

Spring 2017
CRIMINAL PROCEDURE MID-TERM
Professor Rodriguez

YOUR STUDENT ID NUMBER: _____

DURING THIS EXAM YOU ARE NOT TO HAVE ANY OTHER DOCUMENT OR A CELL PHONE OR ANY OTHER DEVICE THAT CAN TRANSMIT AND/OR RETAIN INFORMATION. POSSESSION OF THE ABOVE IS A VIOLATION OF THE HONOR CODE AND WILL BE DEALT WITH ACCORDINGLY.

INSTRUCTIONS:

1. Do not use your own scrap paper. Instead, take one (1) blue book, mark it as “Scrap,” write your student ID # on the front cover, and use it as scrap paper. **Your scrap blue book must be turned in together with the exam packet at the end of the exam.**
2. Your **ANSWERS MUST BE WRITTEN DIRECTLY IN THIS EXAM PACKET**, which you will turn in at the end of the exam. **Limit your answer to the lines provided. I will not read anything written beyond the lines provided. Pay particular attention to the call of the question.**
3. Do not identify yourself in the exam packet in any way other than by student ID. Do not write any information that might reveal who you are.
4. This is a closed-book examination. Other than writing implements, you are not to have any materials on your table or at your feet. Place all books, knapsacks, briefcases, etc. at the side or front of the room. You may also not have any articles of clothing or bag(s) on or underneath your seat.

This exam consists of 5 questions, one of which is a two-part question for a **total of 60 Points**. The total time for the exam is **1 hour and 15 minutes**.

I will give a **15 minute** warning, after which no one may leave the room until the exam ends. I will also warn you when **5 minutes** remain and again when **1 minute** remains. When I announce that time has expired you are to stop writing immediately.

This exam consists of questions in the form of hypotheticals, each of which describes a situation that raises a specific legal issue, or in some instances more than one issue, and which is governed by a specific procedural rule. Each question requires that you identify the specific rule, or rules, that will control the result. For those questions that require you to draft an answer you must identify the issue, state the applicable rule, and apply that rule to the facts of the hypothetical. Answers should be written in the following form:

Your answer must be a concise, proper analysis that includes: (1) Your statement of the likely result; (2) followed by an explicit statement of the governing rule of law; (3) followed by your application of that rule to the specific facts of the situation.

Remember, all questions on this exam are based on federal (NOT Massachusetts) constitutional law.

Spring 2017
CRIMINAL PROCEDURE FINAL EXAM
Professor Rodriguez

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INSTRUCTIONS:

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This exam consists of **FIVE** parts for a **total of 170 Points** and will account for **70% of your semester grade**. The total time for the exam is **three hours**.

Part One consists of a **5 directed short answer questions** for a total value of **35 points**;

Part Two consists of 1 **essay questions** question worth **65 points**;

Part Three consists of a **5 directed short answer questions** for a total value of **50 points**;

Part Four consists of a **10 fill-in-the-blank questions** for a total value of **20 points**;

Part Five consists of **3 directed short answer BONUS questions** allowing for a possible extra **30 points**.

I will give a **15 minute** warning, after which no one may leave the room until the exam ends. I will also warn you when **5 minutes** remain and again when **1 minute** remains. When I announce that time has expired you are to stop writing immediately.

REMEMBER, ALL QUESTIONS ON THIS EXAM ARE BASED ON FEDERAL CONSTITUTIONAL LAW.

PART ONE: DIRECTED SHORT ESSAYS

This section consists of 5 questions in the form of hypotheticals, each of which describes a situation that raises a specific legal issue, or in some instances more than one issue, and which is governed by a specific procedural rule. Each question requires that you identify the specific rule, or rules, that will control the result. For those questions that require you to draft an answer you must identify the issue, state the applicable rule, and apply that rule to the facts of the hypothetical. Answers should be written in the following form:

Your answer must be a concise, proper analysis that includes: (1) Your statement of the likely result; (2) followed by an explicit statement of the governing rule of law; (3) followed by your application of that rule to the specific facts of the situation.

Question 1. A woman was arrested by federal agents for possession of narcotics that she purchased from a state-sanctioned dispensary to treat pain related to chronic illnesses. At trial, an employee of the dispensary testified against the woman, providing evidence regarding the amount of narcotics she had purchased. Just before the close of the prosecution’s case, however, the woman’s illness became more severe and she fell into a coma. The judge declared a mistrial. Two years later, the woman awoke from her coma, and the prosecution brought the case against her for a second time.

If the attorney for the woman files a pre-trial motion to dismiss the second criminal prosecution what is her strongest constitutional argument? How is the court likely to rule on the motion and why?

(This Question is worth **5 Points**) **Limit your answer to the space provided.**

PART TWO – ESSAY QUESTION (This question is worth 65 points. Suggested time for completion is 36 minutes)

Part Two consists of one essay question in the form of a hypothetical which describes a situation from which particular procedural issues arise and which are, therefore, governed by specific criminal procedural rules. The questions require that you identify the specific rule, or rules, that will control the result and requires a clear, concise and complete answer, written in the following form:

Your answer must be a concise, proper analysis that includes: (1) Your statement of the likely result; (2) followed by an explicit statement of the governing rule of law; (3) followed by your application of that rule to the specific facts of the situation.

Limit your answer to procedural questions and to the space provided. I will not read anything written beyond the lines provided. Pay particular attention to the call of the question.

QUESTION 1:

Victor and his wife Wilma owned Giant Grocery in Boston. Each morning, Victor and Wilma counted the money earned from the previous days' receipts, then bundled the money with red rubber bands and placed it in three paper bags for deposit at a local bank. On Monday morning, Wilma gave Victor \$5,000 in cash to deposit in the bank. At the same time, Andy, Brad and Charlie were parked next door to Giant Grocery in a brown van with tinted windows. While sitting in the van, the three men discussed their long-standing plan to rob Victor of his daily deposit money by threatening him with baseball bats.

As Victor drove his car to the bank, his car was blocked by the van driven by Charlie. Andy and Brad got out of the van wearing stocking masks and carrying baseball bats. They approached Victor's car and demanded the money. Victor quickly complied and handed over one of the bags of money to Andy. Andy ran back to the van with the bag of money. Brad, agitated, shouted at Victor to hurry up and "hand over the rest of the bags!" Brad then produced a handgun from his pocket and Victor grabbed the handgun. The gun went off and Victor was shot dead.

A witness who lived across the street from Giant Grocery heard the commotion and ran out of her apartment to witness two men with baseball bats getting into a brown van. The van quickly sped away from Giant Grocery. The witness dialed 911 and told the police dispatcher what she observed and that she thought she noticed the van had a yellow decal in

its left rear window. When the dispatcher asked the witness for her name and address the witness stated that she wished to remain anonymous and hung up.

The Boston Police Department quickly broadcast a report to police patrol cars to be on the lookout for a dark colored van with tinted windows and a yellow decal. Shortly thereafter, a Police Officer on patrol spotted a van matching the broadcast description. Police Officer radioed for assistance. The police quickly surrounded the vehicle, and Andy, Brad and Charlie were ordered out of the van. All three were handcuffed and pat frisked. Upon pat frisking Brad, a police officer felt a soft object in his shirt pocket and upon removing the object discovered it was cocaine. Brad was subsequently arrested. Police Officer asked Charlie for his driver's license. Charlie said it was in his coat located inside the van.

Police Officer then entered the van and found Charlie's coat on the floor. While retrieving Charlie's coat, Police Officer discovered a handgun wedged in between the two front seats of the van.

All three men were then placed under arrest. At the police station, Andy was placed in an interview room and given his Miranda rights. Andy waived his rights. Police Officer then began to interview Andy in a friendly manner, stating, "I know your family, Andy, you are a good man, just level with me, this is your chance to get ahead of this." Andy was despondent but he continually denied involvement in Victor's death. After three hours of interviewing Andy, Police Officer began to question Andy more forcefully and then accused him of causing Victor's death. Andy said he "wanted a lawyer." Police Officer then stated, "this is your last chance to tell me what happened, Andy." Andy said, "I am tired and confused. Victor is dead because of me. I want my lawyer." The interview then ended.

Charlie is arraigned in the Boston Municipal Court for the robbery of Giant Grocery. After meeting and speaking briefly with his court appointed lawyer Charlie is brought back down to lock-up. Twenty minutes later, detectives from the Cambridge Police Department arrive to speak with Charlie regarding an unrelated burglary which Charlie confessed to.

Brad is arraigned in the Boston Municipal Court for the robbery of Giant Grocery. After meeting and speaking briefly with his court appointed lawyer Brad is brought back down to lock-up and later transported to the Suffolk County House of Correction and Jail, to be held on the robbery charge. The Government places a jail house snitch in the same cell as Brad. The snitch, who was motivated by a reduction in his prison sentence, stimulated the conversation

PART THREE: DIRECTED ESSAYS

This section consists of five (5) questions in the form of hypotheticals, each of which describes a situation that raises a specific legal issue, or in some instances more than one issue, and which is governed by a specific procedural rule. Each question requires that you identify the specific rule, or rules, that will control the result. For those questions that require you to draft an answer you must identify the issue, state the applicable rule, and apply that rule to the facts of the hypothetical. Answers should be written in the following form:

Your answer must be a concise, proper analysis that includes: (1) Your statement of the likely result; (2) followed by an explicit statement of the governing rule of law; (3) followed by your application of that rule to the specific facts of the situation.

Question 1. A man with a small strip of tape on each side of his face entered the bank, pointed a pistol at the female cashier and the vice president, the only persons in the bank at the time, and forced them to fill a pillowcase with the bank's money.

Months later an indictment was returned against the man for robbing the bank. The man was arrested on April 2, and counsel was appointed to represent him on April 26. Fifteen days later an FBI agent, without notice to the man's lawyer, arranged to have the two bank employees observe a lineup made up of the man and five or six other prisoners which was conducted in a courtroom of the local county courthouse.

Each person in the line wore strips of tape similar to the ones worn by the robber and upon direction each said something like 'put the money in the bag,' the words allegedly uttered by the robber. Both bank employees identified the man in the lineup as the bank robber.

At trial the two employees, when asked on direct examination if the robber was in the courtroom, pointed to the man. The prior lineup identification was then elicited from both employees on cross-examination. At the close of testimony, the man's counsel moved for a judgment of acquittal or, alternatively, to strike the bank officials' courtroom identifications on the grounds that it violated the man's constitutional rights. The motion was denied, and the man was convicted.

If the man appeals his conviction to the state's appeals court how is the court likely to rule on the motion and why? (This Question is worth **10 Points**) **Limit your answer to the space provided.**

PART FOUR: FILL-IN-THE-BLANK (Worth 2 points each)

Question 1. Fully list the four factors used to determine whether a person’s land falls within the curtilage:

1. _____
2. _____
3. _____
4. _____

Question 2. Fully list the three requirements the Prosecution must show to prove constructive possession:

1. _____
2. _____
3. _____

Question 3. In order for law enforcement to make a warrantless entry into a dwelling to render aid under the “emergency aid doctrine” what must they show:

Question 4. In order for law enforcement to conduct a protective pat frisk of a motor vehicle what must they show:

Question 5. In order for law enforcement to conduct a motor vehicle inventory search what must they show and what is the purpose of a motor vehicle inventory search:

Question 6. In United States v. Ash, the U.S. Supreme Court held that a defendant (**circle the correct answer below**) to have his counsel present while witness(es) view pictures of him for identification purposes at a post-indictment photographic display:

HAS A RIGHT OR HAS NO RIGHT

Question 7. In Manson v. Brathwaite, the court listed several factors from Neil v. Biggers, which are used to determine whether an eyewitness identification is reliable and therefore admissible as evidence in a criminal prosecution. Fully list all seven factors:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____

Question 8. In Crist v. Betz, the United States Supreme Court held, “The double jeopardy clause becomes applicable, however, only after the accused has been placed "in jeopardy", and that does not occur until”:

1. _____
- OR**
2. _____

Question 9. Write in the correct **number of jurors** below for each ROL:

In Williams v. Florida, the United States Supreme Court held, “. . . that a ____ -person jury was of sufficient size to promote adequate group deliberation, to insulate members from outside intimidation, and to provide a representative cross-section of the community.

In Williams v. Florida and Ballew v. Georgia, the United States Supreme Court held, “We thus have held that the Constitution permits juries of less than _____ members, but that it requires at least _____.

In Apodoca v. Oregon, the United States Supreme Court held, “we upheld a state statute providing that only _____ members of a 12-person jury need concur to render a verdict in certain noncapital cases.”

Question 10. What standard of evidence must the Prosecution show in a detention hearing (a.k.a “dangerousness hearing) to hold a defendant without bail under the Bail Reform Act of 1984:

DO NOT TURN THIS PAGE UNTIL YOU ARE INSTRUCTED TO BEGIN THE EXAM.

Spring 2012
CRIMINAL PROCEDURE FINAL EXAM
Professor Rodriguez

YOUR ENTIRE STUDENT ID NUMBER: ___ ___ ___ ___ ___ ___ -- 59

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2. Your **ANSWERS TO PARTS 1 THRU 5 MUST BE WRITTEN DIRECTLY IN THIS EXAM PACKET**, which you will turn in at the end of the exam.
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This exam consists of [5] parts for a **total of 75 Points**. The total time for the exam is **three (3) hours**.

Part One consists of [5] definitions, worth 2 points each, for a total value of **10 points**;

Part Two consists of [5] multiple choice questions worth 1 point each, for a total value of **5 points**;

Part Three consists of [5] definitions, worth 4 points each, for a total value of **20 points**;

Part Four consists of [7] directed, short answer questions, worth 5 points each, for a total value of **35 points**;

Part Five consists of [5] true or false questions, worth 1 point each, for a total value of **5 points**.

