

FINAL EXAMINATION
CRIMINAL PROCEDURE I
PROFESSOR SEPULVEDA
FALL 2005

1. You have a total of **three (3) hours** to complete this exam.
2. This is a **closed** book exam. Students may not use any outside materials or confer with each other during the exam.
3. This exam consists of three (3) parts.

Part I Multiple Choice (40 Points)

} Part I consists of 20 multiple-choice questions of 2 points each. Please mark your responses to the multiple choice questions on the separate ParSCORE TEST FORM using pen or pencil and following the instructions on that form. If you change your answer, place a clear X through the wrong answer and mark the correct answer. A machine will score the exam and any ambiguities will be counted as a wrong answer.

Part II Short Answer (40 Points)

} Part II is to be answered on this exam paper **in the space provided**. (If you type, you may answer on a separate sheet of paper, but you should restrict your answer to the same amount of space as provided by the question.) Do not answer Part II in blue books.

} Part II consists of several short answer questions. These range in value from 4 to 6 points.

Part III Essay (40 Points)

} Part III is to be answered in blue books (or typed). If you answer Part III in a blue book, please write legibly and write on every other line and every other page to permit instructor comments.

} Part III consists of one (1) long essay.

} Deal with *all* the issues raised in the essay question, even if you believe the disposition of one is controlling.

4. Write your **exam number** on the exam envelope. Put your correct class section and student exam # at the top of this page, each page of questions, each blue book or each page of your typed answers, and the ParSCORE TEST FORM. **Do not** use your name, student ID number or Social Security number on any exam materials.
5. At the conclusion of the exam, return all test materials, including blue books, ParScore answer sheet, scratch paper, and this exam packet to the envelope and submit it to the proctor. **Do not** seal the exam envelope. Students who do not return all exam materials at the end of the exam may not be graded.

GOOD LUCK!

Part III ♦ Essay (40 Points)

Recommended Time: 1 hour

The following essay question should be answered in a blue book or typed.

Kitty and Red Forman are enjoying a quiet night at home when police officer Smith knocks at their front door. The officer asks permission to enter their home and to search the bedroom of the Forman's sixteen year old son, Eric. Officer Smith says he is looking for some stolen 8-track tapes. The tapes were shoplifted from a local record store. No force was used during the theft and only one suspect was involved. Kitty agrees to let the officers search, but Red objects. From his position on the front porch, through the open front door, the officer observes a large plastic bag on the coffee table in the living room. The bag contains a leafy green material, which the officer believes is marijuana (based upon his training and experience). The officer enters the Forman's home and seizes the bag, at which time Red Forman declares, What the (bleep) is that? Officer Smith then proceeds upstairs and searches Eric's room, including the closet, where he discovers a brown paper bag. He opens the paper bag and removes a plastic bag which contains a leafy green substance that the officer believes is marijuana (based on his training and experience). Possession of the amount of marijuana found in the bedroom, as well as that observed on the coffee table, would each be a misdemeanor in this jurisdiction. Officer Smith seizes the plastic bag containing marijuana.

Officer Smith then tells Red and Kitty that he is securing their residence in order to obtain a search warrant. Red and Kitty are placed under arrest for possession of marijuana and they remain in the living room with the officer until the search warrant is obtained. The affidavit in support of the search warrant does not mention the marijuana observed on the coffee table, nor the marijuana found in Eric's room. The probable cause set forth in the affidavit relates only to the stolen 8-track tapes and is sufficient to support the issuance of the search warrant, which authorizes entry into the Forman home and a search of Eric's bedroom only.

While they are waiting for the search warrant to be signed, several back-up officers arrive on the scene. Officer Smith suddenly hears music from the basement of the home; he and two other officers proceed downstairs to make sure no one is hiding there. In the basement, which has been converted into an extra living room for Eric and his friends, the officers find Eric and several of his friends (Fez, Donna, Steven and Michael) watching T.V. and eating popsicles. Eric is immediately placed under arrest for possession of marijuana, based upon the bag found in his closet. The officer detains Eric's other friends until he can ascertain their connection with the premises.

After arresting Eric, Officer Smith takes him aside and begins to question him about the marijuana found in his bedroom. He does not advise Eric of his *Miranda* rights before questioning him. He asks who the marijuana in Eric's room belongs to and Eric admits it is his. That is the only questioning of Eric that occurs at the scene.

Another officer observes that Steven is fidgeting about nervously and sticking his hand in his coat pocket. The officer thinks that Steven may have a weapon and pat searches his outer clothing. He feels an object in Steven's jacket pocket that he immediately recognizes as a small plastic baggie containing what he believes to be marijuana, based upon his training and experience. The officer reaches into Steven's pocket and retrieves a sandwich bag containing marijuana (a sufficient quantity to constitute misdemeanor possession). Steven is placed under arrest for possession of marijuana. Steven is given his *Miranda* rights, states he has nothing to say, and is not interviewed at the scene.

Officer Smith transports Eric and Steven down to the police station. About two hours later, each is separately interviewed by a narcotics detective. Eric and Steven are advised of their *Miranda* rights and each of them waives those rights. Eric admits again that the marijuana discovered in his bedroom is his. Steven states that the marijuana found in his pocket is his.

Back at the Forman's residence, the search warrant is served and the stolen eight track tapes are found hidden under a floor board in Eric's bedroom. Upon closer examination, it is discovered that the bag on the coffee table in the living room contains oregano from Kitty's garden, not marijuana. Red and Kitty are released from custody; no charges are filed against them. Fez, Donna and Michael are allowed to leave; no charges are filed against them.

Eric is charged with possession of marijuana and possession of stolen property (the 8-track tapes); Steven is charged with possession of marijuana. They are arraigned on the charges and counsel is appointed for each of them. Subsequently, a detective from out-of-town conducts a live lineup with Eric in it, as part of the investigation of a totally unrelated burglary. Eric is identified as the perpetrator of the burglary and is charged with that offense as well.

(1) Eric moves to suppress all of the evidence seized from his bedroom, all of his statements to the police, and the results of his lineup. What result and why? Can Eric successfully argue that the evidence seized from his bedroom, as well as both of his statements and the lineup results, are products of the original entry and securing of the residence, which he maintains were illegal?

(2) Steven moves to suppress the marijuana found in his jacket pocket, as well as his statement to the police at the station. Evidence presented at the suppression motion establishes that Steven is a good friend of Eric's and spends much of his time hanging out in the Forman basement. What result and why? Can Steven successfully argue that the discovery of the marijuana in his pocket, as well as his subsequent statement, are products of the original entry and securing of the residence, which he maintains were

illegal? Would the answer to this question be different if the evidence showed that Steven had been adopted by the Formans and actually lived in the house?

End of Exam