CORNELL LAW SCHOOL

CRIMINAL PROCEDURE EXAMINATION

Fall Term 2003

Final Examination

Wednesday, December 8, 2003

Time: 1:00 p.m. - 4:15 p.m.

Professor Blume

Classrooms: 285 & 290

You have three hours and fifteen minutes to complete the examination. You may use your book, your notes, any study aids, hornbooks, treatises, etc. You may not consult with a lawyer, a fellow student or anyone else. I would recommend that you allocate your time as follows: Question 1, one hour and fifteen minutes; Question 2, forty-five minutes; Question 3, one hour and fifteen minutes. Good luck.
QUESTION 1

At a pre-trial suppression hearing held in Los Angeles County Superior Court, the following evidence was presented in the case of the People v. Mitchell Sims.

On December 24, 1995, Officer August Knudsen of the Las Vegas Police Department received a tip from a confidential, reliable informant that Jeff and Samantha Jones were dealing cocaine. According to the tip, Samantha was a dancer at the Gold Club, a “gentleman’s club” in North Las Vegas, and Jeff would often accompany her to the club and sell cocaine to patrons of the club. According to the informant, Jeff would arrange the deal, and then Samantha would make the deliveries in a private “VIP” room. The tipster also said that Jeff and Samantha were staying at the Regal Lodge hotel in Las Vegas.

Officer Knudsen called the Regal Lodge and confirmed that a Jeff and Samantha Jones were registered there (in Room 205). Knudsen also learned that the couple had been staying there for a month. Knudsen also called the Gold Club and confirmed that a woman named Samantha was employed as a dancer at the club. Knudsen stopped in at the Gold Club that afternoon. While he did not notice anyone he could identify as Jeff, he did get a bartender to identify Samantha. After observing her and a male patron of the club go into the “VIP” room, Knudsen left the club.

Based on this information, Officer Knudsen went to a magistrate and obtained a search warrant for room 205 of the Regal Lodge Hotel to search for cocaine and other narcotics contraband. When he and several other officers went to the Regal Lodge to execute the warrant
at 9:00 p.m. that night, he knocked on room 205 and an elderly female opened the door. He asked if she was Samantha Jones or if she knew Samantha Jones and she said no. Officer Knudsen then went to the hotel office and learned that Jeff and Samantha had moved earlier that day to Room 209.

Officer Knudsen and company then went to room 209. Knudsen knocked on the door and announced his presence. A young man opened the door, identified himself as Jeff Jones and allowed the officers into the room when Knudsen told him they had a valid search warrant for room 209.

During the search, the officers found a small quantity of marijuana in a night-stand, an amount sufficient only for a misdemeanor arrest under Nevada law. The police also found, in the same drawer, two California driver’s licenses in the names of Mitchell Sims and Ruby Padgett, and several credit cards in the names of Arnold and Mildred Cranford. The names Sims and Padgett rang a bell with Officer Knudsen so he went to his squad car and called the station. During the period that Knudsen was gone, Sims and Padgett were not told they were under arrest. In fact, everyone stood there in silence. Knudsen was out of the room for fifteen minutes. Knudsen was informed that Sims and Padgett were wanted for the murder of Mr. Sims’ stepfather and mother (Mr. and Mrs. Cranford) in Glendale, California, which is in Los Angeles County. Cranford was the Chief of Police in Glendale.

Sims and Padgett were arrested for the California murders and taken to the Clark County, Nevada Jail. Knudsen also conducted a search of Sims’ car. He found a .38 caliber handgun in
the glove compartment of the car. The car was taken to the police impoundment lot, where an inventory search was conducted. In the trunk of the car, the officer found Ruby Padgett’s diary. The diary contained statements by Padgett indicating Sims killed Mr. and Mrs. Cranford, and that Ruby only helped Sims because he said he would kill her if she didn’t help him.

Officer Knudsen called Detective Jon Perkins, the chief investigating officer in the Los Angeles County case and informed him of Sims’ and Padgett’s arrest. Perkins and his partner, Gary Montecuello, immediately left for Las Vegas.