I will give a **15 minute** warning, at which point no one may leave the room until the exam ends. I will also warn you when there are **5 minutes** left and **1 minute** left. When I call time, you are to stop writing immediately.

GOOD LUCK !!!

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PART ONE - Define each principle given below, clearly, fully and correctly. (Each definition is worth 2 points.)

1. Consent _____

2. Bruton Problem _____

3. Voir Dire _____

4. Evanescent Evidence _____

5. Probable Cause _____

PART TWO - MULTIPLE CHOICE (Circle the best possible answer. Each question is worth 1 point)

1. The United States Supreme Court has routinely held that the double jeopardy clause applies to three separate constitutional protections.

Which of the following is **NOT** barred by double jeopardy?

- (A) Second prosecution for the same offense after an acquittal.
- (B) Second prosecution for the same offense after a conviction.
- (C) Second prosecution for the same offense after a mistrial based on a hung or deadlocked jury.
- (D) Multiple punishments for the same offense.

2. John was arrested on a string of kidnapping and murder charges. He was believed to have abducted and murdered a number of small children. When John was captured, police believed that several of his victims were probably still alive. Frustrated, the local prosecutor said, "I promise, you'll only do 30 years if you will tell us where everybody else is." John quickly said, "I accept your offer." Outraged and facing growing community anger, the prosecutor indicted John for first degree murder and sought the death penalty. John's lawyer argued that a valid plea deal was in place and sued for specific performance of that deal. Prosecutors argued that John accepted the deal knowing the victims were all dead.

How should the court rule?

- (A) The deal should be enforced as stated. John and the Prosecutor must live up to the bargain.
- (B) The deal should be voided because of John's bad faith "acceptance."
- (C) Reject John's argument because there was no valid plea deal present.
- (D) The deal should be voided but the evidence found after John's "acceptance" should be ruled inadmissible.

3. In assessing what to do with a person charged with a federal crime, the Bail Reform Act of 1984 (discussed in *United States v. Salerno* in your text) establishes one or more factors to be taken into account by the judicial officer making the decision whether to detain or release the offender pending trial.

Which of the following factors must be considered?

- (A) Likelihood the person may flee.
- (B) Danger to another person.
- (C) Danger to the community.
- (D) All of the above.

4. Barbara had it tough from the day she was born. At age 24, she was incarcerated in the Big Walls Penitentiary in State A after being convicted of attempted murder of a drug rival. She would be eligible for parole in seven years. Through a friend she just learned that she has been indicted in State B for drug sales. She is concerned that she will be unable to locate key defense witnesses if the State B trial is not held until she is released from Big Walls in seven years.

Under the Sixth Amendment's speedy right to trial guarantee, which is correct?

- (A) Barbara has no right to have her trial in State B held until she can appear in person in State B in at least seven years.
- (B) Barbara has no right to have her trial held in State B because the speedy trial guarantee does not apply to prisoners lawfully incarcerated in another jurisdiction.
- (C) Barbara has a Sixth Amendment right to have, upon her demand, State B authorities make a diligent effort to bring her to trial in State B.
- (D) Barbara has a Sixth Amendment right to have, upon her demand, a prompt trial in State A on the outstanding indictment issued in State B.

5. Police received a report of a purse-snatching on a busy street. The thief was described as young, about eighteen, black, wearing jeans and a T-shirt. The defendant was stopped two blocks from the spot where the purse-snatching occurred. A police officer frisked the defendant but found no gun. The defendant was placed in the rear of a police car and transported to the scene of the purse-snatching. The victim was waiting at the scene. A police officer pointed to the defendant and said to the victim, "I think we got him." The victim, without hesitation, identified the defendant as the thief. She said she "would recognize his face anywhere."

The victim's identification at the crime scene is

- (A) derivative of an illegal arrest without probable cause and is inadmissible.
- (B) the product of a one-on-one show-up, which is per se illegal, and is inadmissible.
- (C) admissible because it was based upon the witness's numerous prior contacts with the defendant.
- (D) admissible because it was not so suggestive as to make the identification unreliable.

PART THREE – DEFINITION AND APPLICATION (each question is worth 4 points)

The Essex County District Court which is comprised of four different courts (housing, criminal, juvenile and probate) is a very busy place on Thursdays. The Criminal Court Session alone has more than six different sessions (or judges) that hear only criminal matters. This past Thursday, the following matters were heard in the various sessions:

Over is **Session One** was Judge Judy, presiding over a plea agreement between Don Ring, a once famous boxing promoter, and the state prosecutor. Ring had been indicted for capital murder which provides for the death penalty in this state. However, at the time, the state also provided for the penalty of anywhere from 2 to 30 years' imprisonment for second-degree murder when a plea of guilty was accepted to a second-degree murder charge. Ring's competent attorney, in the face of strong evidence of guilt, recommended a guilty plea but left the decision up to Ring. The prosecutor agreed to accept a plea of guilty to second-degree murder. The trial court heard very damaging evidence from certain witnesses before accepting a plea. Ring, knowing the judge did not have to accept his plea and could sentence him instead to death, pleaded guilty, although disclaiming guilt only because of the threat of the death penalty.

Over in **Session Two** was Judge Joe Brown presiding over a case where defense counsel for Robert Blake was arguing over a request to the prosecution to turn over some "materials" during discovery which contained information relating to deals, promises or inducement made to a certain key witness (Austin Powers) in exchange for his testimony. Blake's defense counsel argued that they were constitutionally entitled to a certain type of evidence.

QUESTION 3: DEA Agents were watching the mobile trailer home of Nicholas Rage (a once famous and rich actor) based on information they received that Rage was exchanging drugs for sex with underage youth in the community. Agents watched Rage accompany a youth from a parking lot back to his mobile trailer home and they watched the trailer for over an hour until the youth later emerged. The agents approached the youth who told them everything about the exchange for marijuana in return for sex. Upon hearing this the agents knocked on Rage’s trailer door and when Rage emerged, without a warrant, consent or exigent circumstances the agents entered Rage’s motor home and observed marijuana, plastic bags, and a scale used in weighing drugs on a table. Rage was subsequently arrested and the agents took possession of the motor home. A subsequent search of the motor home revealed additional marijuana in the cupboards and The Holy Grail in the refrigerator.

Rage filed a motion to suppress the evidence discovered in his motor home claiming that the search and seizure was unreasonable because the agents did not have a valid search warrant. How should the trial court judge rule on the motion?

PART FIVE – TRUE OR FALSE (Circle the correct answer. Each question is worth 1 point)

1. The exclusionary rule was held inapplicable in grand jury hearings where questions or information were based on the results of an earlier illegal search or seizure?

True or False

2. A search warrant is not required to enter a third party's home to arrest a person who does not live there?

True or False

3. A person subpoenaed in connection with a grand jury proceeding has an evidentiary privilege against self-incrimination?

True or False

4. For purposes of determining whether a person is in "custody" when it comes to Miranda warnings, a person is in "custody" during a routine traffic stop by the police?

True or False

5. In a criminal proceeding, a juvenile has a Sixth Amendment Right to an impartial jury trial?

True or False

Spring 2013
CRIMINAL PROCEDURE Quiz # 1
Professor Rodriguez

YOUR ENTIRE STUDENT ID NUMBER: _____ - 59

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INSTRUCTIONS:

Read the instructions on this page. Do not look beyond this page until you are instructed to begin the quiz.

1. You must write your student ID in the designated space on each page of this packet. Do not identify yourself in the packet in any way other than by Student ID. Do not write any information that might reveal who you are.
2. Do not use your own scrap paper. Instead, take one (1) blue book, mark it as "Scrap." and use the blue book labeled "Scrap" as scrap paper. **Do not** turn in your scrap blue book; I only want this packet;
3. All of your answers must be written directly in the quiz packet, which you will turn in at the end of the allotted time. **Pay particular attention to the call of the question;**
4. This is a closed-book quiz; other than writing implements, you are not to have any materials on your table or at your feet. Place all books, backpacks, briefcases, etc. at the side or front of the room.

This quiz consists of 4 parts. **The total time for the exercise is 45 minutes.**

1. **Part One** consists of 5 "fill-in-the-blank" definitions worth 2 points each. Please fill in the missing words precisely as I have repeatedly reviewed them in class.
2. **Part Two** consists of 3 True/False questions worth 1 point each.
3. **Part Three** consists of 2 Multiple Choice questions, worth 1 point each.
4. **Part Four** consists of 5 short answer questions, worth 2 points each. Please **DO NOT** write beyond the space provided.

I will give a **15 minute warning**, at which point **no one may leave the room** until the quiz ends.

I will also warn you when there are **5 minutes left** and **1 minute left**. When I call time, you are to bring stop writing *immediately*.

GOOD LUCK!

PART ONE

1. Fill in the blanks (clearly, fully and correctly.)

The _____ Amendment provides that, “The right of the people to be secure in their _____, _____, _____, and _____, against _____ and _____, shall not be violated, and no _____ shall issue, but upon _____, supported by oath or affirmation, and _____ the place to be _____, and the persons or things to be _____.”

2. Fill in the blanks (clearly, fully and correctly.)

The requirements of _____ are: “Where the _____ and _____ within the police officer’s _____ are such that a reasonably _____ and _____ man would believe that an offense _____, _____ or _____ being _____.”

3. Fill in the blank (clearly, fully and correctly.)

The level of information or the evidentiary standard required for law enforcement to conduct either an arrest or a search of a person is: _____ .

4. Fill in the blanks (clearly, fully and correctly.): The _____ of the warrant clause of the Fourth Amendment.

The warrant clause of the Fourth Amendment categorically prohibits the issuance of any warrant “except one _____ the _____ to be _____ and the _____ or _____ to be _____.”

5. Fill in the blank (clearly, fully and correctly.)

The level of information or the evidentiary standard required for law enforcement to justify the stop of a person or motor vehicle is: _____ .

PART TWO – TRUE OR FALSE (Circle the best possible answer. Each question is worth 1 point)

1. A defendant who is being held in federal police custody as a result of a warrantless arrest is entitled to a neutral determination of probable cause within 24 hours

[TRUE] or [FALSE]

2. The seizure of a person in a constitutional sense has occurred if: (1) there was an application of physical force or (2) there was a show of authority to which the subject yields

[TRUE] or [FALSE]

3. Police may search a vehicle incident to a recent occupant's arrest **ONLY** if:

(1) the arrestee is within reaching distance of the passenger compartment at the time of the search; or

(2) it is reasonable to believe that the vehicle contains evidence of the offense of arrest

[TRUE] or [FALSE]

PART THREE - MULTIPLE CHOICE (Circle the best possible answer. Each question is worth 1 point)

1. Louise, the defendant was speeding when she was stopped by a police car. As the officer approached the vehicle, she noticed that Louise was not wearing a seat belt. In response to the officer's question about the seatbelt, Louise admitted that she never wore one. Louise was arrested and searched. State law allowed the police to arrest for minor offenses such as speeding and not wearing a seat belt. The officer found a marijuana cigarette in Louise's pocket and charged her only with illegal possession of marijuana. Louise moved to suppress the marijuana because the arrest violated her Fourth Amendment rights.

The trial court will

(A) grant the motion to suppress because Louise was not charged with speeding, the underlying justification for the traffic stop;

(B) grant the motion to suppress because Louise's Fourth Amendment right to be free from unreasonable seizure was violated when she was arrested for the minor offense of speeding;

(C) deny the motion to suppress because the search of Louise's person was incident to a lawful arrest;

(D) deny the motion to suppress only if the state files an additional offense charging Louise with speeding and failing to wear a seatbelt.

3. While investigating a “fencing” operation where thieves and burglars unload stolen goods which are then re-sold into the community, investigating officers learned that the defendant likely served as a “fence” for a recent burglary that netted several pieces of expensive jewelry. The officers did not think that they had sufficient evidence to obtain a search warrant so they showed up at the defendant’s door and asked for permission to search his residence. The defendant gave them permission to search and followed the police around the inside of the house while they searched and found nothing. When the officers went into the basement to search and discovered a secret, locked closet in a crawl space, the defendant refused to give the officers the key to the closet and unequivocally ordered them to stop searching and to leave the house immediately. The officers refused to leave and, instead, pried open the locked closet, finding several pieces of jewelry for which they had been searching.

Is the jewelry admissible at the defendant’s trial?

- (A) Yes. The evidence is admissible because it was found pursuant to a voluntary consent to search the house which may not be withdrawn when the police get close to finding what they are looking for.
- (B) Yes. The evidence is admissible because the defendant’s refusal to provide the key to the closet, together with the evidence that the officers had previously accumulated, rose to the level of probable cause, and the imminent destruction of the evidence if they had to get a warrant created exigent circumstances to conduct a warrantless search.
- (C) No. The evidence is inadmissible because the defendant revoked his consent to search.
- (D) No. The evidence is inadmissible because the original consent to search did not extend to hidden containers.

PART FOUR - Define each principle given below, clearly, fully and correctly. (Each definition is worth 2 points.)

1. “Evanescent Evidence” is: _____

2. List the Exceptions to the Warrant Requirement : (List ONLY)

3. Katz' "Reasonable Expectation of Privacy" 2 Prong Test is: _____

4. Scope of a lawful "Search" is: _____

5. According to your text the federal system, and roughly half of the states, define a felony as:

Spring 2013
CRIMINAL PROCEDURE Quiz # 2
Professor Rodriguez

YOUR ENTIRE STUDENT ID NUMBER: ___ ___ ___ ___ ___ -- 59

DURING THIS QUIZ YOU ARE NOT TO HAVE A CELL PHONE OR ANY OTHER DEVICE OR DOCUMENT THAT CAN TRANSMIT AND/OR RETAIN INFORMATION. POSSESSION OF THE ABOVE IS A VIOLATION OF THE HONOR CODE AND WILL BE DEALT WITH ACCORDINGLY.

