answer, assume the facts you need to be able to answer and state that you are doing so (i.e., "I am assuming that") or ("It is not clear if . . . so I am assuming").

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QUESTION #1 (350 points):

Mel Doe is 24 years old. He left high school at 17, when he was in the tenth grade. His IQ is in the low normal range, around 85. He works as a janitor at WalMart, handles his own finances and is buying a car. He is mildly dyslexic; he can read, but he tends to have difficulty with complex sentences and unfamiliar terms.

Mel's brother Sam showed up at Mel's apartment at 5:00 p.m. They ate pizza and drank five beers, each. At 9:00 they left Mel's apartment and went to a bar. Mel had seven more beers and danced with Lori Munro.

Mel and Munro left around midnight and went to his apartment; Sam went to his own apartment. Mel called Sam around 1:00 a.m. and asked him to get more beer. Sam brought beer and arrived at Mel's apartment around 1:30 a.m. Sam left at 2:00 a.m. and went to his apartment. Mel drank one beer while Sam were there.

Around 4:00 a.m. Mel called Sam and said he had killed Munro with a knife. Sam arrived at Mel's apartment fifteen minutes later and found Munro bleeding on the floor; Mel was beside her crying and trying to stop the bleeding. Over his protests, Sam called 911, after which Mel fled the apartment. Police arrived around 4:30; Munro was dead.

Sam went with the police to give a statement. Mel broke into Sam's apartment; he used his cell phone to call relatives and left a message on Sam's answering machine, which Sam retrieved from the police station. At 7:30 a.m., Sam arrived at the apartment with officers who wanted the message. Mel was there drinking a beer. He did not try to run. He told the officers, "it was self-defense" and made a stabbing motion.

Detective Smith said to Mel, "You're coming to the station with us." Mel was put in the back of a squad car, handcuffed and taken to the station. The officers let Sam ride in the back with him. On the way to the station, Sam said, "It must have been an accident." Mel replied, "No, I thought she was attacking me so I fought back."

At the station, Detective Smith handcuffed Mel to a chair in a hallway outside the interrogation rooms, all of which were in use. Smith said to Mel, "In about half an hour, we'll get one of those rooms, and I'll ask you what happened. It's in your best interest to talk to me – if you don't, you'll be charged with murder, which is a capital charge in this state. You'll get the death penalty." In fact, the state does not have the death penalty.

An hour later, at 10:30 a.m., they entered an interrogation room. Smith began by giving Mel a form that read as follows:

1. Before making this statement, I was advised that I have the right to remain silent and anything I might say may be used against me in a court of law.
2. That I have the right to consult with an attorney before saying anything and an attorney may be present while I am making any statement or throughout the course of any conversation with any police officer if I so choose.
3. That in the course of the conversation I can refuse to answer further questions and remain silent, thereby terminating the conversation.
5. That I knowingly and voluntarily waive these rights and choose to answer questions.

Smith said, "read that over and sign it if you agree." Mel read the form and signed it; Smith began interrogating him about what had happened to Munro. Mel talked about meeting her at the bar, but not about the stabbing.

The interrogation continued until 12:30 p.m., when an officer opened the door and said to Smith, "Just so you know – he's been indicted for the murder of Munro." Mel said, "What? How can I be charged with murder? I was defending myself from her when I stabbed her!" Smith stopped Mel at this point and said "You must be hungry – how about some burgers and fries from McDonald's?" Mel said, "sure," so Smith left.

Smith sent one officer to get Sam, who had gone home, and another to get the food. When Sam arrived 45 minutes later, Smith said, "take this food into Mel and talk to him. I don't want you to ask him any questions about what happened to Munro, but I'd like you to soften him up . . . get him feeling chatty so he'll maybe open up to me when I go back in." Sam agreed, went in with the food, and talked to Mel for over an hour. Sam did not ask Mel any questions; instead, he said things like, "I can't imagine how you feel after what happened. You know, the worst thing you can do is bottle this up. You're going to need to talk to someone about this at some point, get this off your chest." Mel said, "hey, buddy, I'm sorry I dragged you into this. Truth is I was drunk and out of control. She wanted to leave and that made me mad. Who did she think she was? So I grabbed her to stop her, and when she started screaming I stabbed her to shut her up." When Sam left, he reported these statements to Smith.

Smith returned to the interrogation room, asked Mel, again, what had happened with him and Munro. This time, Mel talked about what had happened, but he said the stabbing was an accident. He said he was showing Munro his new 7" sheath knife when "she started fooling with it, and then fell on it, which is how she got cut." Smith took these statements down, and then sent Mel to a cell.

Mel's lawyer has moved to suppress any and all statements he made to the point at which Smith sent him to a cell. You clerk for the judge who has the case. Draft a memorandum outlining the arguments the defense can make for suppression and the arguments the prosecution can make in response.

QUESTION #2 (250 points):

You represent Mary Cornelius. The FBI believes she robbed two Dayton banks. Surveillance tapes indicate that the robber is a woman who wore black clothing and a black baseball cap with a distinctive logo on the front. In each instance, the robber gave the teller a note that read, "Give me the currency in your cash drawer." In the second robbery, the robber cut her finger on a sharp edge of the handle on the door as she exited the bank; she left a small amount of blood on the door.