On Christmas Day, Perkins and Montecuello were introduced to Mitchell Sims at the Clark County Jail. When they introduced themselves, Sims immediately said, “I don’t have shit to say to y’all.” Perkins said what did you say, and Sims said “I don’t have shit to say to you guys until I talk to a lawyer.” As Perkins got up to leave he said, “Ruby has already told us what happened.” Sims replied: “You’ll never understand, I had to make him stop.”

As Perkins and Montecuello left the room, they informed Sims that if wanted to communicate with them any more, he would have to contact them. Sims was taken back to his cell. He was placed on suicide watch because he was observed crying uncontrollably in his cell, and he was heard talking to his dead mother. Later that afternoon, Sims asked the jailer if he could talk to a lawyer. The jailer contacted his supervisor, Correctional Officer Jonas Anderson. Anderson told Sims that since he was not charged with a crime in Nevada, he was not entitled to court appointed counsel in Nevada. Officer Anderson said that if Sims wanted a lawyer, he would have to talk to the California police officers about getting a California attorney. Sims
then asked Anderson to contact Perkins and Montecuello and tell them he wanted to speak with them. He also filed a grievance at the jail because they would not let him talk to a lawyer.

The next day, Perkins and Montecuello, after hearing of Sims’ request, came back to the Clark County Jail to interview Sims. Officer Perkins, after giving Sims the standard *Miranda* warnings [with the exception that Sims was told anything he said could be used “for or against” him], Perkins began to ask Sims about the murders. Sims asked what he had to do to get a lawyer to represent him in connection with the California charges, and Perkins said that once Sims got back to LA, counsel would be immediately assigned to the case. Sims nodded in agreement, and Perkins asked Sims if he was willing to talk to them now “on a preliminary basis” without a lawyer. Sims said “ok,” and then Perkins turned on a microcassette recorder and resumed questioning. In response to the questions, Sims admitted that he shot his step-father and mother as they were walking into their house after going out to dinner. He said he and Ruby then fled to Las Vegas. Perkins turned off the recorder and told Sims that he would be extradited within a few days. Sims began crying, and asked Perkins if he could ask the jailers if they would get a psychiatrist to talk to him. Sims said that he was suicidal and he also said that all he could see when he closed his eyes was his mother’s face. Perkins said he would “check into it.”

On December 29th, Sims was extradited back to Los Angeles and incarcerated in the L.A. County Jail. He was indicted on January 2. Sims was placed in a pod with a number of inmates, one of whom was a man named Ronnie White. White testified at the suppression
hearing that he became friendly with Sims because they were both sons of “cops.” White had read in the L.A. Times about Sims case. White testified that Officer Perkins called him out of his cell one day, and asked him if he knew Sims. He said that he did, and Perkins told him “to keep his ears open,” and if he heard anything to let him know. Several days later, White called Perkins and asked to speak with him. When Perkins came to the jail, White said that Sims had told him he killed his step-father and mother for the insurance money. Specifically, Sims said: “I needed money and he had a big insurance policy. Ruby was going to leave me and I didn’t know what else to do. Besides I hated the bastard. He made my life miserable.” On cross-examination, White said he was not promised anything in exchange for his testimony, and he also said that he did not ask Sims about the crime. White said that Sims brought it up himself. White did admit that he had several burglary charges pending in L.A. Superior Court, and that he hoped testifying against Sims would “help,” but he insisted that there had been no promises made. The prosecutor also insisted that there was no “plea agreement”

A ballistics expert has filed a report indicating that the .38 Caliber pistol was the murder weapon. A handwriting examiner has filed a report indicating that the diary entries were written by Ruby Padgett.