INSTRUCTIONS:

Read the instructions on this page. Do not look beyond this page until you are instructed to begin the quiz.

1. You must write your student ID in the designated space on each page of this packet. Do not identify yourself in the packet in any way other than by Student ID. Do not write any information that might reveal who you are.
2. Do not use your own scrap paper. Instead, take one (1) blue book, mark it as “Scrap.” and use the blue book labeled “Scrap” as scrap paper. **Do not** turn in your scrap blue book; I only want this packet;
3. All of your answers must be written directly in the quiz packet, which you will turn in at the end of the allotted time. **Pay particular attention to the call of the question;**
4. This is a closed-book quiz; other than writing implements, you are not to have any materials on your table or at your feet. Place all books, backpacks, briefcases, etc. at the side or front of the room.

This quiz consists of **4 short answer questions**, worth **5 points each**. **Answer each question clearly, fully and correctly using only the lines provided, I will not read anything written beyond the lines provided. I will evaluate your answer on your ability to recognize issues, your knowledge of the applicable law, and your analysis and application of the law to facts. Pay particular attention to the call of the question.**

The total time for the exercise is **30 minutes**. I will give a **15 minute warning**, at which point **no one may leave the room** until the quiz ends.

I will also warn you when there are **5 minutes left** and **1 minute left**. When I call time, you are to bring stop writing *immediately*.

GOOD LUCK!

DIRECTED, SHORT-ANSWER QUESTIONS (each question is worth 5 points)

Each of the following short-answer questions raises a single issue and requires a short answer **ONLY**. Review the following hypotheticals, reflect on each, and consider your response before you write it. I will evaluate your answer on your ability to recognize issues, knowledge of the applicable law, and your analysis and application of the law to facts.

1. Answer the following question clearly, fully and correctly, using no more than the lines given.

After discovering that a gun and bullets had been stolen from his gun shop, the shop’s owner immediately called the police. Officers combed the area, searching for the person who met the description furnished by the owner. Approximately two hours after the theft, James emerged from a children’s movie theatre and, because James closely fit the description of the person who robbed the gun shop, Officer Smith approached James with his gun drawn. James froze when he saw Officer Smith approach, and he placed his hands behind the back of his head. Officer Smith then asked James, “Where’s the gun?” to which James replied, “I’m not answering any questions. I know my rights.” Officer Smith responded, “Come on; there are kids inside that movie theatre.” James then lead Officer Smith to the gun which he had taped to the underside of a seat in the theatre.

James’ defense counsel files a motion to suppress the statements made to Officer Smith. At a preliminary hearing, what is the Judge likely to rule and why?

1(a). What is the functional equivalent of interrogation?

2. Answer the following question clearly, fully and correctly, using no more than the lines given.

Officer Jill validly arrested Marie and correctly gave her the Miranda warnings, to which Marie replied, “I want to see my lawyer.” The police then allowed Marie to call her attorney, who was out of the office, and, therefore, unable to take the call. Marie then turned to Officer Jill and said, “You know, I heard confession is good for the soul. I think, I’d like to make a statement after all.” Officer Jill then read Marie her Miranda warnings again, after which Marie confessed.

At trial Marie’s attorney files a motion to suppress her confession, arguing that her Fifth Amendment rights had been violated. What is the Judge likely to rule on the motion and why?

3. Answer the following question clearly, fully and correctly, using no more than the lines given.

Beverly was charged with committing arson. Because she was indigent, a public defender, Bruce, was appointed for her. Beverly was convicted, and Bruce timely appealed Beverly’s case to the state intermediate appellate court (as was Beverly’s right under existing law), but the appeal failed. Beverly then requested that Bruce appeal her case, pro bono, to State X’s Supreme Court, but, due to his own time constraints, Bruce refused Beverly’s request. Beverly then filed her own petition with the State X’s Supreme Court. Under State X’s law, there is no right of appeal in criminal cases to the State X’s Supreme Court.

If Beverly files an appeal in the appropriate court, arguing that her Sixth Amendment right to the Assistance of Counsel was improperly denied, how will judge rule, and why?

4. Answer the following question clearly, fully and correctly, using no more than the lines given.

Judge Blake was a trial court judge in the State of Bliss District Court. She had been on the bench for fifteen years when she was arrested for accepting a bribe. The facts are as follows: Judge Blake had recently been approached by a woman she had known briefly while in college. The woman claimed to be the sister of a defendant being tried in the judge’s courtroom for drug trafficking offenses that would carry a penalty of up to twenty years in prison on the drug charges, plus a possible additional add-on term of up to ten years because the defendant is charged as a major drug offender.

The woman told the judge that her father is a local philanthropist (the names matched), and that it would kill her mother if the defendant was sentenced to twenty years in prison. She begged the judge for leniency and offered the judge \$25,000, which the judge quickly accepted. (She needed the money to pay for an expensive nursing home for her 80 year old mother.) Several months later the judge accepted a guilty plea from the drug dealer and sentenced him to the minimum term of imprisonment, three years, and dismissed the major offender add-on charges. The judge never notified any authorities of the bribe. It turned out that the woman was actually an undercover FBI agent. Prior to this event the judge had an impeccable reputation and was considered beyond reproach. At trial, Judge Blake pleaded not guilty as a result of entrapment.

If the jurisdiction in which the judge is being tried uses the majority Subjective Test what must the prosecution show in order to convict the judge?

DO NOT TURN THIS PAGE UNTIL YOU ARE INSTRUCTED TO DO SO.

Spring 2013

CRIMINAL PROCEDURE FINAL EXAM

Professor Rodriguez

YOUR ENTIRE STUDENT ID #: ___ ___ ___ ___ ___ ___ -- 59

DURING THIS EXAM YOU ARE NOT TO HAVE ANY OTHER DOCUMENT OR A CELL PHONE OR ANY OTHER DEVICE THAT CAN TRANSMIT AND/OR RETAIN INFORMATION. POSSESSION OF THE ABOVE IS A VIOLATION OF THE HONOR CODE AND WILL BE DEALT WITH ACCORDINGLY.

INSTRUCTIONS:

1. Do not use your own scrap paper. Instead, please take one (1) blue book, mark it as “Scrap.” and use it as scrap paper. Please do not turn in your scrap blue book. At the end of the exam **turn in only this exam packet.**
2. Your **ANSWERS TO PARTS 1 THRU 3 MUST BE WRITTEN DIRECTLY IN THIS EXAM PACKET**, which you will turn in at the end of the exam.
3. Please do not identify yourself in the exam packet in any way other than by student ID. Please do not write any information that might reveal who you are.
4. This is a closed-book examination. Other than writing implements, you are not to have any materials on your table or at your feet. Place all books, knapsacks, briefcases, etc. at the side or front of the room.

This exam consists of **3 parts** for a **total of 100 Points**. The total time for the exam is **three (3) hours**.

Part One consists of 18 short answer questions, worth 4 points each, for a total value of **72 points**;

Part Two consists of 4 directed questions worth 2 point each, for a total value of **8 points**;

Part Three consists of 2 essay questions, worth 10 points each, for a total value of **20 points**.

There are 2 “bonus questions” at the end of the exam worth 2 points each.

I will give a **15 minute** warning, at which point no one may leave the room until the exam ends.

I will also warn you when there are **5 minutes** left and **1 minute** left. When I call time, you are to stop writing immediately.

DO NOT TURN THIS PAGE UNTIL YOU ARE INSTRUCTED TO DO SO.

EXAM INSTRUCTIONS:

These instructions serve for all three sections of this exam. Read them carefully as failure to follow these instructions will result in loss of points. All answers must be confined to the lines provided, and must be legible.

Section One: Section One consists of 18 directed hypotheticals, each of which is intended to invoke a particular rule of law. Each hypothetical requires that you identify the specific rule, or rules, that will control the result and requires a short answer, written in the following form: .

Your answer must be a concise, proper analysis that includes: (1) Your statement of the likely result ; (2) followed by an explicit statement of the governing rule of law; (3) followed by your application of that rule to the specific facts of the situation.

Section Two: Section Two consists of 4 questions, each of which has two parts.

Part (a) is a specific question as to a likely result, and requires that you answer by use of a check-mark or an “X” in the appropriate space. (e.g. [✓])

Part (b) requires that you state a specific rule of law. In each question the rule asked for must be expressed precisely and concisely, as discussed in class.

Section Three: Section three consists of two essay questions, each of which takes the form of a lengthy hypothetical situation which presents multiple parties and, potentially, multiple questions of law. You are required to read carefully and critically in order to evaluate the facts and to develop and arrange these questions of law into a logical, organized answer.

For each issue that you identify, a proper answer takes a form similar to your short answers presented in section one above. In addition, be certain to name the party (or parties) to which each issue applies.

A properly written answer will take the following form for each issue identified within the hypothetical: (1). Name the party and state the issue and the likely result; (2) followed by an explicit statement of the governing rule of law; (3) followed by your application of that rule to specific facts of the situation as presented in the hypothetical. (If your analysis requires you to assume facts not present you must explicitly state these assumptions in your answer.)

DO NOT TURN THIS PAGE UNTIL YOU ARE INSTRUCTED TO BEGIN THE EXAM.

DO NOT TURN THIS PAGE UNTIL YOU ARE INSTRUCTED TO BEGIN THE EXAM.

16. Ashford Simpson, a down and out rhythm and blues singer, robbed two elderly men who were playing checkers in Central Park of their wallets and cash. Simpson, who was masked at the time of the robbery, used a shot gun to hold both men at bay. Simpson was caught a short distance away at a hot dog cart trying to buy two Coney Island Hot Dogs with a portion of the stolen money.

A few months later Simpson went to trial on the charge of robbing Donald Day, one of the participants in the checkers game. The State's evidence that Simpson had actually been the person who robbed the men was very weak. Donald Day had trouble positively identifying Simpson because at the time of the robbery he wasn't wearing his prescription glasses. Oral Roberts, the second robbery victim, did identify Simpson, but only by his size and height, and his actions. The jury found Simpson 'not guilty due to insufficient evidence.'

Six Weeks later Simpson was brought to trial again, this time for the robbery of Oral Roberts, the other participant in the poker game. Simpson filed a motion to dismiss based on his previous acquittal, however the motion was overruled and the second trial began. The witnesses were the same, although this time their testimony and the State's case was substantially stronger. In this trial the jury found Simpson guilty, and he was sentenced to a 35-year term in the state penitentiary.

On appeal Simpson argued that his Fifth Amendment right to the Constitution had been violated when he was 'subject[ed] to the same offense and put twice in jeopardy of life or limb.' How should the reviewing court rule on the motion and why?

SECTION TWO

The following five questions, each worth 2 points, are taken directly from the casebook, from either the Introductory Material at the beginning of a case or from specific Footnotes discussed in class:

1. Officers from the Marshfield Police department have an arrest warrant for John Doe who is believed to be in the home of Peter Cotton-Tail.

1(a). May the Police enter and search Cotton-Tail's home for John Doe?

Yes [] No []

1(b). State the controlling rule from *Payton v New York* (citing *Steagald v. United States*):

2. At trial, after the defendant chose to testify in his own defense, the Prosecution attempted to impeach the defendant's credibility by use of statements he had made prior to being given defective Miranda warnings. The defendant objects to the prosecution's use of these statements.

2(a). How should the court rule on the defendant's objection?

Grant [] Deny []

2(b). State the controlling rule from *Introductory material Sec. 4 Ch. 6 (Harris v New York)* :

3. Bubba Smith was voluntarily brought in by Salt Lake City Police Detectives for questioning. Although Smith thought the detectives wanted to speak with him about a hit and run accident he had caused several weeks ago, the detectives began questioning him about a robbery of a liquor store that he has been implicated in.

3(a). Are the police required to advise Smith of the crimes they wish to speak with him about before questioning him?

Yes [] No []

3(b). State the controlling rule from *Moran v. Burbine* – (citing *Colorado v. Spring*):

4. George Washington was arrested and charged with the arson of several buildings and structures in Chelsea, Massachusetts and was subsequently indicted by the grand jury. Following his indictment the police showed several witnesses who were present at each of the fire scenes a picture of Washington. Each of the witnesses was able to positively identify Washington as being present at the time of the fire.

4(a). Does Washington have a constitutional right to have his counsel present during the post-indictment identification procedures?

Yes [] No []

4(b). State the controlling rule from *Kirby v. Illinois* (citing *United States v. Ash*):

SECTION THREE Essay Questions

1. Officer Riley, a Florida County Sheriff was parked in front of Robert Dunn's home. Believing that the detached garage in Dunn's back yard was situated in an open field, Riley went onto the property to have a look around. As Officer Riley approached the garage he looked through the windows where in plain view he observed marijuana growing inside the garage. Officer Riley called for additional police officers to respond to his location and when they arrived they went into the garage and seized the marijuana. While inside the garage the officers also found a large chest with padlocks on it. One of the officers found a nearby crow bar and broke the padlocks off of the chest. Inside the chest they discovered guns, a large sum of cash and narcotics.

Officer Riley, along with several other officers then left the garage and walked over to Dunn's house, where they knocked on the door. Mrs. Dunn, who answered their knock, told the officers that her husband was next door at Mr. Brad Street's house. When the officers arrived at Mr. Brad Street's home they knocked on the door. When Mr. Brad Street answered the door, Officer Riley told him that they were there to arrest Dunn.

