

**UNIVERSITY OF UTAH  
S.J. QUINNEY COLLEGE OF LAW**

**Criminal Procedure  
Professor Paul Cassell**

**Fall 2008  
December 16, 2008**

**FINAL EXAMINATION**

**Instructions**

This examination begins at 8:30 a.m. It is designed to be a three-hour examination with three questions of one hour each. Each of the three questions will be given equal weight in determining the final grade. You are given an extra hour to allocate as you see fit. You must turn in your examination by 12:30 p.m.

This is essentially an open-book examination. You may have the following materials with you: your textbook, any supplemental materials distributed during the course, and any outline that you may have prepared by yourself or with other students. You may not have the following materials: any commercial publications, hornbooks, or the like, in either printed or electronic form.

In accordance with standard law school procedure, do not write your name (or any other information that could be used to identify you) anywhere on your exam. Write your exam number on your exam. This permits evaluation without knowledge of your identity.

As discussed in class, there is no specific page limit or word count limit. Nonetheless, I would appreciate it if you could avoid filibustering@ me. As a rough guide, I would expect answers to fit within about three blebooks (one side of each page, every other line) or about 13-and-a-half double-spaced typed pages.

## QUESTION I

On December 9, 2008, Barbara Biker rode her bike across a solid double yellow line in the middle of the block at 250 South Main Street in downtown Salt Lake. (Salt Lake City code requires bicyclists to cross streets only in cross walks or where motor vehicles are permitted to cross.) A community-based police officer on a bicycle, Officer Olivia Ochoa, rode up alongside Biker, identified herself as a police officer, and asked Biker to pull up on the sidewalk. Biker did so, and Ochoa then asked for a driver's license or other form of identification so that she could write a ticket for improperly crossing the street. When Biker indicated that she didn't have her driver's license with her, Ochoa asked her for her name and date of birth so that she could run the name through NCIC (the National Criminal Information Center) to see if there were any warrants out for her arrest. Biker then gave her full legal name to Ochoa.

After radioing the name into NCIC, Ochoa quickly asked Biker a couple of questions while waiting the standard five minutes for the check to be performed. Ochoa asked Biker if she had smoked marijuana in the last 24 hours and Ochoa admitted that she had. Ochoa then asked Biker where she kept her stash, and Biker said that it was at her house back at 950 South Main Street in Salt Lake City. Biker said that if she rode back to her house, she could show Ochoa her license.

Ochoa and Biker then both rode back on their bikes to 950 Main Street, seven blocks away from where Ochoa had stopped Biker. While on the way there, Ochoa's helmet radio reported that there was a valid arrest warrant out for Biker for a 2007 felony drug charge. Because the radio report came through an earphone to Ochoa, Biker was not aware of this report. Ochoa at this point decided to arrest Biker, but also decided not to tell Biker of this fact until later.

When they arrived at the single family residence at 950 South Main Street, Biker said, "I'll just run in and get my i.d., because I don't want you to see anything else that I'm up to." Ochoa said that she would need to accompany Biker for "officer safety."

At this point, Biker opened a side door to the home and Ochoa saw someone directly inside the door who appeared to be crouched down in a cabinet and staring at her. This person's hands were not visible. Fearing a possible assault, Ochoa reached about two feet inside the door, pulled out a man later identified as Charles Crouch and told him to turn around and put his hands on the wall. She then frisked Crouch, finding a concealed weapon on his person. She took the weapon into her possession and asked for Crouch's name. After he gave it, a quick radio check revealed that Crouch was wanted on the same 2007 felony drug charge as was Biker and that he had a previous 2005 felony conviction for burglary which made it illegal for him to possess a firearm.

Ochoa pulled out her service weapon and told Crouch not to "pull anything funny." Ochoa then called for backup, which promptly arrived three minutes later. Supporting officers took Crouch into custody and searched him, discovering heroin hidden in his wallet.

