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Professor's Copy
Exam No. _____

**529-001 Criminal Procedure I (4th, 5th, 6th Amendments
Spring Semester 2007**

**UNM School of Law
Final Examination
Three Credits**

**Professor Romero
Friday, May 4, 2007
Wednesday, May 9, 2007
9:00-12:00 p.m. (3 hrs.)**

**Examination Format
Essay and Short Answers**

1. **Laptop** computer users: Start the Securexam program entering your examination number, course name, professor's name, & date of examination. Click "proceed" to enter the program. Type START in the next window that is displayed but do NOT press the enter key until the proctor says to begin the exam.
2. **Bluebooks** for writing: write on every-other line and only on the front page of each sheet. On the front of bluebook record the class name, professor's name, date of exam, and your examination number. Make sure to number each bluebook in order. DO NOT WRITE YOUR NAME ON BLUEBOOKS.

A five-minute warning will be given prior to the conclusion of the examination. When time is called, stop immediately. If you are handwriting, lay down your pen & close bluebook immediately. If using a laptop, save & exit the program.

Go to the exam check-in table at the conclusion of the exam & fill out an examination receipt.

Instructor's Instructions

1. This examination consists of two essay questions. The recommended time for Question 1 is 120 minutes and Question 2 is 60 minutes.
2. Please read the questions carefully and discuss fully the issues presented. Just because you would decide an issue in a particular way, do not foreclose analysis of other issues presented by a different conclusion.

3. This is an open book examination. In preparing your answers, you may consult your casebook and class handouts, class notes, and any other notes and outlines. You may also consult treatises and commercial outlines. You should note, however, that you would be better advised to use your time thinking rather than researching the materials you bring with you.

[The examination begins on the next page]

CRIMINAL PROCEDURE I FINAL EXAMINATION

May 4 and 9, 2007

Spring Semester 2007

Professor Leo M. Romero

QUESTION I

(Two Hours)

To: Criminal Procedure I Students

From: District Attorney Sam Spade

Subject: State v. Ripur and Kidd

Jack D. Ripur and Billy D. Kidd have been charged with armed robbery and possession of cocaine. Ripur has also been charged with DWI (Driving While Intoxicated). I expect the defense attorney to file a motion to suppress evidence. All of my Assistant District Attorneys are in trial, and the law school said you could help me out since you just finished a course in criminal procedure. Having been volunteered by the Dean, could you please read the attached police report by

Wyatt Earp and let me know what evidence the defense might seek to suppress and what the likely outcome of the motion would be. Be sure to consider the defense arguments and how we might counter them.

Police Report

On the night of May 2, I and several other officers were deployed at a DWI checkpoint on University Avenue near Menaul. About 10:30 pm, I saw a van approaching the checkpoint when it pulled over and made a U-turn (not illegal where it made the U-turn). I thought the van was trying to avoid the checkpoint, so I got in my patrol car and followed the van for several blocks. When it looked like the van might get on the Interstate, I turned on my siren and emergency lights and stopped the van. I approached the van and saw two occupants. I ordered them out of the van and asked for identification. When they objected, asked why, and said they had done nothing wrong, I became concerned for my safety and frisked them. I felt something lumpy in Kidd's back pocket^{, reached in,} and found a crumpled up deposit slip from the Wells Fargo bank. According to the identification they produced, the driver was Ripur and the passenger was Kidd. The van was registered to Ripur. I asked them why they had made a U-turn, and Ripur said that Kidd had just mentioned that he had left his jacket at a bar on Central and wanted to go back for

it. I asked them if they had been drinking at the bar, and both said that they had consumed several beers. I then ordered Ripur to perform several field sobriety tests. His performance on the tests indicated possible impairment, so I ordered him to take a breathalyzer test. This test revealed a blood alcohol content of .08. I then arrested Ripur.

As I was placing Ripur in my patrol car, I noticed that he was trying to communicate something to Kidd. I couldn't hear or see what Ripur was trying to say to Kidd. I became suspicious so I asked them if they were transporting drugs in the van. They each said no. I was not convinced by their answer so I asked if they would mind if I looked around in the van. Both refused to give consent. When I told them that I could get a warrant if they refused consent, Ripur said, "Then, get a warrant." Kidd said, "OK, go ahead and look around." I then searched the van and found a black pistol in the glove compartment, a bag of money in a locked compartment near the spare tire, a bag of cocaine in a jacket (belonging to Ripur) and a silver pistol in an athletic bag (belonging to Kidd). I arrested Kidd and placed him in the patrol car and transported them to the police station.

I discovered at the police station that earlier that day a Wells Fargo bank in Albuquerque had been robbed by two men armed with pistols. According to the police report on the bank robbery, the bank cashier, Ms. Teller, described the bank robbers as white men in their 20s, one with blond long hair, and the other with dark hair and a crew cut. The blond fellow had a silver pistol and the crew cut guy had a black pistol. The blond wore jeans, a red cap with UNM on it, and a black T-shirt with something like Jose Cuervo written on the front. The dark haired man wore jeans, a cap with the Isotopes logo, and a shirt, but she could not remember the color. She described them both as being of medium build and between 5' 9" and 6' 1." She said that neither man had any facial hair. Ms. Teller said the robbers were in the bank about five minutes. They gave her a note telling her to empty the cash box into an athletic bag that the blond guy put on the counter. She put about \$10,000 in the bag and they told her not to sound an alarm or they would shoot her.

The day after the robbery and the arrests and before Ripur and Kidd appeared before a judge, I took Ripur to the bank to see if any of the bank employees could identify him. I would have taken Kidd as well, but he was meeting with a lawyer from the Public Defender office at that time. The bank cashier, Ms. Teller, immediately identified him as one of the two robbers. Several

weeks later, after they were indicted for bank robbery, I took the mug shots of Ripur and Kidd (taken when they were booked on the night of their arrest) to show the bank employees. Ms. Teller, who identified Ripur in person, again identified him and Kidd as the robbers.

At the time of their arrests, Ripur was wearing jeans and a black T-shirt with Jack Daniels written on the front. Ripur is 6' 1", weighs 190, and has short dark hair. Kidd was wearing jeans and a yellow polo shirt. He is 5' 10", weighs 165, and has long blond hair. Neither man had a cap at the time of arrest.

Officer Wyatt Earp

QUESTION II

(One Hour)

To: My Law Clerk

From: Judge Max Time

Subject: Motion to Suppress—Kapone Case

Kapone has been charged with the sale of marijuana and possession of marijuana and heroin. He has filed a motion to suppress a videotape, marijuana, statements he made, and heroin. Attached is a copy of the transcript of the testimony of Officer Surelock Holmes at the hearing on the motion to suppress. Please advise me of the likely arguments that will be made by the prosecutor and defense counsel and give me your opinion as to whether I should grant the motion.

Transcript of Testimony

My name is Surelock Holmes, UNM Police Department. At the request of the Dean of the UNM School of Law, we initiated Operation Safe Campus to

provide a safer environment for law students. The Dean made the request after a male student was robbed and a female student was sexually assaulted after leaving the law library at night. As part of this effort, we installed video cameras outside the law school building to monitor activities in the law school parking lots for the protection of students. Pursuant to Operation Safe Campus, I was assigned to monitor the video cameras. The cameras run 24 hours a day, but they are monitored only from 6:00 pm to midnight. The cameras, installed on the roof of the law school building, have wide angle, telephoto lenses that record on a videotape everything that is seen by the camera. I replace the videotapes from each of the cameras every morning and view the videotapes that I removed.

On the morning of April 20, when viewing the videotape from the camera pointed at the North parking lot between the library and the golf course, I saw what looked like a drug sale the night before. Two men were talking to each other when one of them, a young man with a backpack, opened his wallet and counted out several bills that he gave to the other man. The other man, with a rolling suitcase, then reached into the suitcase and pulled out a brown paper bag that he handed to the other man. The fellow with the backpack then placed the bag in his pocket and walked into the law school. The man with the rolling suitcase walked to a car in the parking lot and placed the suitcase in the trunk and left. I could not see the

license plate number or the color of the car, but it was a late model

Toyota. The videotape records the time and day, and this sale took place just after midnight on April 19.

Over the next week, I went to the law school every night to look for the men I had seen in the videotape. On the 26th, exactly one week after the transaction recorded on the videotape, around 8:00 pm, I saw a man (later identified as Kapone) who looked like one of the men I had seen on the videotape. He had a rolling suitcase resembling the one I saw on the videotape. As I approached him, he was talking to a group of evening joggers near the golf course. I approached him, arrested him, and placed him in my patrol car. I then searched the rolling suitcase and found several baggies of marijuana. I told him I was arresting him for sale of drugs because I had a videotape of him selling drugs in the same parking lot about a week before, and he said, "I was supplying marijuana to a law student who sells to other law students." I asked for the name of the student, and he said he knew him only as Smarty. I then read him his Miranda rights from a card. He said he understood them, signed the card, and agreed to talk to me. I asked him if he had sold any marijuana to a law student in the law school parking lot on or about the night of April 19, and he said, "Yes, I just told you I sold marijuana to a law student I know only as Smarty." I then asked him if he had any drugs on him. He

said, "Yeah, I have some in my car which is parked at the end of the parking lot."
I took his car keys from his pocket, left him locked in my patrol car, and searched his car, a Honda Accord, where I found a bag of heroin in the trunk. I then transported him to the jail for booking.

Surelock Holmes