Mr. Bradstreet immediately asked if they had a search warrant, to which Officer Riley pushed right past Mr. Brad Street, closely followed by the other officers, saying "warrant, we don't need no stinkin' warrant." The officers began searching the entire house looking for Dunn. During the search of the home the officers found several stolen flat screen televisions still inside their original boxes in an upstairs bedroom. Upon discovering the stolen televisions the officers arrested Mr. Brad Street charging him with larceny of property.

Dunn was later found hiding in the basement and was arrested and charged with felony trafficking of a controlled substance, felony trafficking of illegal narcotics, illegal possession of firearms with the serial numbers removed, and several other charges.

Assume that you have been hired as defense counsel to represent both Dunn and Brad Street. Please fully discuss what, if any, constitutional issue(s) and the applicable rule of law you would raise in your defense strategy on behalf of both Dunn and Bradstreet at the subsequent state criminal trial.

2. After a seven month investigation into a number of bank robberies in Central Massachusetts, Federal Agents identified Leroy Brown and Beef Demi-Glaze as two possible suspects believed to be responsible for the robberies. Federal Agents set up surveillance on Brown and Demi Glaze and followed them to the Clinton North Worcester County Savings Bank where they watched them for more than 15 minutes, during which time Brown and Demi-Glaze walked back and forth past the bank, looking into the banks' windows each time. Fearing that Brown and Demi-Glaze were about to rob the bank the Federal Agents swooped in identifying themselves as federal agents and immediately pat-frisked them.

During the pat-frisk one of the agents found a baggie of cocaine in Brown's front jacket pocket together with a loaded firearm. When the agents pat-frisked Demi-Glaze they found a cell phone in his pants' pocket which had been altered to fire a live bullet from the antenna slot. Brown was arrested for the possession of a firearm and possession of illegal narcotics, and Demi-Glaze was arrested for the possession of the cell phone gun despite the fact that the officers were not sure if it was fully functional as a dangerous weapon.

Brown and Demi-Glaze were transported to and temporarily held at a federal detention center where they were detained for over 48 hours without a hearing. Two days later they were brought before a Federal Magistrate where they were formally arraigned on the charges. Because they were both indigent they were each appointed counsel, who they met with briefly to discuss the charges and their case. Following the arraignment and the brief meeting with their appointed counsel, Brown and Demi-Glaze were brought back to the federal detention center. Upon arrival they were both placed in a line-up and positively identified by witnesses who were present at the previous robberies.

When the two were brought back to their cells Demi-Glaze discovered that he had a new cell mate named Vito Bianco. Over the course of a few weeks Bianco, who was actually an undercover police officer, befriended Demi-Glaze and engaged him in casual conversation. During one of these conversations, Bianco asked Demi-Glaze if he had ever killed anybody, to which Demi-Glaze replied, "no, I just rob banks," and then proceeded to describe at length the events of his past bank robberies.

Bonus Questions – Each is worth two possible points:

1. Jamal Wilkins was arrested and charged with assault and battery with a dangerous weapon (*to wit*: a lead pipe). At his arraignment Wilkins agreed to a plea agreement with the District Attorney. At his later sentencing hearing Wilkins stood silent and refused to answer any of the judge’s questions.

At the conclusion of the sentencing hearing may the court make adverse inferences from Wilkins’ choice to remain silent?

Yes [] No []

State the controlling rule from *Boykin v. Alabama* – citing *Footnote (a)*:

2. John Bagley was indicted on charges of murder and conspiracy to commit murder. Before trial, he filed motions for (specific) discovery requesting information about any deals, promises or inducements made to [Government] witnesses in exchange for their testimony. The Government’s response did not disclose that any “deals, promises or inducements” had been made to its two key witnesses who testified against Bagley at his later criminal trial, in which he was convicted of all the charges. Bagley filed a motion in the State district court seeking to have his sentence vacated, alleging that the Government’s failure to turn over the requested discovery violated his due process rights.

How should the court rule on the defendant’s objection ?

Grant [] Deny []

State the controlling rule from *Brady v. Maryland* :

Spring 2014
CRIMINAL PROCEDURE MID-TERM QUIZ
Professor Rodriguez

YOUR STUDENT ID NUMBER: _____ -- 59

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INSTRUCTIONS:

1. Do not use your own scrap paper. Instead, please take one (1) blue book, mark it as “Scrap.” and use it as scrap paper. **Your scrap blue book must be turned in together with the exam packet at the end of the exam.**
2. Your **ANSWERS TO PARTS 1 & 2 MUST BE WRITTEN DIRECTLY IN THIS EXAM PACKET**, which you will turn in at the end of the exam.
3. Please do not identify yourself in the exam packet in any way other than by student ID. Please do not write any information that might reveal who you are.
4. This is a closed-book examination. Other than writing implements, you are not to have any materials on your table or at your feet. Place all books, knapsacks, briefcases, etc. at the side or front of the room.

This exam consists of 10 directed, short answer questions for a **total of 50 Points**. In addition, there is a **Bonus** section at the end consisting of 5 true/false or fill-in questions worth **1** point each, for a total value of **5 bonus points**.

The total time for the exam is **1 hour and 15 minutes**.

I will give a **15 minute** warning, at which point no one may leave the room until the exam ends. I will also warn you when there are **5 minutes** left and **1 minute** left. When I call time, you are to stop writing immediately.

Remember, all questions are based on federal constitutional law.

GOOD LUCK !!!

BONUS QUESTIONS (Each question is worth one bonus point)

1. The federal exclusionary rule is a command of the Fourth Amendment?

True [] False []

2. The federal rule permits a person to raise the Doctrine of Automatic Standing in order to challenge the legality of a search anytime a defendant is charged with a crime as to which possession of certain seized evidence at the time of a contested search is an essential element of guilt?

True [] False []

3. The four factors used to determine whether land falls within the curtilage are:

1. _____
2. _____
3. _____
4. _____

4. Under Aguilar-Spinelli, the two prong test used to determine the validity of a warrant is:

1. _____
2. _____

5. When a person is held in federal police custody as a result of a warrantless arrest he/she is entitled to a neutral determination of probable cause within 24 hours. True [] False []

Spring 2014

CRIMINAL PROCEDURE FINAL EXAM

Professor Rodriguez

YOUR STUDENT ID NUMBER: ___ ___ ___ ___ ___ ___ -- 59

DURING THIS EXAM YOU ARE NOT TO HAVE ANY OTHER DOCUMENT OR A CELL PHONE OR ANY OTHER DEVICE THAT CAN TRANSMIT AND/OR RETAIN INFORMATION. POSSESSION OF THE ABOVE IS A VIOLATION OF THE HONOR CODE AND WILL BE DEALT WITH ACCORDINGLY.

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2. Your **ANSWERS TO ALL PARTS OF THIS EXAM MUST BE WRITTEN DIRECTLY IN THIS EXAM PACKET**, which you will turn in at the end of the exam.
3. Please do not identify yourself in the exam packet in any way other than by student ID. Please do not write any information that might reveal who you are.
4. This is a closed-book examination. Other than writing implements, you are not to have any materials on your table or at your feet. Place all books, knapsacks, briefcases, etc. at the side or front of the room.

This exam consists of:

Part One: 16 questions each worth 5 points;
for a **total of 80 Points** and will account for **80% of your semester grade.**

In addition, if you have extra time, there is a Bonus Section at the end consisting of 10 questions, each worth 2 points, with which you may supplement your score.

The total time for the exam is **3 hours.**

I will give a **15 minute** warning, at which point no one may leave the room until the exam ends.

I will also warn you when there are **5 minutes** left and **1 minute** left. When I call time, you are to stop writing immediately.

GOOD LUCK !!!

Question # 2.

Charles Wainwright was arrested and charged with having broken and entered into a bowling alley with the intent to commit a misdemeanor. This offense is a felony under State X law. Appearing in court without funds and without a lawyer, Wainwright, asked the court to appoint counsel for him, whereupon the following colloquy took place:

The COURT: Mr. Wainwright, I am sorry, but I cannot appoint Counsel to represent you in this case. Under the laws of State X, the only time the Court can appoint Counsel to represent a Defendant is when the person is charged with a capital offense. I am sorry, but I will have to deny your request to appoint Counsel to defend you in this case.

The DEFENDANT: The United States Supreme Court says I am entitled to be represented by Counsel.

Put to trial before a jury, Wainwright conducted his own defense as well as he could, however the jury returned a verdict of guilty, and Wainwright was sentenced to serve five years in the state prison

In a post collateral proceeding you agree to represent Mr. Wainwright on a pro bono basis, and you file a petition for Habeas Corpus relief in the State Supreme Court on the grounds that the trial court denied your client his rights guaranteed by the Constitution and the Bill of Rights..

Question # 5.

Thomas J McInnis was arrested by the police for the armed robbery of a hotdog stand in Central Park. When McInnis was arrested, he was unarmed and advised of his rights under Miranda. Prior to McInnis being transported to the police station he was twice again advised of his rights under Miranda and the officers were instructed by their Street Supervisor not to question McInnis or to intimidate him in any way.

While en route to the station, two of the officers engaged in a conversation between themselves concerning the missing gun. One of the officers stated that there were “a lot of handicapped children playing in the park” because a school for such children was located nearby, and “God forbid one of them might find a weapon with bullets and they might hurt themselves.” McInnis interrupted the conversation, stating that the officers should turn the car around so he could show them where the gun was located. Upon returning to the scene the officers again gave McInnis his Miranda rights and he replied that he understood those rights but that he “wanted to get the gun out of the way because of the kids in the area in the school,” and then led the police to the gun.

You are appointed to represent McInnis at trial on the charge of armed robbery. You file a pre-trial motion seeking to suppress the gun and the statements McInnis made leading to its discovery. How should the Judge rule on your motion and why? Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

Question # 6.

Mary Berghuis was arrested by police for the death of Samuel Morris that occurred during an armed robbery at the Emerald Square Mall in North Attleborough. Berghuis was transported to the station and taken to a small 8 by 10 interrogation room. At the beginning of the interrogation, one of the officers presented Berghuis with a form which contained the Miranda warnings. The officers had Berghuis read the form and then they read the Miranda warnings to Berghuis. When asked to sign the form to demonstrate that she understood her rights, Berghuis refused to sign the form, however she verbally confirmed that she understood her rights as listed on the form.

Officers began an interrogation. At no point during the interrogation did Berghuis say that she wanted to remain silent, that she did not want to talk with the police, or that she wanted an attorney. Berghuis was largely silent during the interrogation, which lasted about three hours. She did give a few limited verbal responses, however, such as “yeah”, “no,” or “I don’t know.” About 2 hours and 45 minutes into the interrogation, the officer asked Berghuis, “Do you believe in God?” Berghuis made eye contact with the officer and said, “Yes,” as her eyes “welled up with tears.” The officer asked, “Do you pray to God?” Berghuis said “Yes.” The officer asked, “Do you pray to God to forgive you for shooting that boy down?” Berghuis answered “Yes” and looked away. Berghuis was later charged with first-degree murder, assault with intent to commit murder, and certain firearms-related offenses.

As defense counsel for Berghuis you move to suppress the statements made during the interrogation. What constitutional argument will you raise in your motion and how should the Court rule on the motion and why? Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

Question # 9.

Several years after Robert and Albert Jackson were married, Robert started to physically and verbally abuse Albert. After years of abuse Albert obtained a civil protection order (CPO) in the Superior Court of the District of Columbia. The order, to which Robert Jackson consented, required that he not “molest, assault, or in any manner threaten or physically abuse Albert.

Over the course of eight months, Albert filed three separate motions to have Robert held in contempt for numerous violations of the CPO. After issuing a notice of hearing and ordering Robert to appear, the court held a 3 day bench trial on charges of simple assault, threatening to injure another and assault with intent to kill. At the conclusion of the trial the court found Robert guilty of the simple assault charges and not guilty on the remaining charges. Two weeks later the United States Attorney’s Office obtained an indictment charging Robert with simple assault, which consists of the same elements as in the contempt proceeding in the Superior Court.

As defense counsel for Robert Jackson you file a motion to dismiss the Government’s indictment. What constitutional argument will you raise in your motion and how should the Court rule on your motion and why? Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

Question # 10.

Alan Murphy was subpoenaed to appear before a grand jury in the United States District Court, the District of Massachusetts to answer questions pertaining to an illegal gambling ring. The Government believed that Murphy would likely assert his Fifth Amendment privilege. Prior to the scheduled appearance, the Government applied to the District Court for an order directing Murphy to answer questions and produce evidence before the grand jury pertaining to his role in the illegal gambling enterprise pursuant to 18 U.S.C. ss. 6002 and 6003.

As Defense counsel for Murphy you oppose the issuance of the order, contending that if your client testifies and produces evidence he could be prosecuted in a subsequent federal criminal proceeding on other related offenses to which he testifies to. You file a motion in the U.S. District Court arguing that the Government may not compel testimony from an unwilling witness who invokes his Fifth Amendment privilege against self-incrimination, by conferring on the witness immunity from use of the compelled testimony in a subsequent criminal prosecution.

How should the Court rule on your motion and why? Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

Question # 14.

Gary Bussey in need of some serious money robbed several banks while armed with a shotgun, however he was later caught, arrested and charged for the string of armed robberies. At the plea colloquy, Bussey told the judge that at the time of his criminal spree he was under extreme stress caused by his inability to support his family. In preparing for his sentencing hearing, Bussey's attorney did not seek out any character witnesses or request a psychiatric examination. Bussey's attorney also did not request a pre-sentence report because he was afraid that it included Bussey's criminal history and would undermine the claim of no significant prior criminal record.

Because Bussey's defense attorney presented very few, if any, mitigating factors at the sentencing hearing the judge found numerous aggravating factors and sentenced Bussey to the maximum sentence on each charge of aggravated robbery. Bussey later filed a motion to set aside his criminal conviction alleging that his Sixth Amendment right to the effective assistance of counsel was violated.

