

This essay question is in the form of a hypothetical which describes a situation from which numerous procedural issues arise and which are, therefore, governed by specific criminal procedural rules. This question requires you to 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) your issue statement (3) followed by an explicit statement of the governing rule of law; (4) followed by your application of that rule to the specific facts of the situation.

Question 1.

While on routine patrol, a police officer observed a suspect driving erratically and pulled the suspect's car over to investigate. When he approached the suspect's car, the officer detected a strong odor of marijuana. The officer immediately arrested the suspect for driving under the influence of an intoxicant (DUI). While the officer was standing near the suspect's car placing handcuffs on the suspect, the officer observed burglary tools on the backseat.

The officer seized the burglary tools. He then took the suspect to the county jail, booked him for the DUI, and placed him in a holding cell. Later that day, the officer gave the tools he had found in the suspect's car to a detective who was investigating a number of recent burglaries in the neighborhood where the suspect had been arrested.

At the time of his DUI arrest, the suspect had a six-month-old, aggravated assault charge pending against him and was being represented on the assault charge by a lawyer.

Early the next morning, upon learning of her client's arrest, the lawyer went to the jail. She arrived at 9:00 a.m., immediately identified herself to the jailer as the suspect's attorney, and demanded to speak with the suspect. The lawyer also told the jailer that she did not want the suspect questioned unless she was present. The jailer told the lawyer that she would need to wait one hour to see the suspect. After speaking with the lawyer, the jailer did not inform anyone of the lawyer's presence or her demands.

The detective, who had also arrived at the jail at 9:00 a.m., overheard the lawyer's conversation with the jailer. The detective then entered the windowless interview room in the jail where the suspect had been taken 30 minutes earlier. Without informing the suspect of the lawyer's presence or her demands, the detective read to the suspect full and accurate Miranda warnings. The detective then informed the suspect that he wanted to ask about the burglary tools found in his car and the recent burglaries in the neighborhood where he had been arrested. The suspect replied, "I think I want my lawyer here before I talk to you." The detective responded, "That's up to you."

After a few minutes of silence, the suspect said, "Well, unless there is anything else I need to know, let's not waste any time waiting for someone to call my attorney and having her drive here. I probably should keep my mouth shut, but I'm willing to talk to you for a while." The suspect then signed a Miranda waiver form and, after interrogation by the detective, made incriminating statements regarding five burglaries. The interview lasted from 9:15 a.m. to 10:00 a.m.

In addition to the DUI, the suspect has been charged with five counts of burglary.

The lawyer has filed a motion to suppress all statements made by the suspect to the detective in connection with the five burglaries.

The state supreme court follows federal constitutional principles in all cases interpreting a criminal defendant's rights. Please state the applicable rule of law followed by a complete analysis. Limit your answer to the space provided. **(This question is worth 100 points)**

1. Did the detective violate the suspect's Sixth Amendment right to counsel when he questioned the suspect in the absence of the lawyer? Explain.
2. Under Miranda, did the suspect effectively invoke his right to counsel? Explain.
3. Was the suspect's waiver of his Miranda rights valid? Explain.

This short-directed essay question 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. The question requires that you identify the specific rule, or rules, that will control the result. For this question you must identify the issue(s), 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) your issue statement (3) followed by an explicit statement of the governing rule of law; (4) followed by your application of that rule to the specific facts of the situation.

Question 2.

The petitioner 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 the petitioner at his later criminal trial in which he was convicted of all the charges.

Petitioner filed an appeal in the State appellate court seeking to have his sentence vacated, alleging that the Government's failed to turn over the requested discovery.

What is the petitioner's strongest constitutional argument and how is the court likely to rule on the appeal and why? Please also state the applicable standard of materiality the petitioner must show to support his constitutional argument? Please state the applicable rule of law followed by a complete analysis. Limit your answer to the space provided. **(This question is worth 20 Points)**

This essay question is in the form of a hypothetical which describes a situation from which numerous procedural issues arise and which are, therefore, governed by specific criminal procedural rules. This question requires you to 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) your issue statement (3) followed by an explicit statement of the governing rule of law; (4) followed by your application of that rule to the specific facts of the situation.

Question 3.

A police officer (Officer) on routine traffic patrol watched Suspect drive by. Suspect was in compliance with all applicable traffic laws except the state seat belt law. The state motor vehicle code provides that police officers have discretion to make an arrest for any traffic infraction, including violation of the state seat belt law. Officer had never stopped a driver merely for violating the seat belt law. However, Officer knew that Suspect was a reputed drug dealer and stopped Suspect's vehicle, hoping to uncover evidence of a more serious crime.

Officer directed Suspect to get out of his vehicle, handcuffed Suspect, and told Suspect that he was under arrest for violating the seat belt law. Immediately afterward, Officer looked through the driver's-side car window and noticed a clear plastic bag containing white powder on the front seat of Suspect's car. Officer asked Suspect, "Are those drugs yours?" The suspect responded, "No, that cocaine isn't mine!" The Officer then opened the car door and removed the bag of white powder.

Officer transported Suspect to the police station for booking. An hour later, Detective visited Suspect in the police station holding cell to attempt an interview. Detective read Suspect his Miranda rights. Suspect stated that he understood his Miranda rights but nonetheless would answer Detective's questions. The suspect voluntarily answered Detective's questions for about five minutes and then said, "I'm not sure about this. Maybe I need a lawyer." Detective did not seek clarification of Suspect's statement but continued to question Suspect, who ultimately confessed to possessing the cocaine found in his car.

The state charged Suspect with misdemeanor violation of the seat belt law and felony drug possession. The suspect has moved to suppress all the state's evidence, alleging an unlawful stop, an unlawful arrest, an unlawful seizure of evidence, and multiple Miranda violations. Please state the applicable rule of law followed by a complete analysis. Limit your answer to the space provided. **(This question is worth 160 points)**

1. Did the traffic stop and subsequent arrest violate Suspect's constitutional rights? Explain.
2. Was there a lawful stop/seizure in a constitutional sense?
3. Did Officer's seizure of evidence from Suspect's car violate Suspect's constitutional rights? Explain.
4. Did Officer's questioning of Suspect violate Suspect's Miranda rights? Explain.
5. Should Suspect's confession to Detective be suppressed? Explain.

This short-directed essay question 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. The question requires that you identify the specific rule, or rules, that will control the result. For this question you must identify the issue(s), 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) your issue statement (3) followed by an explicit statement of the governing rule of law; (4) followed by your application of that rule to the specific facts of the situation.

Question 4.

Around 3:25am on April 29, 2015, 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 is your 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 of 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 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 Prosecution’s strongest constitutional argument(s) and how is the court likely to rule on the appeal and why? Please state the applicable rule of law followed by a complete analysis. Limit your answer to the space provided. **(This question is worth 20 Points)**

This short-directed essay question 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. The question requires that you identify the specific rule, or rules, that will control the result. For this question you must identify the issue(s), 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) your issue statement (3) followed by an explicit statement of the governing rule of law; (4) followed by your application of that rule to the specific facts of the situation.

Question 5.

The 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, defense counsel spoke with the defendant about his background but did not seek out any character witnesses or any of the defendant's immediate family, nor did he request a psychiatric examination. Defense counsel also 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 the 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 is the defendant's strongest constitutional argument(s) and what must the defendant show to prevail? Please state the applicable rule of law followed by a complete analysis. Limit your answer to the space provided. **(This question is worth 25 Points)**

This short-directed essay question 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. The question requires that you identify the specific rule, or rules, that will control the result. For this question you must identify the issue(s), 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) your issue statement (3) followed by an explicit statement of the governing rule of law; (4) followed by your application of that rule to the specific facts of the situation.

Question 6.

A defendant was arrested and charged with shoplifting. He claims that he intended to pay for the item he took and requests an attorney and a jury trial. Both requests were denied by the judge, and the defendant is found guilty. The maximum penalty for shoplifting is a \$500 fine and six months in jail. The defendant is sentenced to three months in jail, which he is allowed to serve on weekends in the county detention center.

The defendant claims that his constitutional rights have been violated. Is he correct? Please state the applicable rule of law followed by a complete analysis. Limit your answer to the space provided. **(This question is Worth 20 Points)**

This short-directed essay question 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. The question requires that you identify the specific rule, or rules, that will control the result. For this question you must identify the issue(s), 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) your issue statement (3) followed by an explicit statement of the governing rule of law; (4) followed by your application of that rule to the specific facts of the situation.

Question 7.

A woman was the subject of a murder investigation. The investigation continued for more than two years, with the woman frequently being called in for questioning. Finally, the woman was indicted for the murder. The woman's lawyer filed a motion to dismiss all charges against her, arguing that the excessively long investigatory period violated the woman's constitutional right to a speedy trial.

Despite the pending motion, the woman decided that she wanted to "get it over with," and she told the judge that she wished to plead guilty. The judge then explained the charges to the woman and asked her if she understood them. She replied, "Yes." The judge then asked the woman if she understood that she was not required to plead guilty. She responded in the affirmative. Finally, the judge described the maximum sentence and asked the woman if she understood that she could receive the maximum sentence, which was life imprisonment. She again responded, "Yes," and maintained that she still wished to plead guilty. The judge accepted the woman's plea and sentenced her to 30 years' imprisonment in the state penitentiary. Six months later, the woman filed a motion to set aside the guilty plea.

Was the woman's guilty plea a valid waiver of her Sixth Amendment right to a jury trial. Please state the applicable rule of law followed by a complete analysis. Limit your answer to the space provided. **(This question is Worth 20 Points)**

This short-directed essay question 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. The question requires that you identify the specific rule, or rules, that will control the result. For this question you must identify the issue(s), 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) your issue statement (3) followed by an explicit statement of the governing rule of law; (4) followed by your application of that rule to the specific facts of the situation.

Question 8.

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.

How should the Judge rule on the motion and why? Please state the applicable rule of law followed by a complete analysis. Limit your answer to the space provided. **(This question is Worth 20 Points)**

STUDENT ID# _____

SPRING 2023 CRIMINAL PROCEDURE FINAL EXAM COVER SHEET

Professor Rodriguez

CHECK ONE: YOUR EXAM IS: _____ WRITTEN _____ TYPED

EXAMSOFT PASSWORD: skapc7w5

INSTRUCTIONS:

First, please place your student identification number on the line provided above. Then, immediately turn to the bottom of page 5 and place your student identification number on the signature line to indicate your signature of acceptance of the Student Honor Pledge / Affidavit Regarding Honorable Behavior.

You may read the instructions that follow, and then go immediately to read and sign the Student Examination Honor Pledge / Affidavit Regarding Honorable Behavior. You are not to look beyond the Student Examination Honor Pledge / Affidavit Regarding Honorable Behavior until you are instructed to begin the exam.

If you have not downloaded this Final Exam from the Examsoft platform prior to the start time of the exam, and are not ready to start taking the exam immediately once the professor/proctor calls for the exam to begin, you will be required to write the exam rather than type it.

You are not to have a cell phone, or any other device that can transmit and/or retain information, on your person during this exam. Possession of any electronic device shall be treated, and dealt with, as cheating.

You may wear a jacket while taking the exam, but if you take it off you are to immediately place it at the side or back of the room. If you start off without a jacket, you may put one on with instructions from the Professor/Proctor. If you leave the classroom, you must take your jacket off and leave it at the side or back of the room.

Whether you write or type, you are to turn this exam booklet and blue book where instructed when you have finished your exam. If I do not have your exam booklet, with your acceptance of the Honor Code / Affidavit Regarding Honorable Behavior following these instructions, I will not correct your exam and you will receive a grade of “0” as a score on your final exam, even if you have uploaded an answer on Examsoft.

Please do not identify yourself in any way other than by student ID number. Please do not write any information in your exam booklet that might reveal who you are.

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

There is a bathroom sign out/in book at the front of the room. Please sign out and in when you leave the room. Since any pen put out for each bathroom book invariably “wanders” soon after the first person writes in the book, please use your own pen or pencil to sign out and in.

Do not use your own scrap paper. Instead, take **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.**

Activity conducted during this exam will be monitored, logged, and recorded. Examsoft (Examplify) or MSL may review this information at any time for audit purposes to verify exam integrity.

Whether you type or write, this hard copy exam booklet is the official exam. If minor typos are found after the exam is posted on Examsoft, corrections will be given so that you can make them only on this hard copy of the exam.

If you intend to use Examsoft, your **ANSWERS MUST BE TYPED DIRECTLY INTO EXAMSOFT**. If you are not using Examsoft then all your answers must be handwritten directly into the exam packet. If you write, please take care to make your handwriting legible. I will try my best to read what you write, but I cannot grade what I cannot read.

I understand that your time clock will not begin until you start the exam on Examsoft, regardless of when the proctor calls for you to begin. Whether you have standard time or an extra-time accommodation, the official time for your exam shall be the time the proctor tells you to begin your exam at the beginning of its administration, NOT the time your Examsoft time clock says. For this reason, you **MUST** begin your exam immediately when the proctor calls for the exam to begin; it should take no more than a minute or two for you to start your exam on Examsoft (see above) and the proctor will provide you five extra minutes to deal with the Examsoft startup. This will be the case whether you are a standard time taker or an extra-time accommodations taker. When the proctor calls time, you are to close out your Examsoft administration and upload your exam immediately if you type, and you will hand in your written answers immediately if you write.

You have **THREE HOURS (180 minutes)** to complete this exam if you are entitled to **standard time**. You have **FOUR AND ONE-HALF HOURS (270 minutes)** to complete this exam if you are entitled to **time and one-half**. You have **SIX HOURS (360 minutes)** to complete this exam if you are entitled to **double time**.

This exam consists of two essays for a **total of 540 Points** and will account for **80%** of the semester grade. The total time for the exam is **3 hours**. Below are instructions for the two essay questions and the short, directed essay bonus questions:

Essay Question One is worth **450 points**.

Essay Question Two is worth **90 points**.

If you have extra time, there is a Bonus Question at the end, consisting of 1 short, directed essay question worth 20 points which you may use to supplement your score.

**REMEMBER, ALL QUESTIONS ON THIS EXAM ARE BASED ON FEDERAL
CONSTITUTIONAL LAW AND NOT MASSACHUSETTS
CONSTITUTIONAL LAW**

You may leave when you are done and have turned in your exam booklet and blue book (if you used one) as long as you are quiet and courteous to your classmates who are still under the stress of taking the exam. If you breach this courtesy, the proctor will instruct you to take your seat and remain quiet until the exam is done.

GOOD LUCK!

STUDENT HONOR PLEDGE / AFFIDAVIT REGARDING HONORABLE BEHAVIOR

In taking this examination, I hereby affirm, represent, and acknowledge, both to the professor and the Massachusetts School of Law community, that:

1. I understand that the professor will not grade my examination, and I will suffer the consequences of not having submitted a final exam (specifically, failure of this course), if I fail to place my full student identification number in the signature space below. Placement of my student identification number below will serve as a substitute for my signature, and carry the full weight of my personal signature in making this pledge on my honor;
2. I will not give or receive any unauthorized assistance on this examination;
3. I understand that this is a closed-book examination and, with the exception of materials specifically referred to in the exam instructions, I am not permitted to use papers, personal effects, electronic devices, or any other matter that could provide unauthorized assistance in completing this examination, create any unfair advantage in completing this examination, or otherwise frustrate the honest administration of this examination as a closed-book examination, whether the same be located on my person, near me, in the exam room, or anywhere else in the building or on the grounds;
4. I have placed all electronic devices, papers, personal effects, and other matter that I brought into the room at the front, side or back of the room as instructed by the exam proctor, with all electronic devices being powered off;
5. I have not placed in bathrooms or other areas in the building or grounds any papers, personal effects, electronic devices, or any other matter that could provide unauthorized assistance in completing this examination, create any unfair advantage in completing this examination, or otherwise frustrate the honest administration of this examination as a closed-book examination, either for my personal use or the use of anyone else. I also understand that if I use the bathroom during the exam, I am prohibited from removing any of the exam materials from the classroom;
6. I will not identify myself in any way or frustrate the anonymous grading of this exam;
7. I will faithfully follow any additional instructions the exam proctor provides orally during the exam;

8. Other than instructions that the professor may have given out in advance, I have heard nothing about the specific contents of this examination prior to its commencement;
9. While I understand that not all the examinations are identical, I understand that I may not in any way discuss the examination's contents, format, or answers with anyone prior to 9:00 p.m. tonight. No communications of any kind concerning this examination is permitted until MONDAY, MAY 22, 2023, at 9:00 p.m. in the event that other student(s) may be making up the exam.
10. I have not seen a copy, original, or anyone's notes of said examination, nor have I spoken to or discussed the actual examination with anyone prior to taking this examination;
11. I have not in any way solicited any information nor received any information concerning today's examination or its content, format, or answers prior to taking this examination;
12. I have not seen or overheard anyone discussing today's examination or its content, or answers prior to taking this examination;
13. I understand and acknowledge that MSLAW's honor code requires me to report observed violations of these provisions as well as the MSLAW Honor Code; and
14. I further acknowledge, understand and agree that any violations of the aforementioned shall result in my dismissal from MSL.

Signed under the pains and penalty of perjury.

FULL STUDENT ID NO. ONLY

(DO NOT PUT YOUR NAME HERE)

DO NOT TURN THE PAGE AND BEGIN UNTIL THE
PROFESSOR/PROCTOR INSTRUCTS YOU TO DO SO.

ESSAY QUESTION # 1 (This question is worth 450 points)

Part One 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.

ESSAY QUESTION # 1

Victor and his wife Wilma owned V & W Grocery in Podunk. 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 V & W 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 by threatening him with baseball bats.

When Victor arrived at the bank, his car was blocked by the van driven by Charlie. Andy and Brad got out of the van wearing black stocking masks and carrying aluminum 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 bank heard the commotion and looked out her apartment window to witness two men wearing black stocking masks, carrying aluminum baseball bats getting into a brown van. The van quickly sped away from the bank. The witness dialed 911 and told the police dispatcher that after hearing a gunshot she looked out her window and observed two white males in their forties wearing black stocking masks and carrying aluminum baseball bats get into an older brown Chevy van with tinted windows and a bubble window, mag wheels and large tires with large bright white lettering on the sidewall of each tire that states "FIRESTONE". The witness also thought that she noticed that 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. Even though the witness did not leave her name and address her call was recorded and her telephone number could be traced.

The Podunk Police Department quickly broadcasted a report to all police patrol cars to be on the lookout for a dark colored Chevy van with tinted windows and a bubble window, mag wheels and large tires with large bright white lettering on the sides of each tire that read "FIRESTONE" and a yellow decal in the left rear window. Within minutes, a police officer on patrol spotted a van matching the broadcast description. The 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 immediately 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. Police officer then looked through the passenger side window and observed a handgun wedged in between the two front seats of the van and two red rubber bands on the front passenger seat.

All three men were then placed under arrest for robbery and murder of Victor, the unlawful possession of a firearm and Brad was also charged with the unlawful

possession of a controlled substance (cocaine). Police officer then searched all three men and discovered four 38 caliber bullets in Andy's front pant pocket, red rubber bands in Charlie's jacket pocket and a black mask in Brad's back pant pocket.

At the police station, Andy was placed in an interview room and given his Miranda rights. Andy waived his rights. A Detective 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 any involvement in Victor's death. After twelve hours of interviewing Andy, the detective began to question Andy more forcefully and then accused him of causing Victor's death. Andy said he "wanted a lawyer." The detective 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.

At the police station, Charlie was placed in a holding cell and was told that a detective would come to get him and take him to the interview room. About two hours later, the detective arrived and took Charlie to an interview room where the detective told Charlie that he wanted to talk to him about the crimes for which he was arrested. Charlie responded that there was no reason to beat around the bush because he was guilty of the robbery and murder. The detective then questioned Charlie closely about the robbery and murder, and Charlie offered incriminating details. After this conversation, the officer produced a Miranda rights waiver form, and Charlie signed it.

At the police station, Brad had not been advised of his Miranda rights. While Brad was being booked and processed one of the patrol officers saw Brad through a door and realized that he and Brad had gone to grammar school together. Brad had not seen the officer. After speaking with his supervising officer, the patrol officer changed into a jail uniform and was placed in a two-person jail cell just before Brad

was locked into the same cell. When Brad saw the patrol officer, he remembered his grade school “buddy” whom he had not seen since the sixth grade. After their boisterous reunion, the patrol officer entertained Brad with the officer’s criminal history, all of which was false. Then the patrol officer asked Brad why he was in jail. At first, Brad was reluctant to talk about it, but the patrol officer persisted and prodded. After much persuasion, Brad told the patrol officer about the robbery and the murder. The patrol officer drew from Brad all the details of the robbery and murder which were transmitted through a listening device being recorded for later use against Brad.

Andy, Charlie, and Brad were all indicted and arraigned in the Podunk Superior Court for the robbery and the murder of Victor. Brad was also arraigned for possession of cocaine. At the arraignment, Andy, Charlie, and Brad’s lawyers argued that each of their clients should be released because they have long-term ties to the community, a steady job, and no significant criminal record. The judge rejected each of the lawyer's arguments and ordered that each of their clients be held on pretrial detention without bail until their trial in three months. In giving her reasons and specific findings of facts, the judge found that each of the defendant’s posed a threat to the safety of the community evidenced by their use of a baseball to commit the robbery as well as the use of a firearm to kill the owner of V & W Grocery store. Each of the lawyers believed that the judge’s decision(s) was based on a prediction of future criminality and unconstitutional since the only reason a person should be detained is a reasonable likelihood that he or she will not appear for trial.

After meeting and speaking briefly with his court appointed lawyer, Charlie was brought back down to lock-up and later transported to the Suffolk County House of Correction and Jail to be held on the criminal charges. Twenty minutes later, detectives from the Cambridge Police Department arrived to speak with Charlie regarding a burglary which Charlie confessed to.

Brad, after meeting and speaking briefly with his court appointed lawyer, was brought back down to lock-up and later transported to the Suffolk County House of Correction and Jail to be held on criminal charges. Unbeknownst to Brad, the Government placed 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 between he and Brad. Brad made several incriminating statements concerning the robbery of A & W Grocery which the prosecution now seeks to use as part of its case in chief at trial.

Andy, after meeting and speaking briefly with his court appointed lawyer, was brought back down to lock-up and was later transported to the Suffolk County House of Correction and Jail to be held on the criminal charges. The following day, Andy was placed in a lineup where all the participants in the lineup were told to repeat several sentences that the robbers had said to Victor. At the conclusion of the lineup, a witness identified Andy as one of the assailants. The Government intends to have the witness identify Andy at trial.

The following day, the same witness who identified Andy in the lineup was shown a single 8 ½ by 11-inch color photograph of Charlie. After staring at the photograph for one to two minutes, the witness stated that they were 99.9% positive that Charlie was one of the assailants. The Government intends to have the witness identify Charlie at trial.

Two days later, the same witness who identified Andy and Charlie came down to the Podunk police station to look through several binders of photographs of people who had previously been arrested and charged with theft crimes. At the conclusion of looking through all the binders, the witness was able to identify Brad as one of the assailants. The Government intends to have the witness identify Brad at trial.

At trial, Brad pleaded guilty in court to murder, robbery, and cocaine charges. At his plea colloquy, Brad, feeling bad about what he had done, told the judge that he

had committed all the criminal charges, 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, defense counsel spoke with the Brad about his background but did not seek out any character witnesses or any of the Brad's immediate family, nor did he request a psychiatric examination. Defense counsel also failed to do several things, including requesting a presentence report because he was worried it might include Brad's criminal history, thereby undermining his claim of no significant prior criminal record. At the sentencing hearing the judge told Brad 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 Brad to death on the felony murder charge.

While awaiting trial in jail, Charlie had an unrelated open criminal charge for driving with a revoked license in the Podunk District Court. Charlie had previously been charged with driving with a revoked license after three prior convictions of that offense, a felony punishable by up to four years imprisonment. In a letter to Charlie's counsel, the prosecutor extended a choice of two plea bargains, the most lenient being reduction of the charge to a misdemeanor and recommendation of a 90-day sentence. Charlie's attorney never advised him of the offers, and after their expiration (and after Charlie and once again been arrested for the same offense) Charlie pled guilty without any underlying plea agreement. He was sentenced to three years in prison. At a later post-conviction hearing (appeal), Charlie testified he would have entered a guilty plea to the misdemeanor had he known of the offer.

At trial, the State introduced (over Charlie's objection) a confession given by Brad to the police shortly after his arrest. The confession was redacted to omit all reference to Charlie-indeed, to omit all indication that anyone other than Andy and Brad

participated in the crime. At the time the confession was admitted, the jury was admonished not to use it in any way against Charlie. Brad did not testify. Charlie testified at trial that he had possessed no prior knowledge that Andy and Brad were armed and had not intended to kill anyone. During his closing argument, the prosecutor admonished the jury not to use Brad's confession against Charlie. Later in his argument, the prosecutor, however, linked Charlie to the portion of Brad's confession describing his conversation with Andy in the van. (Charlie's attorney did not object to this.) After closing arguments, the judge again instructed the jury that Brad's confession was not to be considered against Charlie. The jury convicted Charlie of robbery and murder. The Podunk Court of Appeals affirmed in an unpublished opinion, and the Podunk Supreme Court denied leave to appeal. Respondent (Charlie) then filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He alleged that . . . introduction of Brad's confession at the joint trial had violated his constitutional rights. The District Court denied the petition.

Around 9:00 a.m. on the date of the robbery, the Podunk police officers responded to a radio dispatch indicating that a man had been shot. At the scene, they found the owner of V & W Grocery, the victim, Victor, lying on the ground next to his car in the Podunk Savings Bank parking lot. Victor had a gunshot wound to his abdomen, appeared to be in great pain, and spoke with difficulty. The police asked him "what had happened, who had shot him, and where the shooting had occurred.

Victor stated that each of his assailants were armed with baseball bats and the first robber threatened to hit him with the baseball bat if he didn't hand over the money. Victor said he complied and gave the first robber a bag of money, however the second robber was very agitated and pulled out a gun. The first robber yelled to the second robber, "hey Brad what are you doing with that gun?" and the second robber then shot him. Victor's conversation with the police ended within 5 to 10 minutes

ESSAY QUESTION # 2 (This question is worth 90 points)

This essay question is in the form of a hypothetical which describes a situation from which numerous procedural issues arise and which are, therefore, governed by specific criminal procedural rules. This question requires you to 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) your issue statement (3) followed by an explicit statement of the governing rule of law; (4) followed by your application of that rule to the specific facts of the situation.

On February 1st a woman began serving a 60-day sentence in the county jail for operating a motor vehicle under the influence of alcohol. On February 4th, a detective from the county sheriff's department took the woman from her cell to an interrogation room in the jail building. He informed her that she was a suspect in a homicide investigation and that he wanted to ask her some questions. The detective then read the woman the state's standard Miranda warnings:

You have the right to remain silent. Anything you say can be used against you in court. You have the right to an attorney. If you cannot afford an attorney, one will be appointed for you. If you decide that you wish to speak with us, you may change your mind and stop the questioning at any time. You may also ask for a lawyer at any time.

The detective asked the woman if she understood these rights. When she replied, "Yes, and I want a lawyer," questioning ceased immediately, and she was returned to her cell.

On March 15th, the detective removed the woman from her cell and took her back to the same interrogation room. The detective told her that he wanted to ask her questions about the homicide because he had new information about her

involvement. The detective read her the same Miranda warnings he had read on February 4th and asked her whether she understood her rights. She said, “*Yes.*” The woman then asked the detective, “*If I ask you to get me a lawyer, how long until one gets here?*” The detective replied as follows:

We have no way of getting you a lawyer immediately, but one will be appointed for you, if you wish, if and when you go to court. We don’t know when that will happen. If you wish to answer questions now without a lawyer present, you have the right to stop answering questions at any time. You also have the right to stop answering questions until a lawyer is present.

The detective’s statement accurately characterized the procedure for appointment of counsel. The woman then said, “*I might need a lawyer.*” The detective responded, “*That’s your call, ma’am.*”

After a few minutes of silence, the woman took a Miranda waiver form from the detective and checked the boxes indicating that the rights had been read to her, that she understood them, and that she wished to waive her rights and answer questions. She then signed the form. After the detective began to question her, she confessed to the homicide.

The woman was charged with murder in state court. Her lawyer filed a motion to suppress the woman’s March 15th statements to the detective, alleging three violations of her Miranda rights by the detective:

- (1) **Interrogating the woman on March 15th after she had invoked her Miranda right to counsel on February 4th.**
- (2) **Incorrectly conveying to the woman her Miranda right to counsel by the statements he made on March 15th.**
- (3) **Interrogating the woman on March 15th after she had invoked her Miranda right to counsel on March 15th.**

After an evidentiary hearing, the trial court denied the motion to suppress on all three grounds raised by defense counsel.

BONUS ESSAY QUESTION # 3 (Worth 20 points)

The petitioner 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 the petitioner at his later criminal trial in which he was convicted of all the charges.

Petitioner filed an appeal in the State appellate court seeking to have his sentence vacated, alleging that the Government's failed to turn over the requested discovery.

What is the petitioner's strongest constitutional argument and how is the court likely to rule on the appeal and why and what is the standard of materiality the petitioner must show to support his constitutional argument? **(This question is worth 20 Points)**

Spring 2021

CRIMINAL PROCEDURE FINAL EXAM

Professor Rodriguez

DURING THIS EXAM YOU ARE NOT TO HAVE ANY OTHER DOCUMENTS AND/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.

FINAL EXAM INSTRUCTIONS:

1. 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.

3. **ALL OF YOUR WRITTEN EXAM ANSWERS INCLUDING THE MULTIPLE CHOICE MUST BE TYPED DIRECTLY INTO EXAM SOFT.**

4. You should have already read and acknowledge the **MSL Student Honor Code Pledge** which I posted on **TWEN** under **Course Materials** as a PDF document.

5. **Remember, this is a closed-book examination.** You are prohibited from using class notes, outlines and/or casebooks. Furthermore, you are prohibited from accessing the internet to research the exam question(s) or for assistance in writing any of your answers. You are not to use any professional bar preparation materials when taking the exam and you are also not to discuss the exam with anyone while you are taking the exam and after you have completed the exam. Finally, you are not permitted to have any materials on your table or at your feet other than those discussed in the **MSL Student Honor Code Pledge**.

6. If you **receive regular time** on an exam, you will have **three hours** to complete the exam. If you **receive time-and-a-half**, you will have **four hours and thirty minutes** to complete the exam. If you **receive double time**, you will have **six hours** to complete the exam.

7. If you incur any problems during the final exam, you are to contact me by telephone at (978) 580-4242 immediately. We will then discuss your issue or concern and attempt to resolve it. At the conclusion of our discussion, you are not permitted to have your cell phone on or near your person during the remainder of the final exam.

This exam consists of **four** parts for a **total of 500 Points** and will account for **75% of your semester grade**. The total time for the exam is **three hours**.

Part One consists of **4 Directed short essay questions** for a total value of **190 points**.

Question # 1 is worth a total value of **50 points**.

Question # 2 is worth a total value of **10 points**.

Question # 3 is worth a total value of **80 points**.

Question # 4 is worth a total value of **50 points**.

Part Two consists of **5 Directed short essay questions** for a total value of **120 points**.

Question # 1 is worth a total value of **30 points**.

Question # 2 is worth a total value of 20 points.

Question # 3 is worth a total value of 20 points.

Question # 4 is worth a total value of 25 points.

Question # 5 is worth a total value of 25 points.

Part Three consists of **1 Essay question** for a total value of **100 points**.

Part Four consists of **1 Essay question** for a total value of **90 points**.

If you have extra time, there is a Bonus Question at the end, consisting of 5 Multiple choice questions, each worth 2 points for a total value of 10 points, with which you may use to supplement your score.

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

PART ONE – DIRECTED SHORT ESSAY QUESTIONS (Worth 200 points)

Part one consists of four 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. Suspicious that two young men are about to engage in a drug deal, an officer approaches them and asks for identification. The two men comply. Recognizing them as known drug traffickers, the officer orders them to stand by a nearby wall 5 feet apart so that the officer could pat them down and search for weapons. During the frisk, the officer found a gun and two baggies with marijuana inside in each of the men's jackets. At trial, each man files a motion seeking to have the drugs suppressed.

What are the men's strongest constitutional argument and how should the court rule on the motion and why? (This question is worth 60 points)

Question 2. A man returns home from a successful robbery and begins to sort the items according to their worth. Among the stolen goods, the man finds several items that are worthless and so places them in his trash can outside his home. The police believe the man is responsible, but do not have enough evidence to obtain a search warrant. They wait for the garbage collectors to come for the man's trash and when they empty the can into the dump truck the police find the stolen goods. At trial the man files a motion seeking to have the stolen goods suppressed.

What is the man's strongest constitutional argument and how should the court rule on the motion and why? (This question is worth 10 points)

Question 3. A father and son are returning home from a day playing baseball when the father is stopped for speeding. During this routine stop, the officer informs the father that while he writes the ticket, a narcotic sniffing dog will be walked around the car. The father objects, but the officer still has his partner walk the dog around the vehicle. After the dog alerts indicating that there are drugs in the vehicle the officers find cocaine beneath the driver's seat. At trial, the man files a motion seeking to suppress the evidence.

What is the man's strongest constitutional argument and how should the court rule on the motion and why? (This question is worth 80 points)

Question 4. An officer is patrolling when he observes a woman attempting to break into a car. As he approaches, he recognizes the woman. He orders her to back away from the car because she is under arrest for attempted theft. He chastises her stating that he knows that this woman never carries a gun, and that she has never been involved in drug activity. Deciding to teach her a lesson about crime he informs her that he is going to search her for weapons and drugs. As he finishes the search, he feels a pill bottle in her jacket pocket. He takes out the pill bottle and inside he finds assorted prescription pills that do not match the label. The woman files a motion seeking to suppress the pill bottle.

What is the woman's strongest constitutional argument and how should the court rule on the motion and why? (This question is worth 50 points) Limit your answer to the space provided.

PART TWO – DIRECTED SHORT ESSAY QUESTIONS (Five questions worth a total of 120 points)

Part two consists of five 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-up wore strips of tape like 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.

The man's attorney files a motion to suppress both the out-of-court eyewitness identification as well as any statements made during the identification procedure and the in-court eyewitness identification procedure.

What is the man's strongest constitutional argument(s) and how is the court likely to rule on the motion(s) and why? (This question is worth 30 Points) Limit your answer to the space provided.

Question 2. Around 3:25am on April 29, 2015, 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 is your 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 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 are defense counsel and the Prosecution’s strongest constitutional argument(s) and how is the court likely to rule on the appeal and why? (This question is worth 20 Points) Limit your answer to the space provided.

Question 3. The defendant was subpoenaed to appear before a grand jury in the United States District Court to answer questions pertaining to an interstate human trafficking ring. The Government believed that the defendant would likely assert his Fifth Amendment privilege. Prior to the scheduled appearance, the Government applied to the District Court for an order directing the defendant to answer questions and produce evidence before the grand jury pertaining to his role in the illegal human trafficking enterprise pursuant to 18 U.S.C. ss. 6002 and 6003.

As Defense counsel for the defendant, you oppose the issuance of the order, contending that if your client testifies and produces evidence, he could be prosecuted in a subsequent state 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.

How should the U.S. District Court rule on your motion and why? (This question is worth 20 Points) Limit your answer to the space provided.

Question 4. The 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, defense counsel spoke with the defendant about his background but did not seek out any character witnesses or any of the defendant's immediate family, nor did he request a psychiatric examination. Defense counsel also 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 the 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 is the defendant's strongest constitutional argument(s) and what must the defendant show in order to prevail? (This question is Worth 25 Points)

Question 5. Petitioner 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 the petitioner at his later criminal trial in which he was convicted of all the charges.

Petitioner filed an appeal in the State appellate court seeking to have his sentence vacated, alleging that the Government's failed to turn over the requested discovery.

What is the petitioner's strongest constitutional argument and how is the court likely to rule on the appeal and why and what is the standard of materiality the petitioner must show to support his constitutional argument? (This question is worth 20 Points)

PART THREE – ESSAY QUESTION # 1 (Worth 100 points)

This essay question is in the form of a hypothetical which describes a situation from which numerous procedural issues arise and which are, therefore, governed by specific criminal procedural rules. This question requires you to 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) your issue statement (3) followed by an explicit statement of the governing rule of law; (4) followed by your application of that rule to the specific facts of the situation.

While on a routine patrol in a police boat, Cindy (a state police officer) saw two large unoccupied and anchored jet skis, one of which was leaking oil. Cindy pulled her boat over to the jet ski that was leaking oil and climbed on top of it to investigate even though the jet skis had a sign on it which said, “**No Trespassing – This Means You!**”

To see what was causing the oil leak, Cindy unlatched the door to the jet ski’s engine compartment. Immediately, Cindy saw several very large packages of a brown and tan colored powder. Cindy had both jet skis towed to the police department’s dock where she then locked the jet skis to the dock with a chain and searched both jet skis without a warrant.

During this search Cindy found two unregistered automatic guns in a plastic storage bag in the engine compartment of the jet ski that was leaking oil and several small packages of white powder inside the engine compartment of the jet ski that was not leaking oil.

Martha, who owned the jet skis, lived nearby. When Cindy went to Martha’s house to talk with her, only Peter was there. After Cindy asked Peter if she could search the house, he said, “Sure, what do I care, I’m Martha’s ex-husband and I am moving the last of my stuff out now.” Cindy searched the house and found in the attic a room full of large bags of marijuana which she seized and took as evidence.

Cindy then received a call from her police department dispatcher for her to respond to a scream heard coming from another nearby house. When Cindy arrived at that house, the front door was locked, and no one answered the doorbell. However, just as Cindy was about to leave, she heard a woman inside the house scream.

Cindy kicked in the front door of the house, and found Carmen tied up on the floor with serious injuries. Carmen pointed at Martha, who was standing over her with a gun, and said that she had

hurt her. Martha dropped the gun and started to run. Cindy quickly tackled and handcuffed Martha in a bedroom next to a closet and told Martha that she was under arrest. Cindy then searched Martha and found several bullets (that matched the gun Martha dropped) in her jacket pocket. Cindy also looked inside the closet and discovered a loaded shotgun which she also seized.

What legal issue(s) and pretrial motion(s) will defense counsel raise on behalf of Martha and how is the court likely to rule on the motion(s) and why? (This question is worth 100 Points)

PART FOUR – ESSAY QUESTION # 2 (Worth 90 points)

This essay question is in the form of a hypothetical which describes a situation from which numerous procedural issues arise and which are, therefore, governed by specific criminal procedural rules. This question requires you to 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) your issue statement (3) followed by an explicit statement of the governing rule of law; (4) followed by your application of that rule to the specific facts of the situation.

On February 1, a woman began serving a 60-day sentence in the county jail for operating a motor vehicle under the influence of alcohol. On February 4, a detective from the county sheriff's department took the woman from her cell to an interrogation room in the jail building. He informed her that she was a suspect in a homicide investigation and that he wanted to ask her some questions. The detective then read the woman the state's standard Miranda warnings:

You have the right to remain silent. