

Question 1

Deputy Dan was on uniformed foot patrol of Open Fields State Park at dusk when he came upon a campsite with an occupied four man tent. Hoping to find drugs, Dan decided to arrest the individuals for violating a statute which Dan erroneously believed closed the park one hour before sunset.¹ Dan shined his flashlight toward the mesh door and saw shadows of two men, Al and Bill passing a cigarette. As Dan unzipped the tent's door, he heard the men scramble and was overcome by a cloud of marijuana smoke.

Dan asked the men to step out of the tent. Both complied with their hands in the air. Dan pat searched the men and asked them for their id. Al and Bill advised that their licenses were in Al's unlocked truck, parked ½ mile away at the Remote Recreation Area. Deciding to hike the men out, Dan asked the men if there was anything they wanted to bring with them. The men asked if they could retrieve their backpacks from their tent. Dan said "sure" and followed them back inside. Dan observed, and seized, a gram scale and several small baggies of marijuana scattered about the tent floor. Dan again pat searched the men and the packs they were now wearing. This time, Dan seized a small pipe from the pocket of Al's pants and a utility knife concealed in the pocket of Bill's pack. Dan handcuffed Al and Bill together, and the three hit the trail.

Anxious and somewhat bored, Dan decided to strike up a conversation with his hiking companions as they made their way back to the lot. "You know," Dan said, "this drug money goes to fund terrorists. And I'd hate to think that someone was using this land to kill our wives and kids." Dan then heard Bill say to Al, "Is that really true? You never told me that! I thought the money was going to pay your law school tuition."

The trio reached Al's truck and Dan asked for consent to search the interior. Al and Bill chimed "sure," but when asked to sign a written waiver, Al refused to sign. Dan asked Al where their id could be located; Al pointed toward the glove box. Dan opened the driver's door. As Dan reached inside he knelt on the barrel of a shotgun. Using a tape measure, he determined its overall length was under the statutory limit of 26". After removing the gun, Dan opened the glove box and seized pay-owe sheets and a key. Dan used the key to open a locked tool box mounted in the bed of the truck. Among the gear, Dan located \$2,500 in the pocket of a woman's coat, evenly divided between small and large bills.

It was after dark and nearing the end of Dan's swing shift when he completed the search. Exhausted from the arduous trek, he decided to release the men with a citation to appear in court on charges of possession of marijuana for sale. The next morning, Al and Bill retained the defense firm of DoGood, DoGood, and Dumptruck to represent them. At their arraignment, a DoGood associate from San Francisco represented Al; a DoGood associate from LA appeared with Bill. Both men were subsequently convicted of the sales charges.

Discuss the legality of Dan's conduct toward Al and Bill under Fourth, Fifth, and/or Sixth Amendment principles. Do not discuss any substantive crimes that may have occurred.

¹ The statute actually permitted park usage until one hour after sunset.

Question 2

On September 1, Suspect Steve received a letter from the Internal Revenue Service indicating that he was the focus of a federal tax fraud investigation. The letter requested Steve contact Agent Able to arrange an interview at a mutually convenient time. No time was good for Steve; Steve was a restaurateur who had just opened up “The Strip Joint,” a cook-it-yourself steak house, in partnership with his lawyer friend Lou. Lou also represented Steve in a pending state prosecution for “keeping a house of prostitution.”

The letter sat on Steve’s desk for six weeks by the time Able came to dinner. Steve was seating patrons when Able approached, flashed his badge, and asked if they “could talk.” To avoid being questioned at work, Steve accompanied Able to the federal building in Able’s car. Able directed Steve to sit in his office, an 8’ x 10’ windowless room with a desk and two chairs. Able left the room just long enough to let Steve read the framed articles on the wall;² when he returned, Able shut the door and threw a pair of handcuffs on the desk. Steve said, “I really should get back to work,” to which Able replied, “Let’s answer a few questions first.” Steve answered a few too many, confessing to filing fraudulent tax returns.

Nevertheless, Steve returned to the restaurant a free man that night—free until his November 1 preliminary hearing on prostitution charges. At the conclusion of that evidence, the judge found “reasonable suspicion” and remanded Steve into custody. Unable to make bail, Lou was left to run the restaurant. Late one night while Lou was alone at The Strip Joint “cooking the books,” the IRS executed a Search Warrant for Steve’s business and tax records. Seized among the records were all of Lou’s client files. Lou reviewed the warrant and determined that Able’s Affidavit in Support of the Warrant contained what he believed he could prove were lies or falsehoods. Lou headed off to the law library to research his remedies and recover his files.

By Thanksgiving weekend Able had presented his evidence to the Attorney General and obtained a warrant for Steve’s arrest for tax evasion. Just as Steve was finishing his pumpkin pie, Able paid Steve a visit at the county jail. Able advised Steve that he was under arrest and read him his Miranda rights. When asked, Steve said he “understood” and started to reiterate his earlier story. But when Steve saw Able start his tape recorder, Steve abruptly said, “Oops, Lou said you’d better talk to him before I say anymore.” Aware that Lou was Steve’s attorney on the prostitution charge, Able concluded the interview. As Able signed out in the jails’ visitors’ log, he flipped through its preceding pages to learn that “Peaches,” a well-known prostitute, had called-on Steve earlier that day. Able conveyed this information to the prosecutor on the prostitution case.

Steve was arraigned the following Monday for federal tax code violations.

Please advise Lou on the legality of Able’s conduct toward Steve and Lou under 4th, 5th, and/or 6th Amendment principles and any remedies they should pursue. Do not discuss any substantive crimes. Assume the search warrant was facially valid under Gates and executed in compliance with the Fourth Amendment.