What must Bussey show in order to raise a successful ineffective assistance of counsel claim? Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

(GO ON TO THE NEXT PAGE)

PART TWO – BONUS QUESTIONS (worth 2 points each)

1. At trial, after the defendant chose to testify in his own defense, the Prosecution attempted to impeach the defendant's credibility by use of statements he had made prior to being given defective Miranda warnings. The defendant objects to the prosecution's use of these statements. How should the court rule on the defendant's objection? Grant [] Deny []

2. The seizure of a person in a constitutional sense has occurred if: (1) there was an application of physical force or (2) there was a show of authority to which the subject yields. True [] False []

3. Police may search a vehicle incident to a recent occupant's arrest ONLY IF:
(1) the arrestee is within reaching distance of the passenger compartment at the time of the search; or
(2) there is probable cause to search the vehicle for any contraband
True [] False []

4. A defendant can be subjected to a second trial when a conviction in a prior trial was reversed for lack of sufficient evidence. True [] False []

5. Abe Lincoln was arrested and charged with the arson of several buildings and structures in Chelsea, Massachusetts and was subsequently indicted by the grand jury. Following his indictment the police showed several witnesses who were present at each of the fire scenes a picture of Lincoln. Each of the witnesses was able to positively identify Lincoln as being present at the time of the fire. Lincoln has a constitutional right to have his counsel present during the post-indictment identification procedures? True [] False []

(GO ON TO THE NEXT PAGE)

6. Louise, the defendant, was speeding when she was stopped by a police car. As the officer approached the vehicle, she noticed that Louise was not wearing a seat belt. In response to the officer's question about the seatbelt, Louise admitted that she never wore one. Louise was arrested and searched. State law allowed the police to arrest for minor offenses such as speeding and not wearing a seat belt. The officer found a marijuana cigarette in Louise's pocket and charged her only with illegal possession of marijuana. Louise moved to suppress the marijuana because the arrest violated her Fourth Amendment rights.

The trial court will

- (A) grant the motion to suppress because Louise was not charged with speeding, the underlying justification for the traffic stop;
- (B) grant the motion to suppress because Louise's Fourth Amendment right to be free from unreasonable seizure was violated when she was arrested for the minor offense of speeding;
- (C) deny the motion to suppress because the search of Louise's person was incident to a lawful arrest;
- (D) deny the motion to suppress only if the state files an additional offense charging Louise with speeding and failing to wear a seatbelt.

(GO ON TO THE NEXT PAGE)

7. While investigating a “fencing” operation in which thieves and burglars unload stolen goods which are then re-sold into the community, investigating officers learned that the defendant likely served as a “fence” for a recent burglary that netted several pieces of expensive jewelry. The officers did not think that they had sufficient evidence to obtain a search warrant so they showed up at the defendant’s door and asked for permission to search his residence. The defendant gave them permission to search and followed the police around the inside of the house while they searched and found nothing. When the officers went into the basement to search and discovered a secret, locked closet in a crawl space, the defendant refused to give the officers the key to the closet and unequivocally ordered them to stop searching and to leave the house immediately. The officers refused to leave and, instead, pried open the locked closet, finding several pieces of jewelry for which they had been searching.

Is the jewelry admissible at the defendant’s trial?

(A) Yes. The evidence is admissible because it was found pursuant to a voluntary consent to search the house which may not be withdrawn when the police get close to finding what they are looking for.

(B) Yes. The evidence is admissible because the defendant’s refusal to provide the key to the closet, together with the evidence that the officers had previously accumulated, rose to the level of probable cause, and the imminent destruction of the evidence if they had to get a warrant created exigent circumstances to conduct a warrantless search.

(C) No. The evidence is inadmissible because the defendant revoked his consent to search.

(D) No. The evidence is inadmissible because the original consent to search did not extend to hidden containers.

(GO ON TO THE NEXT PAGE)

8. Defendant was stopped when a police officer observed his car weaving in and out of his lane. After being stopped for suspicion of impaired driving, the defendant was unsuccessful in completing the road-side sobriety test. He was placed under arrest and given a breathalyzer test which he also failed. A search of the defendant revealed a substantial quantity of illegal drugs on his person and notes indicating that he was involved in a large-scale drug trafficking operation. He was taken to the police station, booked and placed in a holding cell that night, Friday, where he was told that he would remain until court opened on Monday. Monday came and nothing happened until the evening when he was taken to an interrogation room. There, he was given *Miranda* warnings and questioned at length. By Tuesday morning defendant had given police a detailed statement of his involvement in a major drug trafficking operation. Accidentally, police had stumbled onto one of the major drug traffickers in their area simply because he was driving recklessly. Tuesday afternoon the defendant was taken before a judge who set bond and ruled that police had probable cause for the arrest and detention.

The defendant's confession is

- (A) Inadmissible because it was the product of an illegal detention.
- (B) Inadmissible because the *Miranda* warnings should have been administered immediately after the defendant's arrest.
- (C) Admissible because it followed administration of *Miranda* warnings.
- (D) Admissible because the defendant was legally arrested and detained

(GO ON TO THE NEXT PAGE)

9. A motorist was stopped for speeding in a school zone during school hours. The police officer ordered the motorist out of the vehicle and ran a license and registration check. After the check turned up no outstanding warrants, the officer wrote out a traffic citation. Before handing the completed citation to the motorist, the officer searched the motorist and found marijuana and a small marijuana pipe in the motorist's pants pockets. The officer arrested the motorist and charged her with possession of an illegal substance and drug paraphernalia. The defense at the motorist's trial moved to suppress the marijuana and contraband.

The evidence is

- (A) Admissible under the search incident to arrest doctrine if speeding in a school zone is an arrestable offense in the jurisdiction.
- (B) Admissible because the officer has the authority to order a legally stopped motorist from his or her vehicle and to frisk the motorist for the officer's safety.
- (C) Inadmissible because speeding is not an arrestable offense and an officer may not search incident to a speeding stop.
- (D) Inadmissible because the motorist was not under arrest when the officer conducted the search.

10. Add the following facts to those in Question 9. When the officer ordered the motorist out of the vehicle, the motorist was very surly, mumbled responses to the officer's questions, seemed to fidget inordinately, and indicated to the officer that she needed to get away from the area immediately. The officer responded to the motorist's reaction by ordering the motorist to sit in the back of the police cruiser. The officer frisked the motorist for a weapon before placing her in the back of the cruiser but found no weapon on the motorist's person. The officer checked the motorist's license and registration and determined that there was no outstanding warrant for the motorist. The officer wrote the traffic ticket and walked the motorist back to her car. Before allowing the motorist to get in her car, the officer reached into the car and found a gun under the driver's seat. The officer arrested the motorist for carrying a concealed weapon. The defense has moved to suppress the gun.

The gun is

- (A) Admissible because it was found incident to a valid traffic arrest.
- (B) Admissible because it was found during a lawful search of the vehicle for weapons.
- (C) Inadmissible because the officer did not have probable cause to believe that there were weapons in the car.
- (D) Inadmissible because the officer had no authority to search the vehicle once he decided to release to motorist.

Spring 2016
CRIMINAL PROCEDURE MID-TERM
Professor Rodriguez

YOUR STUDENT ID NUMBER: ___ ___ ___ ___ ___

DURING THIS EXAM YOU ARE NOT TO HAVE ANY OTHER DOCUMENT OR A CELL PHONE OR ANY OTHER DEVICE THAT CAN TRANSMIT AND/OR RETAIN INFORMATION. POSSESSION OF THE ABOVE IS A VIOLATION OF THE HONOR CODE AND WILL BE DEALT WITH ACCORDINGLY.

INSTRUCTIONS:

1. Do not use your own scrap paper. Instead, take one (1) blue book, mark it as "Scrap," write your student ID # on the front cover, and use it as scrap paper. **Your scrap blue book must be turned in together with the exam packet at the end of the exam.**
2. Your **ANSWERS MUST BE WRITTEN DIRECTLY IN THIS EXAM PACKET**, which you will turn in at the end of the exam. **Limit your answer to the lines provided. I will not read anything written beyond the lines provided. Pay particular attention to the call of the question.**
3. Do not identify yourself in the exam packet in any way other than by student ID. Do not write any information that might reveal who you are.
4. This is a closed-book examination. Other than writing implements, you are not to have any materials on your table or at your feet. Place all books, knapsacks, briefcases, etc. at the side or front of the room.

This exam consists of 5 questions, one of which is a two part question for a **total of 60 Points**. The total time for the exam is **1 hour and 15 minutes**.

I will give a **15 minute** warning, after which no one may leave the room until the exam ends. I will also warn you when **5 minutes** remain and again when **1 minute** remains. When I announce that time has expired you are to stop writing immediately.

This exam consists of questions in the form of hypotheticals, each of which describes a situation that raises a specific legal issue, or in some instances more than one issue, and which is governed by a specific procedural rule. Each question requires that you identify the specific rule, or rules, that will control the result. For those questions that require you to draft an answer you must identify the issue, state the applicable rule, and apply that rule to the facts of the hypothetical. Answers should be written in the following form:

Your answer must be a concise, proper analysis that includes: (1) Your statement of the likely result; (2) followed by an explicit statement of the governing rule of law; (3) followed by your application of that rule to the specific facts of the situation.

Remember, all questions are based on federal constitutional law.

Spring 2015
CRIMINAL PROCEDURE MID-TERM
Professor Rodriguez

YOUR STUDENT ID NUMBER: __ __ __ __ __ __ __ __ -- 59

DURING THIS EXAM YOU ARE NOT TO HAVE ANY OTHER DOCUMENT OR A CELL PHONE OR ANY OTHER DEVICE THAT CAN TRANSMIT AND/OR RETAIN INFORMATION. POSSESSION OF THE ABOVE IS A VIOLATION OF THE HONOR CODE AND WILL BE DEALT WITH ACCORDINGLY.

INSTRUCTIONS:

1. Do not use your own scrap paper. Instead, take one (1) blue book, mark it as "Scrap," write your student ID # on the front cover, and use it as scrap paper. **Your scrap blue book must be turned in together with the exam packet at the end of the exam.**
2. Your **ANSWERS MUST BE WRITTEN DIRECTLY IN THIS EXAM PACKET**, which you will turn in at the end of the exam. **Limit your answer to the lines provided. I will not read anything written beyond the lines provided. Pay particular attention to the call of the question.**
3. Do not identify yourself in the exam packet in any way other than by student ID. Do not write any information that might reveal who you are.
4. This is a closed-book examination. Other than writing implements, you are not to have any materials on your table or at your feet. Place all books, knapsacks, briefcases, etc. at the side or front of the room.

This exam consists of 6 questions for a **total of 65 Points**. The total time for the exam is **1 hour and 15 minutes**.

I will give a **15 minute** warning, after which no one may leave the room until the exam ends. I will also warn you when **5 minutes** remain and again when **1 minute** remains. When I announce that time has expired you are to stop writing immediately.

This exam consists of questions in the form of hypotheticals, each of which describes a situation that raises a specific legal issue, or in some instances more than one issue, and which is governed by a specific procedural rule. Each question requires that you identify the specific rule, or rules, that will control the result. For those questions that require you to draft an answer you must identify the issue, state the applicable rule, and apply that rule to the facts of the hypothetical. Answers should be written in the following form:

Your answer must be a concise, proper analysis that includes: (1) Your statement of the likely result; (2) followed by an explicit statement of the governing rule of law; (3) followed by your application of that rule to the specific facts of the situation.

Remember, all questions are based on federal constitutional law.

GOOD LUCK !!!

(b) At the suppression hearing the man raises an issue concerning the deputy climbing over his six foot tall privacy fence and onto his back porch. Please list (*only*) the factors used by the court to determine whether the man's back porch falls within the curtilage: (This Question is worth **5 Points**)

1. _____

2. _____

3. _____

4. _____

Question 2. A detective received information from an informant, who had given reliable information many times in the past, that a particular man was a narcotics dealer. Specifically, the informant said that this dealer sold some heroin to his friend. The detective knew that the informant, the dealer, and the friend were acquaintances. Thereafter, the detective put all this information into affidavit form, appeared before a magistrate, and secured a search warrant for the dealer's apartment. The search turned up a supply of heroin.

If the dealer's attorney files a motion to suppress the heroin how should the court rule on the motion and why? (This Question is worth **10 Points**)

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Spring 2015
CRIMINAL PROCEDURE FINAL EXAM
Professor Rodriguez

YOUR STUDENT ID NUMBER: _____ -- 59

DURING THIS EXAM YOU ARE NOT TO HAVE ANY OTHER DOCUMENT OR A CELL PHONE OR ANY OTHER DEVICE THAT CAN TRANSMIT AND/OR RETAIN INFORMATION. POSSESSION OF THE ABOVE IS A VIOLATION OF THE HONOR CODE AND WILL BE DEALT WITH ACCORDINGLY.

INSTRUCTIONS:

1. Do not use your own scrap paper. Instead, please take one (1) blue book, mark it as "Scrap." and use it as scrap paper. At the end of the exam please turn in **your exam packet** and your scrap blue book.
2. **ANSWERS TO PARTS 1 THROUGH 3 MUST BE WRITTEN DIRECTLY IN THIS EXAM PACKET**, which you will turn in at the end of the exam.
3. Do not identify yourself in the exam packet in any way other than by student ID. Do not write any information that might reveal who you are.
4. This is a closed-book examination. Other than writing implements, you are not to have any materials on your table or at your feet. Place all books, knapsacks, briefcases, etc. at the side or front of the room.

This exam consists of three parts for a **total of 180 Points** and will account for **75% of your semester grade**. The total time for the exam is **three hours**.

