

UNIVERSITY OF UTAH  
S.J. QUINNEY COLLEGE OF LAW

Criminal Procedure  
Professor Paul Cassell

Spring 2007  
April 26, 2007

**FINAL EXAMINATION**

Instructions

This examination begins at 1:00 P.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 your examination at 5:00 P.M.

Page limits:

If you are using a *wordprocessor* for this exam, you are limited to a total of 4350 words (plus or minus 50 words, so don't worry about exceeding the limit slightly) for the entire exam. (This word limit is roughly 13 pages.) Please double-space. On the last line of the exam, please type in the number of words that your word processing package shows for the test.

If you are *handwriting* this exam, you are limited to a total of three bluebooks, one side of each page, every other line. The three-bluebook limit is for the whole exam. For example, if you have space left over in the first bluebook after answering Question I, you can use that space for Question II, etc.

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.

## QUESTION I

On April 22, 2007, Utah Highway Patrol Officer Olivia Ochoa was patrolling Interstate 15 in Salt Lake City when she saw a blue Toyota Camry proceeding northbound. The driver of the Camry was observing the speed limit, but was weaving slightly – the car straddled the center line for about one second before returning to its lane of traffic. Officer Ochoa pulled the vehicle over based on suspicion of drunk or drugged driving and asked the driver, Donna Driver, to exit the vehicle. Ochoa then had Driver perform three standard field sobriety tests. Driver performed unevenly on these tests, failing the first one, passing the second one, and performing ambiguously on the third one.

At this point, Ochoa smelled Driver's breath, failing to detect any odor of alcohol. But Ochoa thought that Driver was "on something," so she asked Driver whether she had any illegal drugs in the car. Driver said that she did not. Ochoa then asked for permission to search the passenger compartment of the car, and Driver replied "I don't see why not."

Ochoa then directed Driver to step away from the car and remain in front of the car, while she searched the passenger compartment. Ochoa quickly looked inside the glove compartment in front of the front passenger seat, finding what appeared to her (based on extensive training and experience) to be a marijuana cigarette or "joint." Without revealing this fact to Driver, Ochoa then opened the trunk of the car by releasing a latch under the steering wheel. Driver said, "Hey, wait a minute – I only said you could search the passenger compartment." Ochoa replied: "I want to see what's back there – you just be quiet."

Ochoa then looked in the trunk, seeing several brick-sized objects wrapped in burlap. She peeled the burlap back to see a white powdery substance that, based on her training, appeared to be cocaine.

Ochoa then took the three objects and placed them on the front hood of the car and looked quizzically at Driver. Driver said, "I ain't telling you nothing about that stuff." Ochoa replied, "You'd better, or I'm going to prosecute this in the federal courts and you'll never get out of prison." Driver then admitted that it was cocaine. Ochoa said, "I'd better give you *Miranda* warnings," and properly recited the warnings and determined that Driver understood them. She then asked Driver whether she understood the rights, and Driver said she did. Ochoa next asked Driver whether she wanted to talk further, and Driver replied, "Maybe I should talk to a lawyer." Ochoa said, "That's up to you, but I have no way of giving you a lawyer. One will be appointed for you, if you wish, if and when you go to court." Driver said, "Well, in that case, I better talk to you now." She then proceeded to give more details about her involvement in cocaine trafficking.

Ochoa then arrested Driver, taking her and her car back to the police station. Utah Highway Patrol standard policy is to do an inventory search of the contents of impounded cars. On April 23, while conducting such a search of Driver's Camry, Ochoa found a kilo of heroin by peeling up the carpet on the floor by the front passenger seat.

Driver has been charged with drugged driving, possession of marijuana, and possession of both cocaine and heroin with the intent to distribute. Her attorney has moved to suppress all evidence and statements obtained by the police.

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

## QUESTION II

Juab County Police Officer Wayne Walker suspects that Ron Rancher is involved in a marijuana growing operation on his 1600-acre ranch in a rural part of Utah. To

investigate his suspicions, Walker borrows an extremely high-powered telescope (not available to the general public) from the U.S. Air Force. Then, from a convenient vantage point along a public road, he sets up the telescope to peer onto Walker's property.

Walker first observes, about a mile away, what appears to be camouflage netting concealing part of a field. Under the netting, Walker can see green, leafy plants. While he can't determine what type of plants they are from that distance, Walker suspects they might be marijuana.

Walker next turns the telescope onto the Rancher home, located in the center of the property about a mile from any public road. He can't see anything inside the home, but he sees inside the garage (the door of which is open) multiple scales and burlap bags. Further suspecting that a marijuana growing operation is underway, Walker decides to hop the barbed wire fence (adorned with "No Trespassing" signs) to sneak a peek under the camouflage netting. After hiking the mile, he looks under the netting to see a significant field of marijuana.