After backup arrived, Ochoa asked Biker if she still wanted to show her the i.d. Biker said that she did not want to get into any more "trouble" about "her grass" than she had to and took

Ochoa inside. Biker produced a valid i.d., but while inside Ochoa observed a small amount of cocaine in plain view on a mirror in Biker's bathroom. Ochoa asked about the cocaine, and Biker admitted it was hers.

After both Biker and Crouch were arrested and booked into jail, officers learned that the 2007 arrest warrants for both Biker and Crouch had been fully resolved and were no longer valid. However, due to a clerical mistake by the Salt Lake City police department, the warrants had not been withdrawn from the NCIC record keeping system.

Biker has been charged with illegally crossing a double yellow line on a bike and with possession of marijuana. Crouch has been charged with illegal possession of a firearm and with possession of heroin. They have moved to suppress all evidence against them, including all statements made by them.

Discuss the issues of criminal procedure that arise under the United States Constitution and the Utah Constitution.

## QUESTION II

On December 15, 2008, the Salt Lake City police department received a report that the Governor of the Utah was preparing to sell an appointment to fill a vacancy in the Utah congressional delegation to a prominent lawyer, Sarah Superlawyer, for \$100,000. (A member of Utah's delegation had resigned and, by operation of law, the Governor possessed the sole power to fill the resulting vacancy.) The report came from a person who identified himself to police as Paul Partner, who was previously married to Superlawyer but was recently divorced in a highly publicized and acrimonious proceeding. Partner explained that, while he had just moved out of Superlawyer's home, in the bedroom there was a locked safe that contained \$100,000 in cash that would be used to make the payoff to the Governor. He stated that he had personally seen large amounts of cash inside the safe a month ago and meticulously described the house where Superlawyer lived.

The Salt Lake City police hurriedly confirmed that Superlawyer lived at the address identified by Partner and prepared a search warrant affidavit that accurately recounted all of the foregoing facts (except for the facts surrounding the acrimonious divorce; on this subject, the affidavit just indicated that Partner was recently divorced from Superlawyer). The search warrant accompanying the affidavit asked for authority to search Superlawyer's entire home for evidence of bribery, including any U.S. currency.

After getting the appropriate magistrate judge to authorize the search warrant, a team of police officers quickly went to Superlawyer's home. They saw her coming down the steps and asked her to stay there pending the search, despite her protests that she had an important court hearing to attend. They also did a quick patdown of Superlawyer and the purse she was carrying over her shoulder, feeling something hard inside the purse. They then opened the purse and discovered an illegal handgun, which they secured. Superlawyer then admitted that she shouldn't have been carrying the weapon, but claimed that Partner had just put it there against her will the

day before. Other officers then executed the search warrant and found the locked safe in the bedroom. Opening the safe, they found cocaine but no cash.

The officers then returned to the front steps to question Superlawyer about the cocaine. She admitted knowing about it, but claimed that it was Partner's. She told them that "Partner is the biggest drug dealer in town. I'm sure he has cocaine on his person right now." The officers then arrested Superlawyer and told her that she had "the right to remain silent and that anything . . . ." At this point, Superlawyer said, "What kind of an idiot lawyer do you think I am? I know my rights and I'm not telling you anything more other than that Partner gave the cocaine as a wedding anniversary present." The officers asked her what she meant and Superlawyer said, "Well, I guess I'm really more of a civil lawyer than a criminal lawyer, so maybe I should get my law professor friend to represent me." The officers told her that it was her decision what to do, but that things typically go easier for people who talk to the police. She decided to keep talking and made more incriminating statements about the cocaine and about her plan to bribe the Governor.

Based on the information given to them by Superlawyer, the officers then went to Partner's home, a single family residence in Salt Lake City. They saw a light on inside, but did not see anyone present inside the house. They walked up the front sidewalk and rang the door bell. When no one answered, the officers peeked through the open glass window next to the door and saw evidence of drug trafficking (small baggies, a scale, burlap bags, and drug paraphernalia) scattered about.

The officers then walked around to the backyard and, seeing Partner, placed him in handcuffs. They asked if they could go into his house to get the evidence and Partner asked what would happen if he declined. The officers said that they would get a warrant, so Partner said that they could go inside and "shut down my small business venture." They then went inside and retrieved all of the evidence they had seen previously as well as some additional cocaine found in plain view nearby.

Superlawyer has been charged with bribery, illegal possession of a firearm, and possession of cocaine with intent to distribute based solely on the evidence found at her house and the statements police obtained from her there. Partner is also charged with drug dealing based solely on the evidence found at his house and the statement police obtained from him there. Their lawyers have moved to suppress all of the evidence the police have discovered as well as all statements that they have made.

Discuss the issues of criminal procedure that arise under the United States Constitution and the Utah Constitution.

### **QUESTION III**

On the evening of November 1, 2008, Harry Horton was driving down 1300 East in Salt Lake City when he encountered a police "checkpoint" designed to catch drunk and drugged drivers. Horton dutifully stopped at the checkpoint where, pursuant to the established procedure, an officer immediately asked him what his sixth birthday was. When Horton was unable to give

any answer, Officer Able, who was staffing the checkpoint, directed Horton to drive over to a side parking area for further investigation.

In the side area, there had been a change in the shifts of the officers, so no one went over to see Horton for twenty minutes. (The plan had been for officers to talk immediately to anyone referred to the side area.) In fact, Horton got so bored by the delay and that he got out of the car and stood about fifty feet away from it while waiting for the officers.

After twenty minutes, Officer Baker approached Horton and quickly realized that the reason that Horton did not respond to Officer Able was that he (Horton) was deaf. Able wrote out a note to Horton telling him that the Police Department was sorry to have inconvenienced him and that he was free to go. Horton nodded his head and turned to return to his car. At this point, Baker immediately noticed a suspicious bulge in the back pocket of Horton's jacket. Baker ran after Horton and patted down the bulge, quickly discovering an illegal firearm. Baker then communicated with Horton, informing Horton that he was under arrest for the illegal weapon. Baker handcuffed Horton at this point and placed him in the back of Baker's squad car.

Meanwhile, unbeknown to Baker, Officer Charlie had been investigating Horton's car. While Baker was talking to Horton, Charlie had brought over to the car the new mechanical device that professors at the University of the Utah had developed for the Salt Lake City Police Department. Known as "The Mechanical Mutt," the device could reliably detect the presence of illegal substances inside of cars. The device essentially replicates the dog sniffs that the Department has previously accomplished with highly trained (and highly expensive) canines. (The device also has a high-powered "X-ray" capability letting it "see" inside of cars, but this capability had been turned off for the evening because of uncertainties regarding the legality of this feature.) The device signaled the presence of methamphetamine inside the car by flashing a red light (rather than the green light signaling "all clear" because of the presence of no contraband).

After discussing all the events of that evening, Baker and Charlie then searched Horton's car. Baker searched the passenger compartment. When he tried to open the glove box, he found that it was locked. Baker forced the lock and discovered inside the glove box one small, hand-rolled marijuana cigarette. At the same time, Charlie searched the trunk, finding a large quantity of heroin. No methamphetamine was ever found in the car. (The University of Utah graduate student working on The Mechanical Mutt had made a mistake, cross-wiring the device so that, contrary to what the officers had been told by the professors, the device blinked the red light instead of the green that should have gone out for an "all clear" reading and vice versa.)

It turns out that "Horton's" car was in fact a car that he had stolen two months earlier from Nevada.

Horton has been charged with illegally possessing the firearm, the marijuana cigarette, and the heroin. His attorney has moved to suppress all the evidence against him.

Discuss the issues of criminal procedure that arise under the United States Constitution and the Utah Constitution.