Part One consists of a **10** Multiple Choice worth **2** points each for a total value of **20 points**;

Part Two consists of **one essay** question worth **20 points**;

Part Three consists of a **21** directed, short answer questions. The point value for each question is noted following the hypothetical. The total value of this section is: **140 points**;

I will give a **15 minute** warning at which point no one may leave the room until the exam ends.

I will also warn you when there are **5 minutes** left and **1 minute** left. When I call time, you are to stop writing immediately.

GOOD LUCK !!!

PART ONE – CONSISTS of 10 MULTIPLE CHOICE Questions (Circle the letter of the best answer choice. Each questions is worth 2 points. Suggested time for completion of this section is 30 minutes)

1. For a guilty plea to satisfy federal requirements the trial judge must do all of the following, EXCEPT:
 - a. inform the defendant that a guilty plea will save the court time and trial resources.
 - b. insure that the plea is voluntary.
 - c. assure himself that there is a factual basis for the plea.
 - d. inform the defendant of the mandatory minimum penalty if there is one, even if the agreed-upon deal exceeds the mandatory minimum.

2. A state legislature passed a statute providing that juries in criminal trials are to consist of 6 rather than 12 jurors, and also providing that jury verdicts do not have to be unanimous but rather could be based on 5 votes out of 6 jurors.

A defendant was tried for murder. Over his objection, he was tried by a jury composed of 6 jurors. The jurors found him guilty by a vote of 5 to 1 and, over the defendant's objection, the court entered a judgment of conviction, which was affirmed on appeal by the state supreme court. The defendant seeks to overturn his conviction in a habeas corpus action in federal court, claiming his constitutional rights were violated by allowing a jury verdict that was not unanimous and by allowing a jury composed of fewer than 12 members.

How is the federal court likely to rule in this action?

- a. It will set aside the conviction, because the jury was composed of fewer than 12 members.
 - b. It will set aside the conviction, because the 6-person jury verdict was not unanimous.
 - c. It will set aside the conviction for both reasons.
 - d. It will uphold the conviction.

3. A defendant was charged with manslaughter. At the preliminary hearing, the magistrate dismissed the charge on the grounds that the evidence was insufficient. The prosecutor then brought the case before a grand jury. After hearing the evidence presented by the

prosecutor, the grand jury refused to return an indictment. The prosecutor waited a few months until a new grand jury had been impaneled and brought the case before that grand jury, which returned an indictment charging the defendant with manslaughter. The defendant moves to dismiss the indictment on double jeopardy grounds.

Should the motion be granted?

- a. No, because jeopardy had not attached.
 - b. No, because there has been no conviction or acquittal.
 - c. Yes, because any proceeding after the preliminary hearing would violate double jeopardy.
 - d. Yes, because bringing the case before the second grand jury was a violation of double jeopardy.
4. A woman who is a computer whiz decided to dedicate herself to exposing persons who traffic in child pornography. She posted a number of sexually oriented photographs on her web site. The file for each photograph contained an embedded Trojan horse program. The defendant downloaded one of those photographs onto his personal computer. Using the embedded program, the woman entered the defendant's computer and found a file containing a pornographic photograph of a child. She copied the file and turned it over to a federal law enforcement agency. A federal agent told her that a successful prosecution would require more than one photograph and offered her a monetary reward for additional photos leading to a conviction of the defendant. The woman entered the defendant's computer again, and this time she found hundreds of child pornography photos, which she turned over to the federal agency.
- The defendant is charged with multiple counts of violating federal statutes prohibiting child pornography. He moves to suppress the photographs that the woman discovered on his computer. The motion is based on both the Fourth Amendment and a federal statute forbidding interception of electronic communication without permission. The parties have stipulated that the woman's conduct in downloading photos from the defendant's computer violated the interception statute.

How should the court rule on the defendant's motion to suppress?

- a. Deny it as to all photographs.
 - b. Grant it as to all photographs, because the woman acted without probable cause.
 - c. Grant it as to all photographs, because the woman violated the federal interception statute.
 - d. Grant it only as to the second set of photographs.
5. A defendant was lawfully arrested without a warrant for bank robbery. He was not given *Miranda* warnings, but was immediately taken to a police station where he and five other men were placed in a lineup to be viewed by the bank teller. Each man was required to say the words spoken by the bank robber: "Give me all your money. I've got a gun." After all the men in the lineup spoke those words, the teller identified the defendant as the robber.

The defendant subsequently moved to suppress the testimony of the teller, claiming the lineup violated his privilege against self-incrimination. At a suppression hearing, the teller testified that she had not gotten a good look at the robber's face, because the robber had been wearing a hat pulled down over most of his face, but that she was certain the defendant was the robber because she had recognized his voice at the lineup.

Should the defendant's motion be granted?

- a. No, because being required to speak at the lineup, while compelled, was not testimonial or communicative.
 - b. No, because testimony of a witness based on firsthand observation is not subject to exclusion as the fruit of the poisonous tree.
 - c. Yes, because the defendant was compelled to speak at the lineup, and this compelled speech led to the witness's identification testimony.
 - d. Yes, because the defendant was never informed that he could refuse to make a statement and that any statement could be used as evidence against him.
6. A federal grand jury was investigating drug trafficking in the jurisdiction. It subpoenaed a witness to testify, and the prosecutor advised the witness that he had a Fifth Amendment privilege to not testify if he so chose. The witness asked that his counsel be allowed to advise him inside the grand jury room, but the prosecutor refused to allow the attorney

inside. The witness, after speaking with his attorney outside the grand jury room, decided to testify and ended up making self-incriminating statements.

The witness subsequently was indicted for drug crimes. The indictment was based on the witness's grand jury testimony and on evidence seized in an unconstitutional search of the witness's home.

The witness moved to dismiss the indictment. Should the court dismiss the indictment?

- a. Yes, because the witness was denied his constitutional right to advice of counsel.
 - b. Yes, because the indictment was based upon illegally seized evidence.
 - c. No, because the witness waived his constitutional rights by testifying.
 - d. No, because the witness had no right to counsel inside the grand jury room and the illegally seized evidence did not affect the validity of the indictment.
7. While investigating a murder, a state grand jury learned that the key suspect might have kept a diary. The grand jury issued a subpoena duces tecum requiring the suspect to produce any diary. The subpoena made clear that the grand jury was seeking only the diary and not any testimony from the suspect. The suspect refused to produce the diary, citing the privilege against self-incrimination.

Under what circumstances, if any, could the grand jury compel production of the diary over the suspect's Fifth Amendment privilege?

- a. It may compel production without granting immunity because the suspect was not compelled to write a diary.
 - b. It may compel production only if the suspect is granted use and derivative use immunity from the act of production.
 - c. It may compel production only if the suspect is granted transactional immunity.
 - d. It may not compel production of a private diary under any circumstances.
8. The United States Supreme Court has routinely held that the double jeopardy clause applies to three separate constitutional protections.

Which of the following is NOT barred by double jeopardy?

- a. Second prosecution for the same offense after an acquittal.
- b. Second prosecution for the same offense after a conviction.
- c. Second prosecution for the same offense after a mistrial based on a hung jury.

- d. Multiple punishments for the same offense.
9. Under the Blockburger approach to double jeopardy, which of the following is the correct test to determine whether “larceny from the person” and “robbery” are the “same offense”?
- a. Are there some common elements in the two crimes?
 - b. Does each crime require proof of a fact that the other does not?
 - c. Did the legislature intend for someone to be prosecuted for both crimes?
 - d. Did the two offenses occur during the same transaction or set of acts?

10. A defendant was validly arrested for the murder of a store clerk and was taken to a police station where he was given Miranda warnings. When an interrogator asked the defendant, "Do you understand your Miranda rights, and are you willing to give up those rights and talk to us?" the defendant replied, "Yes." When asked, "Did you kill the clerk?" the defendant replied, "No." When asked, "Where were you on the day the clerk was killed?" the defendant replied, "Maybe I should talk to a lawyer." The interrogator asked, "Are you sure?" and the defendant replied, "I'm not sure." The interrogator then asked, "Why would you want to talk with a lawyer?" and the defendant replied, "Because I killed the clerk. It was an accident, and I think I need a lawyer to defend me." At that point all interrogation ceased. Later, the defendant was formally charged with murdering the clerk.

The defendant has moved to suppress evidence of his statement "I killed the clerk" on the ground that this statement was elicited in violation of his *Miranda* rights.

Should the defendant's motion be granted?

- a. No, because although the defendant effectively asserted the right to counsel, the question "Why would you want to talk with a lawyer?" did not constitute custodial interrogation.
- b. No, because the defendant did not effectively assert the right to counsel, and his conduct prior to making the statement constituted a valid waiver of his Miranda rights.
- c. Yes, because although the defendant did not effectively assert the right to counsel, his conduct prior to making the statement did not constitute a valid waiver of his Miranda rights.
- d. Yes, because the defendant effectively asserted the right to counsel, and the question "Why would you want to talk with a lawyer?" constituted custodial interrogation.

PART TWO – ESSAY QUESTION (This question is worth 20 points. Suggested time for completion is 36 minutes)

Part Two consists of one essay question in the form of a hypothetical which describes a situation from which particular procedural issues arise and which are, therefore, governed by specific criminal procedural rules. The questions require that you identify the specific rule, or rules, that will control the result and requires a clear, concise and complete answer, written in the following form:

Your answer must be a concise, proper analysis that includes: (1) Your statement of the likely result; (2) followed by an explicit statement of the governing rule of law; (3) followed by your application of that rule to the specific facts of the situation.

Limit your answer to procedural questions and to the space provided. I will not read anything written beyond the lines provided. Pay particular attention to the call of the question.

QUESTION 1:

Belinda lived in a two—apartment brownstone. She never trusted her neighbor Ben, who lived in the other apartment and who hosted rambunctious parties and left beer bottles and garbage all over their shared backyard. Last Friday, after she arrived home from work, Belinda heard loud banging and a commotion from Ben’s house. A few minutes later, she looked out into their backyard and saw Ben wheeling a cart across the lawn with an upside down human leg sticking out of the cart, He appeared to dump the leg into their joint dumpster. She called the police and told them what she had seen.

When the police arrived, they spoke to Belinda who let them into the backyard to search. The police upon looking into the dumpster discovered a severed human leg which they seized. The police also found the cart and observed what appeared to be blood droplets. The blood from the cart and the leg found in the dumpster was later tested and found to be from the victim, later identified as Priscilla.

The police then forced their way into Dan’s apartment with their weapons drawn, and found Ben in his kitchen, holding a knife, and standing over Priscilla’s dismembered body. Ben dropped the knife and ran. The officers tackled and handcuffed him. All the while Ben was mumbling that he was sorry and that he had “taken all kinds of pills.” The police read Ben his Miranda rights and arrested him. Because Ben claimed to have taken all kinds of pills, the officers took him to the hospital prior to booking him to conduct a blood test, which showed no medication in Ben’s system.

At the police station, and after being read his Miranda rights a second time, Ben told the police that he met Priscilla and her boyfriend, Bob at a bar that afternoon. Bob and Priscilla went



PART THREE - DIRECTED, SHORT-ANSWER QUESTIONS

Part Three consists of 21 questions in the form of hypotheticals each of which describes a situation from which particular procedural issues arise and which are, therefore, governed by specific criminal procedural rules. Each question requires that you identify the specific rule, or rules, that will control the result and requires a short answer, written in the following form:

Your answer must be a concise, proper analysis that includes: (1) Your statement of the likely result; (2) followed by an explicit statement of the governing rule of law; (3) followed by your application of that rule to the specific facts of the situation.

Limit your answer to procedural questions and to the space provided. I will not read anything written beyond the lines provided. Pay particular attention to the call of the question.

Question 1.

John Bagley was indicted on charges of murder and conspiracy to commit murder. Before trial, he filed motions for (specific) discovery requesting information about any deals, promises or inducements made to Government witnesses in exchange for their testimony. The Government’s response did not disclose that any “deals, promises or inducements” had been made to its two key witnesses who testified against Bagley at his later criminal trial in which he was convicted of all the charges. Bagley filed an appeal in the State appellate court seeking to have his sentence vacated, alleging that the Government’s failure to turn over the requested discovery violated his due process rights.

How should the court rule on the Bagley’s appeal and why? (This Question is worth **5 Points**)

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(Turn The Page For The Next Question)

Question 4.

David Kiley was stopped by a police officer for driving with expired registration tags. In the course of the stop the officer also learned that Kiley's license had been suspended. Pursuant to department policy the officer impounded Kiley's car, and another officer conducted an inventory search of the car. When that search turned up two handguns under the car's hood Kiley was arrested for possession of concealed and loaded firearms.

An officer searched Kiley incident to the arrest and found items associated with the “M80’s” street gang. He also seized a cell phone from Kiley's pants pocket. The officer accessed information on the phone and noticed that some words (presumably in text messages or a contacts list) were preceded by the letters “TK”—a label that, he believed, stood for “Trip Killers,” a slang term for members of the M80’s gang. At the police station approximately two hours after the arrest a detective who specializes in gangs further examined the contents of the phone. The detective testified that he “went through” Kiley's phone “looking for evidence, because ... gang members will often video themselves with guns or take pictures of themselves with the guns.” The police also found photographs of Kiley standing in front of a car they suspected had been involved in a shooting a few weeks earlier.

Kiley was ultimately charged in connection with that earlier shooting with firing at an occupied vehicle, assault with a semiautomatic firearm, and attempted murder. Prior to trial, Kiley moved to suppress all evidence that the police had obtained from his cell phone. He contended that the searches of his phone violated the Fourth Amendment and that the search of his phone was not otherwise justified by exigent circumstances.

How should the Judge rule on Kiley’s motion and why? (This Question is Worth **5 Points**)

Question 5.

Vickie Rock is on trial for prostitution. She has been convicted of prostitution fifteen times in the past four years in exactly the same courtroom presided over by Judge Thomas Martin, who is in a hurry to complete Rock’s sixteenth prostitution trial. When the defense lawyer announces that, “the next witness will be my client, Ms. Rock,” Judge Martin interrupts and says, “She doesn’t need to testify. I have heard her testify in a dozen or more previous cases and she always says the same thing. She denies that she asked for any money for sex. So I will assume that is what she will say now and so her testimony is unnecessary. I rule she cannot testify because it would be cumulative evidence.” Defense Counsel makes an appropriate objection.

You are handling the appeal for the defense lawyer. Does the criminal defendant have a constitutional right to testify at the defendant’s own trial? (This Part of the Question is Worth **1 Point**)

YES or NO

In the space provided below recite the applicable rule of law and apply it to the facts to support the conclusion you reached in your answer. (This Part of the Question is Worth **5 Points**)

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Question 7.

Defendant pleaded guilty in a trial court to an indictment charging him with capital murders. At his plea colloquy, Defendant, feeling bad about what he had done, told the judge that he had committed a string of burglaries, that he had no significant prior criminal record, and that at the time of his criminal spree he was under extreme stress caused by being married and his inability to support his family. In preparing for the sentencing hearing, Defendant’s defense counsel spoke with him about his background but did not seek out any character witnesses or any of Defendant’s immediate family, nor did he request a psychiatric examination. Defense counsel failed to do a number of things, including requesting a presentence report because he was worried it might include Defendant’s criminal history, thereby undermining his claim of no significant prior criminal record. At the sentencing hearing the judge told Defendant that he had “a great deal of respect for people who are willing to step forward and admit their responsibility.” However, the judge found many numerous aggravating circumstances and no mitigating circumstances and sentenced Defendant to death on each of the murder counts.

What constitutional argument(s) should the Defendant raise, and what must the Defendant show in order to prevail? (This Question is Worth **10 Points**)

Question 8.

Shortly after an Uber driver who had been robbed by a man wielding a Colt 45 automatic handgun identified a picture of Robert Guinness as that of his assailant a Cambridge patrolman spotted Guinness, who was unarmed, on the street, arrested him and advised him of his rights under Miranda. While driving Guinness to the station, two of the officers engaged in a conversation between themselves concerning the missing gun. One of the officers said to the other that there were “a lot of special needs children running around in this area” because a school for such children was located nearby; in addition he said “God forbid one of them might find a weapon with bullets and they might hurt themselves.” Guinness interrupted the conversation, telling the officers to turn the car around so that he could show them where the gun was located.

Was Guinness “interrogated” within the meaning of Miranda? (This entire Question is Worth **3 Points**)

Yes [] No []

State the controlling rule from *Rhode Island v. Innis*:

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Question 12.

Around 3:25am on April 29, 2001, Boston police officers responded to a radio dispatch indicating that a woman had been badly beaten and stabbed multiple times during a domestic dispute. Police arrived within minutes and at the scene found the victim lying on the floor in a pool of blood, appearing to be in great pain, and speaking with difficulty. Unable to immediately locate the assailant and concerned for the safety of the public, themselves, and the victim, the police asked the victim, “what happened,” “who stabbed you,” and “where was her attacker.”

The victim managed to tell the police that her boyfriend, Anthony Covington had just beaten her up, that he also stabbed her multiple times and that he had just run out of the house as the police were pulling up. The victim’s conversation with the police ended within 5 to 10 minutes of when emergency medical services arrived to treat her. The victim was transported to the hospital, where she died within the hour. The police began an immediate search for Covington and within hours located him not far from the scene.

At Covington’s trial for murder the police officers who spoke with the victim testified to what the victim had told them. The jury returned a guilty verdict on the charge of second-degree murder. Covington is now appealing his conviction.

What constitutional argument(s) can Covington raise in his defense and how should the court rule on his appeal? (This Question is Worth **10 Points**)

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Question 16.

A man was subpoenaed to appear before a United States grand jury in the United States District Court – District of Massachusetts, to give testimony regarding his involvement in human trafficking. The Government believed that the man would likely assert his Fifth Amendment privilege against self-incrimination.

Prior to the man’s scheduled appearance, the Government applied to the District Court for an order directing the man to answer questions and produce evidence before the grand jury under a grant of immunity conferred pursuant to 18 U.S.C. ss 6002, 6003.

The man, through his lawyers, opposed the issuance of the order arguing that the immunity provided by the statute was not coextensive with the scope of the privilege against self-incrimination and was, therefore, not sufficient to replace the privilege and to compel his testimony.

When the man appeared before the grand jury he refused to answer any questions, asserting his privilege against compulsory self-incrimination.

Can the United States Government compel testimony from an unwilling witness, who invokes his Fifth Amendment privilege against compulsory self-incrimination, by conferring on the witness immunity? (Recite the full and complete rule of law as well as your application and analysis) (This Question is Worth **10 Points**)

Spring 2016
CRIMINAL PROCEDURE FINAL EXAM
Professor Rodriguez

6.12.00 Prof R. eliminated
half @ of Part 1 Q 4 and Q 5
making each worth 5 pts
rather than 10

YOUR STUDENT ID NUMBER: _____

DURING THIS EXAM YOU ARE NOT TO HAVE ANY OTHER DOCUMENT OR A CELL PHONE OR ANY OTHER DEVICE THAT CAN TRANSMIT AND/OR RETAIN INFORMATION. POSSESSION OF THE ABOVE IS A VIOLATION OF THE HONOR CODE AND WILL BE DEALT WITH ACCORDINGLY.

INSTRUCTIONS:

1. Do not use your own scrap paper. Instead, take one (1) blue book, mark it as "Scrap." and use it as scrap paper. At the end of the exam turn in **your exam packet** and your scrap blue book.

2. **ANSWERS TO ALL PARTS OF THIS EXAM MUST BE WRITTEN DIRECTLY IN THIS EXAM PACKET**, which you will turn in at the end of the exam.

3. Do not identify yourself in the exam packet in any way other than by student ID. Do not write any information that might reveal who you are.

4. This is a closed-book examination. Other than writing implements you are not to have any materials on your table or at your feet. Place all books, knapsacks, briefcases, etc. at the side or front of the room.

5. All fact patterns are to be read and answers written based on the Federal Constitution.

This exam consists of FIVE parts for a **total of 200 Points** and will account for **75% of your semester grade**. The total time for the exam is **three hours**.

Part One consists of a **5 directed short answer questions** for a total value of **35 points**;

Part Two consists of 10 **direct answer or true/false questions** question worth **20 points**;

Part Three consists of a **5 directed short answer questions** for a total value of **30 points**;

Part Four consists of a **5 multiple choice questions** for a total value of **5 points**;

Part Five consists of a **18 directed, short answer questions**. The point value for each question is noted following the hypothetical. The total value of this section is: **110 points**;

I will give a **15 minute** warning at which point no one may leave the room until the exam ends. I will also warn you when there are **5 minutes** left and **1 minute** left. When I call time, you are to stop writing immediately.

PART ONE - DIRECTED, SHORT-ANSWER QUESTIONS

Part one consists of 5 questions in the form of hypotheticals each of which describes a situation from which particular procedural issues arise and which are, therefore, governed by specific criminal procedural rules. Each question requires that you identify the specific rule, or rules, that will control the result and requires a short answer, written in the following form:

Your answer must be a concise, proper analysis that includes: (1) Your statement of the likely result; (2) followed by an explicit statement of the governing rule of law; (3) followed by your application of that rule to the specific facts of the situation.

Limit your answer to procedural questions and to the space provided. I will not read anything written beyond the lines provided. Pay particular attention to the call of the question.

QUESTION 1:

Around 3:25am on April 29, 20015, police officers responded to a radio dispatch indicating that a man had been badly beaten and shot multiple times during a heated dispute. Police arrived within minutes and at the scene found the victim lying on the floor in a pool of blood, appearing to be in great pain, and speaking with difficulty. Unable to immediately locate the assailant and concerned for the safety of the public, themselves, and the victim the police asked the victim, “what happened,” “who stabbed you,” and “where was his attacker.” The victim managed to tell the police that the defendant, his neighbor had just beaten him up, that he also shot him multiple times and that he had just run out the house as the police were pulling up. The victim’s conversation with the police ended within 5 to 10 minutes when emergency medical services arrived to treat him. The victim was transported to the hospital, where he died within the hour. The police began an immediate search for the defendant and within hours located him not far from the scene. At the defendant’s trial for murder the police officers who spoke with the victim testified to what the victim had told them. The jury returned a guilty verdict on the charge of second-degree murder. The defendant is now appealing his conviction.

What is the defendant’s strongest constitutional argument(s) on appeal and how should the Appeals Court rule and why? (This Question is worth **5 Points**) **Limit your answer to the space provided.**

Question # 3:

The defendant was charged with capital felony murder. In accordance with state law, the trial judge at voir dire removed for cause, over the defendant's objections, those prospective jurors who stated that they could not under any circumstances vote for the imposition of the death penalty. Eight prospective jurors were excluded for this reason. The jury convicted the defendant of capital felony murder, but rejected the State's request for the death penalty, instead setting the defendant's punishment at life imprisonment without parole.

The Defendant now brings a motion in the state appellate court to set aside the lower state court's verdict raising, inter alia, the claim that "death qualification," or the removal for cause of prospective jurors whose opposition to the death penalty is so strong, violated his right under the the Federal Constitution to have his guilt or innocence determined by an impartial jury selected from a representative cross section of the community. How should the Appellate Court rule on the defendant's motion and why? (This Question is worth **5 Points**) **Limit your answer to the space provided.**

Question # 4:

A man with a small strip of tape on each side of his face entered the bank, pointed a pistol at the female cashier and the vice president, the only persons in the bank at the time, and forced them to fill a pillowcase with the bank's money.

Months later an indictment was returned against the man and two others for conspiring to rob the bank, and against the man and the accomplice for the robbery itself. The man was arrested on April 2, and counsel was appointed to represent him on April 26. Fifteen days later an FBI agent, without notice to the man's lawyer, arranged to have the two bank employees observe a lineup made up of the man and five or six other prisoners which was conducted in a courtroom of the local county courthouse.

Each person in the line wore strips of tape similar to the one worn by the robber and upon direction each said something like 'put the money in the bag,' the words allegedly uttered by the robber. Both bank employees identified the man in the lineup as the bank robber.

At trial the two employees, when asked on direct examination if the robber was in the courtroom, pointed to the man. The prior lineup identification was then elicited from both employees on cross-examination. At the close of testimony, the man's counsel moved for a judgment of acquittal or, alternatively, to strike the bank officials' courtroom identifications on the ground that it violated the man's constitutional rights. The motion was denied, and the man was convicted.

If the man were to appeal his conviction to the state appeal's court how should the court rule on the motion and why? (This Question is worth **10 Points**) **Limit your answer to the space provided.**

Question # 5:

Petitioners were convicted of assault with intent to murder in a state circuit court in the shooting of one Reynolds after he and his wife parked their car on the state highway to change a flat tire. The Petitioners filed a motion to vacate their convictions in the state appellate court arguing that the preliminary hearing prior to their indictment was a ‘critical stage’ of the prosecution and that the State's failure to provide them with appointed counsel at the hearing therefore unconstitutionally denied them the assistance of counsel. In rebuttal to the Petitioner’s motion to vacate their convictions, the State argues that constitutional errors were not exempted from the usual rule of appellate review that requires affirmance where the error in prior proceedings is deemed "harmless".

How should the appellate court rule on the Petitioner’s motion to vacate their sentences and why? (This Question is worth **10 Points**) **Limit your answer to the space provided.**

PART TWO

The following ten questions, each worth 2 points, are taken directly from the casebook, from either the Introductory Material at the beginning of a case or from specific Footnotes discussed in class:

- 1. Officers from the Marshfield Police department have an arrest warrant for John Doe who is believed to be in the home of Peter Cotton-Tail.

1(a). May the Police enter and search Cotton-Tail’s home for John Doe?

Yes [] No []

1(b). State the controlling rule from *Payton v New York* (citing *Steagald v. United States*):

- 2. The defendant is the target of a grand jury proceeding where the prosecution is seeking to indict him for rape. During the grand jury proceeding the defendant attempts to offer his own evidence before the grand jury.

2(a). Does the defendant have a constitutional right to offer his own evidence before the grand jury?

Yes [] No []

2(b). According to the introductory material in Chapter 8. *Investigation by Subpoena*, a Superior Court Judge leads the grand jury and he or she is the only one who may present evidence to the grand jury.

True [] False []

- 3. Officers executed a search warrant for the defendant’s home seeking to recover stolen jewelry from a recent jewelry heist. During their search the officers searched two or three areas not specifically included within the warrant. The defendant files a motion to suppress the search warrant arguing that it was facially invalid and lacked probable cause

for the search. In response, the Government argued that the officers executed the warrant with a good faith reasonable reliance that the warrant was valid.

3(a). If the warrant is subsequently held to be invalidated may the officers invoke the Leon Good Faith Exception?

Yes [] No []

3(b). State the controlling rule cited in footnote # 19 from *United States v. Leon*:

4. Police made a warrantless arrest of the defendant on a Friday afternoon. Monday was a state and federal holiday so the district court was closed. The defendant sat in police custody until Tuesday morning when he was finally brought over for his arraignment.

4(a). If the defendant were to later argue that his constitutional rights were violated because he was denied a hearing prior to his arraignment is he correct?

Yes [] No []

4(b). State the controlling rule in footnote (a) from *United States v. Watson* (citing *Gerstein v. Pugh*):

5. The requirement that a misdemeanor must have occurred in the officer's presence to justify a warrantless arrest is not grounded in the Fourth Amendment.

True [] False []

6. After arresting the defendant, DEA agents brought her into the interrogation room and prior to giving defective warnings the defendant made a number of statements.

6(a). May the Prosecution use the defendant’s statements at trial for impeachment purposes if the defendant takes the stand in her own defense?

Yes [] No []

6(b). State the controlling rule from the Introductory Material in Section 4 of Chapter 6. Police Custodial Interrogations (citing *Harris v. New York*):

7. The Defendant was indicted on robbery charges and a week later he was appointed counsel to represent him. While out on bail, the FBI arranged a meeting between the defendant and an undercover agent who they gave explicit instructions to deliberately elicit incriminating statements from the defendant. During that meeting the defendant made a number of incriminating statements which the government seeks to use against the defendant at his later criminal trial.

7(a). May the Prosecution use the defendant’s statements at trial for impeachment purposes if the defendant takes the stand in his own defense?

Yes [] No []

7(b). State the controlling rule from footnote (a) in the Introductory Material in Section 4 of Chapter 6. Police Custodial Interrogations (citing *Kansas v. Ventis*):

8. After being given valid Miranda warnings the defendant remained silent.

8(a). If the defendant takes the stand in her own defense may the Prosecution use the defendant's silence for impeachment purposes? Yes [] No []

8(b). State the controlling rule from footnote (b) in the Introductory Material in Section 4 of Chapter 6. Police Custodial Interrogations (citing *Doyle v. Ohio*):

9. In the introductory material to *Chapter 19 Retrials*, the double jeopardy clause becomes applicable only after the accused has been placed "in jeopardy", and that does not occur until the first witness has been sworn involving a jury trial.

True [] False []

10. Several weeks prior to the start of the defendant's criminal trial the defendant seeks to replace his appointed counsel with a privately retained lawyer citing a complete breakdown in communication between he and his appointed counsel.

10(a). In general the defendant has no right to have appointed counsel replaced ?

Yes [] No []

10(b). State the controlling rule from footnote (a) in the introductory material in *Chapter 17. The Role of Counsel*:

PART THREE - DIRECTED, SHORT-ANSWER QUESTIONS

Part three consists of 5 questions in the form of hypotheticals each of which describes a situation from which particular procedural issues arise and which are, therefore, governed by specific criminal procedural rules. Each question requires that you identify the specific rule, or rules, that will control the result and requires a short answer, written in the following form:

Your answer must be a concise, proper analysis that includes: (1) Your statement of the likely result; (2) followed by an explicit statement of the governing rule of law; (3) followed by your application of that rule to the specific facts of the situation.

Limit your answer to procedural questions and to the space provided. I will not read anything written beyond the lines provided. Pay particular attention to the call of the question.

QUESTION 1:

Police were called to the home of Mr. & Mrs. Smith for a report of a domestic disturbance. Mrs. Smith told the police that she and her husband were having marital problems primarily due to finances as well as her husband's continued use of cocaine. Mr. Smith explained to the police that he had recently lost his job when the company he worked at for more than 10 years had relocated to another state. Mr. Smith also denied that he used cocaine and countered that it was in fact his wife who abused drugs and alcohol. One of the officers, Sergeant Murray, went to speak with Mrs. Smith, and when they returned she not only renewed her complaints about her husband's drug use, but also volunteered that there were " 'items of drug evidence' " in the house. Sergeant Murray asked Mr. Smith for permission to search the house, which he unequivocally refused.

The sergeant turned to Mrs. Smith for consent to search, which she readily gave. She led the officer upstairs to a bedroom that she identified as Mr. Smith's, where the sergeant noticed a section of a drinking straw with a powdery residue he suspected was cocaine. He then left the house to get an evidence bag from his car and to call the district attorney's office, which instructed him to stop the search and apply for a warrant. When Sergeant Murray returned to the house, Mrs. Smith withdrew her consent.

The police took the straw to the police station, along with the Smiths'. After getting a search warrant, they returned to the house and seized further evidence of drug use, on the basis of which Mr. Smith was indicted for possession of cocaine.

If Mr. Smith's attorney files a motion to suppress the evidence found inside the home how should the Judge rule on the motion and why? (This Question is worth **5 Points**) **Limit your answer to the space provided.**

**PART FOUR – MULTIPLE CHOICE QUESTIONS- (*Circle* the best possible answer.
Each question is worth 1 point)**

Question 1:

A defendant was validly arrested for the murder of a store clerk and was taken to a police station where he was given Miranda warnings. When an interrogator asked the defendant, "Do you understand your Miranda rights, and are you willing to give up those rights and talk to us?" the defendant replied, "Yes." When asked, "Did you kill the clerk?" the defendant replied, "No." When asked, "Where were you on the day the clerk was killed?" the defendant replied, "Maybe I should talk to a lawyer." The interrogator asked, "Are you sure?" and the defendant replied, "I'm not sure." The interrogator then asked, "Why would you want to talk with a lawyer?" and the defendant replied, "Because I killed the clerk. It was an accident, and I think I need a lawyer to defend me." At that point all interrogation ceased. Later, the defendant was formally charged with murdering the clerk. The defendant has moved to suppress evidence of his statement "I killed the clerk" on the ground that this statement was elicited in violation of his Miranda rights.

Should the defendant's motion be granted?

(A) No, because although the defendant effectively asserted the right to counsel, the question "Why would you want to talk with a lawyer?" did not constitute custodial interrogation.

(B) No, because the defendant did not effectively assert the right to counsel, and his conduct prior to making the statement constituted a valid waiver of his Miranda rights.

(C) Yes, because although the defendant did not effectively assert the right to counsel, his conduct prior to making the statement did not constitute a valid waiver of his Miranda rights.

(D) Yes, because the defendant effectively asserted the right to counsel, and the question "Why would you want to talk with a lawyer?" constituted custodial interrogation.

Question 2:

A defendant was arrested and charged with possession of heroin. At the defendant's preliminary hearing, the prosecution presented evidence that the defendant was arrested while riding in a car. The heroin was found in a briefcase containing no identification, but several papers found inside contained references to the defendant. The defendant's attorney argued that the briefcase did not belong to the defendant, and the defendant had no idea how the heroin got inside the briefcase. The court ruled that there was insufficient probable cause to support a prosecution of the defendant on the heroin possession charge. The defendant was released from custody and charges were dropped.

Several weeks later, a grand jury was convened to determine if the defendant should be re-indicted for heroin possession based on the same alleged incident reviewed at the preliminary hearing. The defendant was called to testify as a witness at the grand jury hearing. He appeared and was sworn in as a witness. The defendant proceeded to challenge the proceeding on the basis that any grand jury indictment for heroin possession would constitute a violation of the double jeopardy clause.

The defendant's double jeopardy challenge should be

- (A) granted, because by voluntarily appearing at the grand jury hearing, the defendant has standing to challenge the indictment.
- (B) granted, because the heroin possession charge was formally dismissed at the preliminary hearing.
- (C) denied, because there is no basis for a double jeopardy challenge.
- (D) denied, because double jeopardy rights do not attach unless there has been an acquittal or conviction

Question 3:

Which of the following is NOT barred by double jeopardy?

- (A) Second prosecution for the same offense after an acquittal.
- (B) Second prosecution for the same offense after a conviction.
- (C) Second prosecution for the same offense after a mistrial based on a hung jury.
- (D) Multiple punishments for the same offense.

Question 4:

The defendant was a passenger in his cousin's car when the car was stopped by police for, as the officer sneered, "driving while black." The defendant and the driver were ordered out of the car while the car was searched. Under the passenger seat, police found a sawed-off shotgun and a wallet. The identification in the wallet was not the driver's or the defendant's. The driver and the defendant were arrested for receiving stolen property. Later at the police station the wallet was matched to a man who reported being robbed earlier that evening. Fingerprints on the wallet and gun matched the defendant's fingerprints that were on file from a previous arrest. The victim of the robbery told police that the robber was behind him at all times, and that he could not identify the robber who had threatened to blow off the victim's head with a shotgun. However, with the wallet, sawed-off shotgun, and matching fingerprints, police charged the defendant with armed robbery. The defendant moved to suppress the wallet and shotgun.

The motion to suppress should be:

- (A) granted because as a passenger in the vehicle the defendant has automatic standing to challenge the search of the vehicle.
- (B) granted because as a passenger in the vehicle the defendant has standing to challenge the stop.
- (C) denied because the defendant has no standing to challenge the search of the vehicle in which he was riding as a passenger.
- (D) granted because the defendant has standing to challenge the search since the state seeks to use the wallet and shotgun as evidence against the defendant.

(Turn The Page For The Next Question)

Question 5:

Undercover officers staked out an area known for narcotics transactions. An officer watched the area for several hours. During that time, he saw a man approach numerous cars and persons and engage in a number of quick transactions. At 3:00 a.m., the police moved in. As the officer and the other police approached the man, people on the corner dispersed, and the man attempted to flee as well. The officer chased after the man, ordering him to halt and place his hands on his head. The man stopped moving, but did not take his hands out of his pockets. Because he could not see the man's hands, the officer was concerned that the man might have a weapon. He conducted a pat-frisk of the man. During his pat-frisk of the man, the officer did not feel anything resembling a weapon, but he did feel something that he immediately recognized as crack cocaine vials. The officer reached into the man's pocket and removed the vials. He then arrested the man. At the man's trial for various drug-related offenses, the man's attorney moved to suppress the evidence seized by the officer.

The man's motion should be

- (A) denied, because the officer performed a proper stop and frisk.
- (B) denied, because the search was incident to arrest.
- (C) granted, because the officer did not have a search warrant.
- (D) granted, because the officer did not have legally obtained probable cause.

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PART FIVE - DIRECTED, SHORT-ANSWER QUESTIONS

Part one consists of 18 questions in the form of hypotheticals each of which describes a situation from which particular procedural issues arise and which are, therefore, governed by specific criminal procedural rules. Each question requires that you identify the specific rule, or rules, that will control the result and requires a short answer, written in the following form:

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Limit your answer to procedural questions and to the space provided. I will not read anything written beyond the lines provided. Pay particular attention to the call of the question.

Question 1.

A detective received information from an informant, who had given reliable information many times in the past, that a particular man was a narcotics dealer. Specifically, the informant said that this dealer sold some heroin to his friend. The detective knew that the informant, the dealer, and the friend were acquaintances. Thereafter, the detective put all this information into affidavit form, appeared before a magistrate, and secured a search warrant for the dealer's apartment. The search turned up a supply of heroin.

If the dealer's attorney files a motion to suppress the heroin how should the court rule on the motion and why? (This Question is worth **10 Points**) **Limit your answer to the space provided.**

Question 7.

Defendant was arrested and charged with rape. He appeared in court for a preliminary arraignment and bail was set. He requested, and was assigned, a public defender who was out of town and would be unable to see him until the following Tuesday. Defendant was unable to make bail and remained in jail. The following Monday he was placed in a lineup where all the participants in the lineup were told to repeat several sentences that the rapist had said to the victim. At the conclusion of the lineup, the victim identified Defendant as her assailant.

Will the victim be permitted to testify at trial that Defendant was the man who raped her based on her identification of the defendant at the lineup?

YES or NO

In the space provided below recite the applicable rule of law and apply it to the facts to support the conclusion you reached in your answer. (This Question is Worth **5 Points**)

Question 8.

David Kiley was stopped by a police officer for driving with expired registration tags. In the course of the stop the officer also learned that Kiley's license had been suspended. Pursuant to department policy the officer impounded Kiley's car, and another officer conducted an inventory search of the car. When that search turned up two handguns under the car's hood Kiley was arrested for possession of concealed and loaded firearms.

An officer searched Kiley incident to the arrest and found items associated with the "M80's" street gang. He also seized a cell phone from Kiley's pants pocket. The officer accessed information on the phone and noticed that some words (presumably in text messages or a contacts list) were preceded by the letters "TK"—a label that, he believed, stood for "Trip Killers," a slang term for members of the M80's gang. At the police station approximately two hours after the arrest a detective who specializes in gangs further examined the contents of the phone. The detective testified that he "went through" Kiley's phone "looking for evidence, because ... gang members will often video themselves with guns or take pictures of themselves with the guns." The police also found photographs of Kiley standing in front of a car they suspected had been involved in a shooting a few weeks earlier.

Kiley was ultimately charged in connection with that earlier shooting with firing at an occupied vehicle, assault with a semiautomatic firearm, and attempted murder. Prior to trial, Kiley moved to suppress all evidence that the police had obtained from his cell phone. He contended that the searches of his phone violated the Federal Constitution and that the search of his phone was not otherwise justified by exigent circumstances.

How should the Judge rule on Kiley's motion and why? (This Question is Worth **5 Points**)

Question 11.

Shortly after an Uber driver who had been robbed by a man wielding a Colt 45 automatic handgun identified a picture of Robert Guinness as that of his assailant a Cambridge patrolman spotted Guinness, who was unarmed, on the street, arrested him and advised him of his rights under Miranda. While driving Guinness to the station, two of the officers engaged in a conversation between themselves concerning the missing gun. One of the officers said to the other that there were “a lot of special needs children running around in this area” because a school for such children was located nearby; in addition he said “God forbid one of them might find a weapon with bullets and they might hurt themselves.” Guinness interrupted the conversation, telling the officers to turn the car around so that he could show them where the gun was located.

Was Guinness “interrogated” within the meaning of Miranda? (This entire Question is Worth **5 Points**)

Yes [] No []

State the controlling rule from *Rhode Island v. Innis*:

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(Turn The Page For The Next Question)

