

Spring 1996 Criminal Procedure Final

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CRIMINAL PROCEDURE
SPRING 1996

BIG JOHN "COKE" ESCOVITO

John grows marijuana plants in his backyard garden immediately adjacent to his porch. His house including his backyard is surrounded by an 8-foot-high stockade fence. A jacuzzi, hot tub and small pool are located next to the garden. John gets "high" in the jacuzzi, hot tub or pool almost everyday. He usually has a "friend" over during these "get high" times.

Two police officers, Robo and Fritz have been trying to bust John for six months. Officer Robo decides to climb a stepladder he has placed on the public sidewalk next to John's fence. He climbed the step ladder and peeked over the fence. Not only did Robo see John's marijuana plants but he saw five money bags laying on the ground with the words B-R-I-N-K-S S-E-C-U-R-I-T-Y on each bag. A daring daylight robbery of a Brinks truck occurred three days ago before John's arrest. Officer Robo arrested John and his "companion of the day" for possession of marijuana plants and suspicion of armed robbery.

At our first class meeting be prepared to discuss the rights of John Escovito and the obligations (if any) of Officer Robo.

PART I MULTIPLE CHOICE

B. Exemplary Multiple Choice Query:

(Consider the facts of John Escovito, p. 5 of the Syllabus as the source for this query).

Officer Robo uses highly sensitive lenses of a NASA satellite to observe the marijuana plants in John's garden. A judge determining the lawfulness of Robo's action must consider:

- (a) The language of the Fourth Amendment;
- (b) The Open Fields Doctrine;
- (c) John's reasonable expectation of privacy; or
- (d) The public or private nature of the activity.

Of these four considerations, those which are most applicable under present law are:

- 1. a and (d)
- 2. c only
- 3. b only
- 4. None of the alternatives presented

C. PART III - SHORT ANSWER QUERY

(Assume the facts in John Escovito's case p. 5 of the Syllabus)

The Mayor of the city instructs the police to use dogs to sniff around John's fence to determine if marijuana is growing near his house. You are legal counsel for the Mayor, give the Mayor an opinion as to whether such action is lawful. Support your conclusion(s) with an appropriate case.

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BILLY CLYDE ROY

One afternoon in 1965 two city police officers were patrolling a neighborhood located on the outskirts of rural, Arkansas. While patrolling the neighborhood in an unmarked police cruiser the officers observed a short round man exit the rear door of one of the houses. The short man (Lenro White) was carrying a black leather pouch. The short man walked up to a taller blond man standing next to an "out house" 100 yards from the main house. The two men talked briefly and then entered the outhouse closing and locking the door behind them. The officers recognized the taller man as Billy Clyde Roy; identified last week by an anonymous

informant as the main heroin dealer for the neighborhood.

The officers crept to the back of the outhouse and listen to the conversation within. Inside Lenro was handing over \$1,000 from the black pouch to Roy. In exchange Roy was delivering a 5 pounds of marijuana to Lenro. At that moment the two officers broke into the outhouse and arrested both men. The officers searched Roy and found 5 pounds of cocaine taped to Roy's back.

At the station Roy is booked for possession of cocaine and distributing marijuana. Roy is taken into an interrogation where there are 10 officers (6 from other cities) waiting to question him. Roy asks for a lawyer before the questioning began. All the officers laugh at his request. Roy makes incriminating statements.

PART I - MULTIPLE CHOICE

B. Exemplary Multiple Choice Query:

(Consider the facts of Billy Clyde Roy, above, as the source for this query)

Roy alleged that the officer's act of laughing at his request for counsel prior to his interrogation was a violation of his constitutional rights. A judge determining the validity of Roy's allegation must consider:

- (a) The language of the Fifth Amendment;
- (b) The Open Field's Doctrine;
- (c) The original Miranda opinion; or
- (d) The number of officers in the room;

Of these four considerations, those which are most applicable under present law include:

1. (a) and (b)
2. (c) only
3. (b) only
4. None of the alternatives as presented.

PART III - SHORT ANSWERS QUERY

(Assume the facts in the Billy Clyde Roy case at p. 7 of the Syllabus)

Miranda has at least two levels of protection for a suspect facing police interrogation. Identify and discuss the level that provides a suspect with the most extensive protection.

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Exemplary Questions From
Bailey's Recent Final Examinations in Criminal Procedure

DEA agents suspected Bart of growing marijuana at his home for subsequent sale. With the aid of a telescope, the agents were able to observe a small plot of soil located behind Bart's house. The plot of land was enclosed by a fence that encircled his house and thus was not open to view from the ground. Through the telescope the agents observed marijuana seedlings. Based on this information the police secured a warrant to arrest Bart. Bart moves to suppress the evidence and quash his arrest. What are his rights?

After extensive investigation into the theft of a priceless impressionist painting from the City Museum, the police concluded that it was an "inside job" and that J. "Sticky" Bender, a security guard at the museum was involved. Bender was taken into custody and questioned without being advised of his Miranda "rights." After some time he admitted that he had unlocked the museum to let his accomplice in to steal the painting, and he finally told the police where they had hidden it - in the museum gift shop stock room. Detectives immediately went to the location and discovered the painting wrapped in old newspapers. Two Supreme Court opinions resolve the two major issues raised in this scenario. Identify and explain those (a) two opinions; (b) two major issues raised in the opinions and (c) applicable resolutions for both issues.