Walker then returns to his police station to prepare a search warrant for the Rancher property. The warrant accurately recites (1) the camouflage netting, (2) that there are no other ranching or farming properties in Juab County using such netting for legitimate agricultural reasons (according to the U.S. Farm Bureau), (3) that there were scales and burlap bags observed in Rancher's garage, and (4) based on his training and experience, Walker has learned that scales and burlap bags are frequently involved in marijuana distribution operations. All other "boilerplate" portions of the search warrant and affidavit were properly completed, including portions that very specifically identified the property to be searched (the Rancher property, garage, and home) and the items to be seized. The appropriate magistrate judge approved the warrant.

As Walker and his partner drive towards the Rancher property to execute the

warrant, they see Rancher heading toward them on the public road. They block the road with their patrol car and, with guns drawn, order Rancher out of his pickup truck. When Rancher gets out of the car, they ask him, "Why have you been growing marijuana out here?" Rancher confesses that he has been doing it because of financial troubles resulting from low agricultural prices.

After Rancher is arrested, Walker searches the Rancher property. He finds evidence of marijuana trafficking under the netting, in the Rancher garage, and in the Rancher home. Walker also finds evidence implicating Sam Santos (Rancher's friend who lives in Mexico) in the operation.

Rancher and Santos have been charged with marijuana trafficking. Their defense attorneys have moved to suppress all evidence found at the ranch. Rancher's attorney has also moved to suppress the statements made by Rancher after he was stopped on the public road.

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

### QUESTION III

At noon on April 24, 2007, a student (Roger Roommate) attending Coolidge College in Utah came to local police station to report that one of his roommates at the college dorm, David Defendorf, was plotting an armed attack on other students at Coolidge. Roommate said that he had seen Defendorf cleaning several firearms in his room and making threats that very day about "taking out" as many students as he could. Roommate said he was concerned for the safety of students at the college, including his other roommate, Harry Helpless. According to Roommate, Defendorf had a minor fist fight in the room with Helpless that very morning. Alarmed, police officers quickly organized into two groups: one

team (an armed "SWAT" team) plan to respond immediately to the threat posed by Defendorf while the other team prepared a search warrant for the room. The SWAT team asked Roommate if they had "his permission to enter and thoroughly search" his room (dormitory room 101) at the college, and he readily agreed.

At 1:30 p.m. that day, the SWAT team went to dormitory room 101 and knocked on the closed door. A voice from inside the room answered, "Who is it?" The SWAT team identified themselves and asked who was there. David Defendorf identified himself. The SWAT team asked if they could come in. Defendorf replied, "Not without a search warrant." The SWAT team asked if Helpless was there with him. Defendorf answered, "I haven't seen Harry for a week." At this point, concerned for the safety of Helpless, the SWAT team broke down the door and entered the room, taking Defendorf into custody without incident. Helpless was not there. (It was later determined that he was having his normal lunch at the school cafeteria.) The SWAT team then searched the room and located two loaded revolvers that belonged to Defendorf – one sitting right on top of his desk and the other one hidden inside a closed drawer of his desk. They also found Defendorf's diary, in which he wrote about his plans for a violent attack on the school.

At the same time that day (1:00 p.m.) the other police team presented a search warrant application to the appropriate local magistrate judge. The search warranted stated:

This morning a student at Coolidge College in Utah, who identified himself as Roger Roommate, reported to your affiant that one of his roommates at the college dorm, David Defendorf, was plotting an armed attack on other students at Coolidge. Roommate stated that he had seen Defendorf cleaning several firearms in his room and making threats that very day about "taking out" as many students as he could. Roommate said he was concerned for the safety of students at the college, including his other roommate, Harry Helpless. According to Roommate, Helpless had gotten

into a fight in the room with Defendorf that very morning. Therefore, your affiant seeks authority to search dorm room 101 at Coolidge College, which roommate identified as a room he shares with Helpless and Defendorf. Your affiant has confirmed with Coolidge College officials that dorm room 101 is leased to these three people.

All other "boilerplate" portions of the search warrant and affidavit were properly completed, including portions that very specifically identified the dorm room to be searched and the items to be seized ("firearms and any evidence of planned armed attack"). The magistrate judge approved the warrant.

At 1:30 p.m., the search warrant team went to dormitory room 101 to execute the signed search warrant. They saw the SWAT team leaving with Defendorf and, therefore, had no need to execute the warrant.

Defendorf has been charged with two counts of violating the local criminal law forbidding the possession of firearms on the Coolidge College campus (one count for each of the two guns) and with threatening other students. His defense attorney has moved to suppress the guns and the diary, as well as Defendorf's statements to the SWAT team before they entered his dorm room.

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