² “IRS Today” reported “Able Advocates Life Term For Late Filers” and “Able: Fraud Finder of the Year”

Question 1

On June 1, anonymous informant Ian advised Officer Owen that during Santa Rosa's Wednesday Night Market in July, an older Hispanic male, dressed in cowboy hat and boots, would be selling "meth" from his two wheel, hand push ice cream cart bearing the business name "Speedy Ice." While inspecting the Krispy Kreme vendor during the July 6 Market Owen noticed a merchant, later identified as Manuel, who matched the description given by Ian, although his cart was marred by what Owen recognized as gang graffiti.

When Owen approached, Manuel leaned over the open cart and whispered in Spanish to the three young males who surrounded the cart. Owen directed the men to sit on the curb before turning to Manuel. Owen asked Manuel, "Tell me whatcha got." Manuel motioned toward the ice box and answered, "ice°, cicles, cream..." Owen looked inside the cart before reaching his hand toward his favorite fudgcicle. As he grabbed it he knocked over a pile of pudding pops, revealing frozen bindles of meth. Owen handcuffed Manuel and called for backup from Officer Otis. Although Otis located cash and a "pay-owe sheet*" stuffed in the brim of Manuel's hat, he later released Manuel on a citation to appear and towed the cart to the city yard for storage.

Suddenly Owen detected movement from the suspects still sitting on the curb. Owen decided to pat search. When Owen reached in the pocket of the 2nd man, the 3rd man, later id' as Sal, suddenly fled down 4th St., with Owen in pursuit. After running ¼ mile, Sal's superior speed was slowed by a bank of bounce houses, permitting a winded Owen to grab Sal's t-shirt from behind. They tumbled to the ground, causing a cell phone and baggie of meth to fly from Sal's sweating hands. Before Owen could cuff him, Sal got to his feet and fled into a crowd of hostile onlookers leaving the evidence behind. An injured Owen tried to call for help. When he discovered his radio had been lost during the chase, he frantically opened Sal's flip phone and dialed 9-1-1. As dispatch routed his call, he saw the background on the cell's screen—a photo of Manuel and Sal together.

On Friday, while drafting an affidavit in support of an arrest warrant for Sal, Owen received a telephone call from Cy, the custodian of the city storage yard. Cy reported that a sticky blue liquid was leaking from the cart. Owen, who had aggravated his bad back in the fall, directed Cy to open the cart and "take a look." Underneath some previously undiscovered methamphetamine, Cy located a gram scale and handgun.

Sal was soon arrested on the warrant, but posted bond. Manuel and Sal appeared in court for their arraignment and indicated they intended to hire Lawyer Loophole. The Court granted the District Attorney's motion to remand Manuel and increase Sal's bail based upon the subsequent discovery of the gun.

Discuss the legality of the officers' conduct toward Manuel and Sal under Fourth, Fifth, and/or Sixth Amendment principles. Please assume that all items were properly placed into evidence. Do not discuss any substantive crimes that may have occurred.

° Ice is street slang for methamphetamine.

* Pay-owe sheets are handwritten ledgers documenting drug transactions.

Question 2

Remaining true to form, sixteen year old wanna be gang member Cid and his buddy Bill spent Friday's fourth period remedial math class smoking pot in the park. Had Cid been able to read the paper that day, he would have known that police were operating a checkpoint in the area to photograph individuals for a gang yearbook. The yearbook was to be used by officers and witnesses to identify a growing number of gang associates. Feeling high and mighty, Cid hopped in his car with Bill in the passenger seat and drove up to Agent Al. Al directed them to step out of the car; he asked if they would mind having their picture taken for the book and an id card certifying both as gang members. Enticed by the idea of a card (since he didn't have a drivers' license), Cid said yes. The subsequent photos showed the boys flashing gang signs as joints dangled from their fingers.

Al asked them for id. Unable to produce any, Al searched the car. Under the right front passenger seat Al found a case for a gangsta rap music CD containing marijuana joints; in the trunk he located a billy club tied with a bandana bearing gang colors. The club was concealed by discarded Taco Bell cups and wrappers.

Al transported the two to juvenile hall. Al reached Cid's mom Mary by phone and suggested she come down, but learned Bill's mom was in jail. Before leaving, Al asked Cid if they were hungry after all that marijuana. Cid nodded. Once Cid and Bill were settled in their common room, Al returned with a #3 combination from The Bell for both and lots of burning questions. As they inhaled their burritos Al read them their Miranda rights. Cid said he understood but asked, "You mean I can have a lawyer and not a Public Defender . . . what about my mom?" Al waited two hours for Mary to arrive and invited her in. Mary confronted Cid, "What the h--- were you doing with that s---? Come clean for once in your life!" Cid started to sob. "It was only a little bit of pot, and the bat ... (sniff) ... why won't you let me talk to your lawyer Lou?" Mary, sensing the remorse through her baby's tears, told Al she planned to retain Lou to represent Cid, but that Bill, (whom Mary deemed a bad influence on her son), "was on his own." Al walked Mary to her car and left.

Lou visited Cid Saturday morning. Lou prepared Cid for court procedures, reviewed the evidence, and above all, reminded him not to talk about the case. Lou made a general appearance at Cid's Monday morning arraignment, where the Court ordered Cid detained on felony charges.

On Tuesday night Al returned to visit Cid with another #3 combination in hand. Cid started to cry that his only visit had been from Lou. Al re-read the Miranda advisement, which Cid again said he understood. Al added, "but before you decide whether to waive your rights, you might like to know that your little buddy Bill confessed." (Al knew Bill had not). Cid signed a written waiver and subsequently admitted felony charges.

Discuss the legality of Al's conduct toward Cid and Bill under Fourth, Fifth, and/or Sixth Amendment principles. Please assume that all items were properly placed into evidence. Do not discuss any substantive crimes that may have occurred.