#### FINAL EXAMINATION

#### CRIMINAL LAW AND PROCEDURE II

Professor Power April 29, 1994

# **SPECIAL INSTRUCTIONS**

TIME: THREE HOURS CLOSED BOOK

This is a three-hour, closed book examination. There are three questions. Allocate 45 minutes to questions I and II and 90 minutes to question III, as this reflects their weight in the grading process.

The examination contains seven pages. Check now to be certain that you have the entire examination. You are required to hand in your copy of the examination along with your examination books. Place your examination number on the upper right corner of this page and on each of your examination books. On each book, please indicate both the number of that particular book in the series of books you write and the total number in the series. E.g., BOOK 2 OF 3.

Your handwriting must be legible. I will do my best to decipher your handwriting, but I cannot give you credit unless I can figure out what your answer says. Please write on only one side of each page, and, if your handwriting makes it necessary, write on every other line.

Anyone caught making disturbing noises during the exam will be stopped, frisked, searched, seized, forced to confess, and spit out.

Attempt to answer the questions on the basis of the facts given. If you find it necessary to make any assumptions as to law or fact in writing your answer, please state the assumption and explain why you are making it. If you believe that additional information is necessary to answer a question, explain what information is necessary and how it would affect your answer.

# I. (45 minutes)

Some months ago the FBI arrested Aldrich Ames, a career CIA employee, for espionage. Some of the following is true, but not much of it.

Ames was arrested at his home, along with his wife, Maria Rosario Casas, a Colombian national. Both were advised of their "Miranda" warnings. (Set out an acceptable version somewhere in your answer). Neither agreed to waive any of their rights at that time. Both have attorneys, and both are in prison, having been denied bail. On March 15, a federal grand jury indicted them on several counts of espionage. If convicted, each faces a possible sentence of life in prison.

Early in April, Ames's old office mate, Natasha Badenov, and FBI Special Agent Herbert A. Philbrick visited Aldrich Ames in prison. In the discussion that ensued, Agent Philbrick reminded Ames of <u>all</u> his rights, but suggested that Ames "hear out" what he had to say. Philbrick pointed out that Aldrich and Maria had no chance at trial, but the government might be generous if a trial could be avoided. Moreover, the prosecution was prepared to go easy on Maria if Aldrich cooperated, because she wasn't a CIA employee when she spied or even a U.S. national. And finally, there was their son, Vladimir, to consider. If Aldrich cooperated, he would still get a life sentence, but Maria would get a short sentence at a low security prison, which would allow her to have a role in raising Vladimir. Philbrick told Aldrich not to say anything then, but to think it over and confer with Maria and his attorney if he wished. Badenov said nothing during the meeting except "Nice to see you again, Aldrich."

Aldrich said he would think about it. The next day he sent a letter to Maria. Immediately after receiving it, she sent him a return letter. Upon receiving her response, Aldrich notified Badenov that he would cooperate. The next day Ames gave a complete confession to Agent Philbrick.

- a. You are Aldrich Ames's attorney and want to try to suppress the confession as evidence, if only to try to get a better deal for your client. What questions should you ask your client in order to prepare a suppression motion on all arguable grounds?
- b. You are the prosecutor. Make the argument that the government's actions did not violate Ames's constitutional rights. You may make up the answers to any questions you identified in part a.

NOTE: EACH PART IS OF EQUAL WEIGHT, SO SPLIT YOUR TIME AS EVENLY AS YOU CAN.

# II. (45 minutes)

President Clinton's weekly radio address of April 16 concerned one response to the crime problem. Here are extracts from the New York Times article on that address:

President Clinton today announced an initiative intended to increase police searches for illegal drugs and weapons in public housing projects plagued by gang violence.

The Federal courts have blocked efforts by the Chicago Housing Authority, which were backed by the Clinton Administration, to conduct these searches without warrants.

Instead of trying to gain a new power for warrantless searches, Mr. Clinton would encourage housing authorities to ask tenants in signing leases to give standing consent to having their apartments searched for drugs or weapons.

The President's proposal would also allow officials to enter apartments without a warrant in emergency circumstances if there is not enough time to obtain a judicial warrant.

"Every law-abiding American, rich or poor, has the right to raise children without the fear of criminals terrorizing where they live," Clinton said.

The new policy, he said, would allow the residents to "take back their homes."

The proposal immediately raised some concern among advocates of housing for the poor, who cautioned that it might amount to asking a vulnerable population to cede a right that the courts have said could not be taken from them.

Gordon Cavanaugh, of the Council of Large Public Housing Authorities, said that inserting consent search clauses in public housing leases may pressure tenants who feel they must agree to such a provision in order to gain access to public housing.

The new Federal policy would encourage local housing authorities to make a more vigorous effort to search vacant apartments, stairwells and other common areas for signs of criminal activity. Housing or local police would also continue to frisk suspicious people or enter an apartment with an arrest warrant.

As part of the policy, the Federal government will urge local housing authorities to install metal detectors in building lobbies and search common areas and vacant apartments.

You are an attorney in the Department of Justice's Office of Legal Policy, which is responsible for advising the President on such matters. Analyze the 4<sup>th</sup> amendment issues

presented by the President's radio address. To the extent possible, you should include recommendations for ways the President could try to meet his objectives lawfully if all or part of this program would be unconstitutional.

# QUESTION III (90 minutes)

The FBI has been investigating Edie Adams, head of a major organized crime group in New England, for several years. They "know" that the Adams family is involved in gambling, loansharking, narcotics trafficking, and hijacking. Unfortunately, much of their "knowledge" is derived from old investigative reports, information from informants too valuable to endanger by using publicly, and from guesswork based on surveillances.

One day recently they got lucky. FBI Special Agent Lewis Bearskin was having Sunday brunch with his family at Tweets Balzano's restaurant in Bristol, Rhode Island. Adams came in with two other people and took the next table. Bearskin recognized them as Tasha Yar, the Adams family's head enforcer, and Pigsfeet Dupree, who handles the family's business in Las Vegas. Bearskin heard Dupree say that he would be bringing in "100 Gs" from Las Vegas next Sunday and that the family had "skimmed" over a million dollars so far this year. Adams then said, "Good going. I'll pick you up at the airport." They then chatted about the weather, local politics, and Madonna, and Bearskin picked up no more useful information.

After Bearskin reported the information, the U.S. Attorney decided they should try to arrest Adams and her cohorts. The FBI tried to pull together its sources of information on the group but could reveal little of the juicy parts. They finally put together the following affidavit:

"I, Lewis Bearskin, hereby swear that I am a Special Agent of the FBI and have been one for 22 years.

On April 17, 1994, I was at Tweets Balzano's Restaurant in Bristol, Rhode Island, where I observed Edie Adams, Tasha Yar, and Pigsfeet Dupree come in and take the table next to mine.

In the course of their conversation, Dupree told the other two that they had skimmed over a million dollars from casino receipts this year and that he would be bringing \$100,000 in cash to Rhode Island on Sunday, April 24.

Records of the Nevada Gaming Commission indicate that the registered owner of the What Cheer Casino in Las Vegas is "the Bad Guy Corporation," which lists Pigsfeet Dupree as its resident agent.

Records of Mountain Telephone Co. indicate that Pigsfeet Dupree makes a nightly telephone call to 401-541-3901, which is registered to Edie Adams.

Records of Continental Airlines indicate that a "P. Dupree" has reservations from Las Vegas to Providence, Rhode Island, on April 24, arriving at 6:15 p.m.

Special Agent H.R. Block of the Internal Revenue Service has advised me that "skimming" is an underworld term for taking unrecorded cash from a business so as to evade taxes.

Sworn this	_ day of April, 1994
	Lewis Bearskin

Based on that affidavit, U.S. Magistrate N.D. Pendent issued warrants later that day to arrest Adams, Yar, and Dupree.

On April 24, FBI agents waited in the Continental Terminal at Providence Airport. They saw Dupree enter the terminal from the unloading area and meet with Adam's chauffeur, "Mister" Sulu. The agents followed Dupree and Sulu to the car. Before they could get into the car, however, the FBI agents swept in and arrested them. Sulu was carrying Dupree's suitcase, which the agents then opened, finding \$105,000 in cash. They had Special Agent Justa Lackey drive the car back to the federal building, where the agents began to search the car. On the front seat they found a document that stated that Edie Adams is the sole stockholder of "the Bad Guy Corporation."

While searching the car, Special Agent Doo X. Machina said, "Don't forget the gun." Special Agent Bearskin asked what he meant. Machina said, "My informant tells me Adams has a secret compartment with a gun, you press some sort of button with one hand, and a gun pops out into the other hand." "Wow," said Bearskin, as he began to search in earnest. After taking the dashboard apart, he suddenly realized that Adams had a chauffeur and therefore sat in the back seat. So Bearskin sat in back and started pushing the seat belt buttons. All of a sudden the right armrest sprang open, releasing a fully loaded .38 on a spring, directly by Bearskin's right hand.

Yar and Adams were later arrested at their homes. When the agents arrested Yar, they found her working at her desk. As they took her away, Special Agent Bearskin noticed that the papers Yar was working on had columns with numbers on it. Bearskin said, "Better take these too," and, obviously enough, took those too. FBI crypto-analysts later established that the papers showed the amounts of money skimmed from the What Cheer Casino over the last three years.

Adams, Yar, Sulu, and Dupree are charged with Conspiracy to Evade Taxes. Adams is also charged with Possession of an Illegal firearm (as a previously convicted felon, it is a crime for her to possess a firearm). All four defendants move to suppress the bag of money taken from Sulu, the document and gun found in the car, and the papers taken at Yar's house.

You are the judge. Rule on their motions.