Cornelius tells you she is not the robber – her identical twin Martha sister is. She says Martha asked her to write the note, saying it was part of a "joke" she was playing on her husband. Cornelius says she believed Martha and did as she asked. Cornelius says Martha borrowed the clothes she wore in the robbery from her, Mary. The clothes are in a storage locker Mary uses for extra possessions; she is the only one who knows the combination to the lock on the locker.

When you press Mary for more details, she admits that while she did not commit the robberies, she knew Martha was going to use the note to commit them. She says Martha threatened to expose the fact that she, Mary, has not filed an income tax return for the past 5 years if she did not write the note and lend Martha the clothes. If the FBI knew Mary has not filed tax returns for five years, she would be prosecuted for federal crimes – failing to file returns and failing to pay taxes.

A federal grand jury investigating the robberies has issued a subpoena to Mary that requires her to do the following:

- Appear and testify before the grand jury as to what she knows about these robberies;
- Provide a sample of her blood to be tested for DNA and used to identify the robber;¹
- Write out the robbery note in response to dictation (the grand jury foreperson will read the actual note, and Mary will be required to write out what he says); and
- Give the grand jury the combination to the lock on her storage locker so they can see what is inside.

Will you advise Mary to comply with the subpoena or will you challenge all/part of its requirements? What, if any, challenges can you raise? What, if any, arguments can the prosecutor working with the grand jury make in opposition to the arguments you make?

¹Since Mary and Martha are identical twins, their DNA is identical.

QUESTION #3 (350 points):

Agent Tom Parton of the Iowa Drug Enforcement Agency (IDEA) submitted an Affidavit and Request for a Search Warrant on April 12, 2006, containing the following information:

- A cooperating defendant in a marijuana trafficking case ("CD # 1") provided information to Iowa Drug Enforcement Agent Greg Fox pertaining to the indoor cultivation of marijuana at 60 Bristow Street in Ames, Iowa by Ed Unruh.
- CD # 1 reported personal conversations during December 2005 with an unidentified individual ("UI # 1") who claimed to have obtained marijuana from, and smoked marijuana with, Ed Unruh at his residence at 60 Bristow Street.
- CD # 1 relayed information obtained from another unidentified individual, a friend of CD # 1 and Ed Unruh ("Friend"), who claimed to have been at the Unruh residence in December 2005 and to have witnessed a large grow operation.
- Both UI # 1 and Friend told CD # 1 that Unruh was cultivating and selling marijuana from his single-family residence where he lived with his wife Meg Unruh, who was not involved in the cultivation activity inside the residence.
- Friend told CD # 1 that Ed Unruh was using several high-intensity discharge grow lights, which were mounted on motorized tracks for automated movement over the marijuana plants they illuminated, and carbon dioxide gas to enrich the grow room environment for better plant growth.
- On January 5, 2006, CD # 1 reported that CD # 1 and Friend drove to Ed Unruh's residence and CD # 1 watched Friend enter 60 Bristow Street for a brief stay.
- Friend returned and told CD # 1 that Unruh had just harvested a crop of indoor-grown marijuana plants at his home some time during December 2005 and had several big bags of processed marijuana stored in the house.
- Agent Fox determined that Ed Unruh lived at that address with his wife, Meg Unruh, and that Ed Unruh was a felon, who had been convicted and sentenced in 1999 to ninety days in jail and five years probation for possession of narcotics.
- Agents took trash sitting on Unruh's porch the day before trash collectors came. They examined the trash, and found boxes that had contained large garbage bags of the type that can be used to contain processed marijuana.
- Agent Parton asked Iowa Power & Light for electrical usage records for 60 Bristow Street for the period March 2005 to March 2005. IP&L gave Parton the records.
- Agent Demme analyzed the power records and found the average consumption rate to be more than twice the national average.
- On April 10, 2006, Agent Parton conducted a thermal imaging scan of the Unruh residence. It showed the temperature of the surface area of the front second floor was significantly higher than the other areas of the residence.

Iowa Common Pleas Judge Sheila Jones issued a search warrant that authorized law enforcement officers to search the premises at 60 Bristow Street in Ames, Iowa and to seize evidence relating to a suspected marijuana grow operation.

Officers arrived at the Unruh residence to execute the warrant at 2:40 p.m. on April 12. The officers were wearing SWAT gear, including bulletproof vests, because this was a drug raid; the word "POLICE" appeared in large letters on the back of their outfits.

Seven officers went to the front of the house. The storm door was open but the inner door was closed. Agent Kelly tried the inner door, found it was not locked, opened it and entered "thinking there would be another door inside the house." He found himself in the living room, where Sam, Ed's father, was watching television. Startled by the intrusion, Sam grabbed a handgun from a table, waved it at the intruders and said "Get out of here before I shoot you or call the cops or both!" One officer fired a shot at Sam, intending to wound him; the shot went wide, entered Sam's heart and killed him.

The officers searched the house and found marijuana plants, the gun Sam had used and other evidence they believed was associated with an illegal marijuana growing operation. Ed Unruh arrived during the search and was arrested. He has been charged with various drug crimes under Iowa law.

Unruh has moved to suppress the evidence the officers located in his residence. He has also filed a civil suit claiming the officers unlawfully killed his father. You clerk for the judge who has been assigned Unruh's civil and criminal cases. The judge has asked you to draft a memorandum analyzing:

- The arguments Unruh can make in support of his motion to suppress and the arguments the prosecution can make in opposition to his motion;
- The arguments Unruh can make in support of his civil suit and the arguments the prosecution can make in opposition.