You are the trial judge’s law clerk. He has asked you to prepare a memorandum regarding the admissibility of the credit cards belonging to his parents, Mildred and Arnold Cranford, the .38 caliber pistol, the diary and all statements given by Mr. Sims to law enforcement and to Mr. White. Write the memorandum.
QUESTION 2

Mr. Sims has experienced court appointed counsel, Bill Runyon. However, one month before trial, Sims filed a motion for substitution of counsel. In the motion, Sims stated that he would like for Leslie Abrahamson to be appointed to represent him. Ms. Abrahamson has a sub-specialty in parricide cases, and just obtained a hung jury in the case of the People v. Lyle Menendez, one of two brothers charged with killing their parents in another high profile case in LA. Ms. Abrahamson has submitted an affidavit stating that she is willing to take Sims’ case, but she says that she can not be ready for trial for at least six months. Sims also stated in his affidavit that he does not “see eye to eye with present counsel about trial strategy,” and he also says that he wants a new lawyer because his current counsel goes to the same church that his parents formerly attended and served on a “building committee” with Mr. Sims’ mother. Sims says he does not trust Runyon. In the alternative, Sims asks that he be permitted to represent himself. Runyon has submitted an affidavit indicating that he did go to church with Sims’ dead parents, that he did serve on the committee with Mr. Sims’ mother, but he also made clear that the prior relationships would not effect his representation. Runyon also said he was ready for trial.

Current counsel has also filed a motion for investigative and expert services asking that Dr. William Vicary be appointed as a defense psychiatrist. Sims has been previously evaluated pursuant to a court ordered competency evaluation by a local psychiatrist, Dr. Les Ache, who has filed a report to the effect that Sims is competent to stand trial and that Sims was not legally
insane at the time of the offense. However, Dr. Ache did say in his report that Sims alleged he had been sexually abused for years by Arnold Cranford, and that, starting at age 10, Cranford had given him alcohol to make him compliant with the sexual demands. Ache diagnosed Sims as having Alcohol Dependence and as being a severe psychopath.

Counsel has also filed a motion requesting that he be given funds for a ballistics expert to determine if the .38 is really the murder weapon, and a handwriting examiner to see if Ruby in fact wrote what was in the diary found in the car.

Finally, counsel has filed a motion requesting a change of venue. In support of the motion, counsel states that there has been an extraordinary amount of publicity about the case, especially due to the recent “Menendez” trial, another parricide case. According to counsel, Mr. Cranford’s funeral was attended by over one thousand police officers and was widely covered in the media accounts. At the funeral, numerous police officers discussed what a “great man” Cranford was, and how Mr. Sims deserved the death penalty for betraying Cranford’s love and trust. The Lieutenant Governor, who went to school with Cranford, also spoke at the funeral. Counsel also informed the court that the press accounts contained quotes from Ruby Padgett’s mother indicating that Sims ruined her daughter’s life. Ruby’s mother is also quoted as saying that her daughter, who had never been in trouble before, had no idea Sims was going to kill the Cranfords, and that her daughter was not involved in the homicides in any way. Finally, Ms. Padgett says that Sims is clearly guilty and deserves the death penalty. She also says that her daughter Ruby told her Sims would have killed the officers in Las Vegas when they came to the
hotel except for the fact that Sims had left the gun in the car. Ruby also told her that Sims said he wanted to “go out in a blaze of glory like Gary Gilmore.” Officer Perkins is also quoted as saying that Sims expressed no remorse for killing his parents.

Counsel requested, if the change of venue was denied, that he be permitted to voir dire the jurors about the content of the publicity the jurors had read.

Assume that you are an employee of the District Attorney’s office and that you have been assigned to write the response to the defendant’s motions anticipating what the defense arguments will be. Write the response.
QUESTION 3

Sims went to trial in Los Angeles County, and he was convicted of all charges and sentenced to death. All motions described in Question 2 were denied, except the court did grant funds for the appointment of a defense psychiatrist, Dr. Vicary. Mr. Sims’ convictions and sentence were affirmed by the California Supreme Court on direct appeal. You are an associate in a large firm which has agreed to undertake Mitch’s post-conviction representation. You have discovered the following facts in your investigation.

The Los Angeles Public Defender’s office represented Mitch and Ruby for the first three months that they were charged. The public defender who ultimately represented Mitch at his trial, Bill Runyon, was also involved in Ruby Padgett’s case. Runyon was involved in preliminary plea negotiations with the District Attorney’s office, where it was determined that the People would not seek the death penalty against Ms. Padgett if she cooperated. Once the deal was arranged, Ms. Padgett’s case was “conflicted out” to a private attorney since it was determined that the Public Defender’s Office would represent the more culpable party. At the time the deal was struck, Runyon had not yet been assigned to Mitch’s case, but he was designated as lead counsel in Mitch’s case about a week later. While the public defender’s file in Ruby’s case is thin due to the fact that the deal was arranged so quickly, it does contain an interview with Ruby’s brother-in-law indicating that Mitch was “hen-pecked,” that Ruby “bossed Mitch around,” and that she was always threatening to leave him because he didn’t have enough money to support her like she wanted to be supported. The brother-in-law also told
counsel that Ruby was very promiscuous and that she once worked as a prostitute in North Hollywood, where she had been arrested several times for solicitation. He described Ruby as very “materialistic,” as a “chronic liar” and as “one tough cookie,” who would do whatever it takes to get what she wants. This information did not come out at trial.

Ruby did testify for the prosecution at trial. She said that Sims hated Cranford and that he always talked about getting “even,” and “setting the record straight.” She said that Sims needed money and he knew that he would get a lot of insurance money if both his parents died. She testified that Sims told her he would kill her too if she didn’t help him, and that she didn’t leave him afterwards because she was afraid he would hunt her down and kill her. She also said that the only agreement she had was that the people would not seek the death penalty in exchange for her testimony.

During discovery, you have obtained Detective Perkins’ file. It contains the notes of an interview with Ruby, where she initially says that “Mitch was ‘out of his mind’ that day,” because he found out that Cranford had started sexually abusing Sims’ younger half-sister Margaret. Sims knew his mother wouldn’t do anything because she had “looked the other way for years” while Cranford abused him and his older sister Merlon. Ruby also said that Sims was not going to go through with it, but that when they were out there hiding in the bushes, Cranford saw them hiding and started yelling at Mitch and calling him names and taunting him. Cranford also said that Mitch didn’t have the “guts” to pull the trigger. According to the interview notes, Mitch just started shooting. Further investigation reveals that the prosecutor...
who tried the case did not know of these interview notes. Trial counsel did not, however, file a 

Brady motion.

Ruby is presently incarcerated at the California Prison for Women at Chino. After Sims’ trial, she plead guilty to accessory before and after the fact of murder and was sentenced to a term of ten years imprisonment. There is a note in her court file to the prosecutor who did Ruby’s guilty plea from Detective Perkins asking that her cooperation with the police in the Sims’ matter be taken into account since the People would never have been able to secure a death sentence without her cooperation. Based on the letter, the prosecutor knocked the charges down to accessory after the fact.

You have also discovered that one of the jurors (in fact the foreperson of the jury) was Detective Perkins’ ex-wife. They had been married for ten years and she was the mother of his two children. The couple divorced three years before Sims’ trial. The juror no longer went by the name Perkins, but used her maiden name, Bonnie Marie Stinnett. During voir dire, Stinnett had been asked if she was related to any witness in the case -- Detective Perkins name was on the witness list -- and she said no. Juror Stinnett was also asked if she had ever been the victim of a crime. She also said no to this question. A review of the civil lawsuits in Los Angeles County revealed that she had a civil suit pending in Superior Court alleging that her therapist had sexually assaulted her a year five years before trial when she was seeking counseling due to difficulties in her marriage with Detective Perkins. Perkins, as the chief investigating officer, was present in the courtroom throughout voir dire.
You have discovered a note in trial counsel’s file which indicates that during a pre-trial conversation with a psychiatrist, Runyon asked his expert about the effects of childhood physical and sexual abuse, and the doctor said that it wasn’t really his area of expertise but that he knew that in some of the more recent literature there was information that prolonged physical and sexual abuse could lead to severe psychiatric problems. The doctor also mentioned that there was a new syndrome, post-traumatic stress disorder, which sometimes resulted from abuse of the nature Mitch had been subjected to. The doctor recommended the name of a psychologist at UCLA Medical Center who was working in this area and suggested that counsel contact the expert, Dr. Lenore Walker. Counsel never contacted Dr. Walker. You have talked to Dr. Walker and she has reviewed Sims’ records, conducted psychological testing and interviewed Sims and other members of the family who witnessed the abuse or who Sims told about the abuse years before the murders. She has also found some police reports where the police were called to the house. But because of Cranford’s ties with law enforcement, nothing ever happened. Dr. Walker also talked to Sims’ sister who confirmed that Cranford began sexually abusing her shortly before Sims killed him. She was 11 years old at the time. Dr. Walker has given you an affidavit diagnosing Sims with PTSD, describing his as a classic case, and relating his PTSD to the commission of the crime. In Dr. Walker’s opinion, Sims was permanently damaged by the sexual and emotional abuse, that his relationship with Ruby and her hold over Sims as a result of the abuse and that his life was falling apart about the time he killed his stepfather and mother, and Simssaw no other options. In her opinion, Sims did not have the
mens rea which would have made him guilty of capital murder in that the crime was not “premeditated,” a requirement of California law. Dr. Walker is also prepared to testify that Sims is adaptable to confinement and will make a good prisoner.

Trial counsel confirms that he never made the call. Runyon’s reason for not calling was that he thought his expert was a good witness, and Runyon was not sure that a jury would buy all that “abuse excuse” stuff anyway, and Runyon didn’t want to be seen as attacking the victim. [At trial, the defense expert Dr. Vicary testified at the sentencing phase and mentioned that Sims reported that he had been sexually abused by his step-father, testified that there was new research indicating this type of abuse has long term effects, and then he testified that Mitch was depression].

You have also found a note in the file which memorializes a conversation between trial counsel Runyon and the district attorney. The memo indicates that if Mitch was prepared to plead guilty to all charges and accept a sentence of life imprisonment without possibility of parole, then the DA would drop the death penalty. Mitch says that no one ever communicated the offer to him and that he would have taken the deal if it had been offered to him. You have interviewed trial counsel, and he has confirmed that he never told Mitch about the DA’s offer, but he says that Mitch made it plain during one of their early meetings that he would rather die than spend the rest of his life in prison so he didn’t see the point in taking the offer to Mitch. Runyon says he was afraid that Mitch would lose confidence in him if he came in and tried to talk him into a deal, especially after the hearing in which Mitch tried to fire him and get
Abrahamson.

You have also discovered that the prosecution used three of its five strikes against African-American jurors, and two of its strikes against Latino jurors. Sims is white. The defense did object at trial on *Batson* grounds, and the prosecutor said that the jurors all lived in areas where there had been riots following the acquittal of the police officers who assaulted Rodney King. Since the victim in this case was the police chief who was in command when the unpopular riots occurred, and since there had been additional accusations of police brutality in stopping the riots, the prosecutor was afraid the jurors might be reluctant to impose the death penalty on his killer.

Finally, your review of the record indicates that the prosecutor made the following argument at the sentencing phase of Sims’ trial: “And the first step to rehabilitation is the acceptance of responsibility for what you have done. Has Sims done that? Has he taken responsibility for his actions? Has he even said he was sorry for killing his own mother. What kind of animal wouldn’t be sorry for butchering their own mother? I have sat through this entire trial waiting for some indication he is sorry for what he did and I haven’t see it or heard it. Have you?”

Sims did not testify at either phase of the capital trial. He also did not make an unsworn statement to the jury at the sentencing phase, which California law permitted him to do. The prosecutor’s argument came after Sims had advised the judge at the sentencing phase that he
would not make an argument or testify.

Furthermore, Runyon, Sims’ trial counsel, asked the court for a “no adverse inference” charge at the sentencing phase, citing *Griffin v. California*. The court refused the request saying that *Griffin* did not apply since Sims had already been found guilty.

Draft a memo to the senior partner on the case summarizing the potential issues Sims might raise in a petition for habeas corpus relief.