

Narrative Answer Questions [total weight is two-thirds of the examination]

This section contains three (3) questions. The weight of each is stated below.

For all questions, you should presume that no officer has any warrant (of any kind) unless the warrant is mentioned in the question.

Question 1 [one third (~33.33 percent) of the narrative answer portion of the examination]

On Mother's Day, Donald Deliveryman was sent by his employer (a flower shop) to deliver a bouquet of flowers to Martina Mother that had been purchased by Mother's children. When he arrived at Mother's house, Deliveryman rang the doorbell and was invited inside to drink a glass of water while Mother put the flowers into a vase.

About two minutes later, Officer Ommegang of the local police department arrived, holding a warrant to search Mother's house for illegal drugs. Believing sincerely that the "knock and announce" rule did not apply whenever officers executed warrants in drug searches, the officer smashed in Mother's front door with a single kick. After entering the house, the officer informed Mother and Deliveryman that they could not leave, and the officer then conducted a thorough search. No drugs were found.

However, when the officer opened a piano to search for drugs inside, the officer noticed a sticker reading, "Property of Ludwig's School of Music." A call to Ludwig's School revealed that the piano had been stolen a few months earlier. The officer seized the piano and (with the help of a few strong fellow officers called in for backup) took it to the police station. In addition, while frisking Deliveryman, the officer noticed what she later said "unmistakably felt like a gun" in Deliveryman's pocket. She reached into the pocket, retrieved a gun, and saw that the serial number had been scratched off. Remembering that it is a misdemeanor in her state to possess a firearm with an obliterated serial number, she seized the gun and arrested Deliveryman. Prosecutors soon thereafter charged Deliveryman with possession of the seized weapon, and they also charged Mother with receipt of the stolen piano.

Answer the following questions about the facts presented above:

- (a) Did the officer violate the Fourth Amendment when she entered the house without knocking and announcing? If so, what remedy (if any) is available to Mother and Deliveryman?
- (b) For purposes of this subpart only, assume that upon subsequent judicial review, the warrant held by Officer Ommegang when she arrived at Mother's house turns out to be invalid. What remedy (if any) is available to Mother and Deliveryman?
- (c) For purposes of this subpart only, assume that Deliveryman was validly arrested. After handcuffing Deliveryman and putting him in the back of a squad car, the officer asked him, "Do you have any other illegal guns, creep?" If Deliveryman responded (truthfully) that he had a sawed-off shotgun in the trunk of his delivery van, can his answer be used against him in court? What about the gun itself?

Question 2 [one half (50 percent) of the narrative answer portion of the examination]

You are a lawyer for a police department. A few officers have sent messages to you concerning suspects. In each case, the officer wishes to learn information from a suspect (or from some other person with useful knowledge), and the message asks whether the officer's proposed course of conduct is permissible under the Constitution of the United States. (You may ignore any issues concerning state constitutional law.) Your job is to give brief answers to the officers. The messages follow below. Note that each message is independent of all of the others (*i.e.*, you should answer each one without regard to the others).

If your answer depends on facts not available, you can answer with that ambiguity in mind (*e.g.*, "If X is true, then I would conclude Y. If X is false, ..."). But keep in mind that the officers are trying to fight crime, and time is precious. They want answers they can use and have neither the time nor the inclination to read a law review article or to track down a bunch of court opinions. Try to give useful advice.

Message A:

"I arrested a suspect for possession of meth, and she's locked up at the county jail. May I send an undercover officer (disguised as another jail inmate) to get some evidence to use at trial? Don't worry, I already had probable cause before I arrested her."

Message B:

"I believe a certain suspect is running a gang that sells cocaine to kids this town and a few nearby jurisdictions. I don't have the evidence I need to arrest him, and I don't even know where he is. I'm pretty sure that when he visits town, he stays at his grandmother's house. I'd like to search the grandmother's house for evidence about the suspect, but I don't have enough evidence yet to get a warrant. If I ask the grandmother for permission to search the house, what warnings to I need to provide to make her permission legitimate?"

Also, let's say the grandma says no to me. Then, while I'm watching the house one day from my unmarked car, I see the suspect park in front of the house, run across the front yard, and enter the house. May I follow him in now that I'm in hot pursuit of a suspect?"

Message C:

"I arrested a suspect for robbery, and she's locked up at the county jail. When I began questioning her, she cursed at me and then said, 'I want my lawyer!'"

That was four hours ago. May I go back now to see if she wants to change her mind and talk to me? If not, when may I do so?"

[THIS QUESTION CONTINUES ON THE FOLLOWING PAGE.]

Message D:

“I have two suspects in custody in separate cells. I believe they have jointly committed a murder but don’t have much evidence. So far, I’ve arrested each of them for a pretty trivial drug crime (marijuana possession). Don’t worry, the arrests were legitimate.

Just now, a fellow officer left the cell of Suspect A. Unfortunately, he seems to have interrogated the suspect without Mirandizing him. On the other hand, he got some useful stuff when the suspect opened his mouth.

Anyhow, I’m about to question Suspect B. Don’t worry; I’ll Mirandize her. During that interrogation, can I tell her what we know (that is, what my colleague learned just now from Suspect A), or will that taint the evidence I hope to get? And speaking of telling stuff to Suspect B, can I embellish the story (that is, lie to her about what Suspect A said)?”

Message E:

“This is kind of embarrassing, but I just interrogated a murder suspect without Mirandizing him. I did, however, get some useful information. I’d like to clean up my mess if I can. If I go back and Mirandize the suspect, and he tells me the information again, can the district attorney use the new statement?”

Provide the answers you will give to the officers.

Question 3 [one sixth (~16.67 percent) of the narrative answer portion of the examination]

It has been suggested by some observers of human behavior that “[t]he wicked flee when no man pursueth: but the righteous are bold as a lion.” In other words, some folks believe that if a person flees from an authority figure, she probably has a guilty conscience and is running to avoid facing the consequences of her actions.

Please answer the following two questions about the saying reproduced above:

- (a) Is the saying accurate? (Regardless of your opinion, you should probably offer arguments on both sides.)
- (b) How is the saying (and its accuracy, or lack thereof) relevant to the criminal procedure law we have studied together this semester?

[END OF NARRATIVE ANSWER SECTION.]

[END OF EXAMINATION.]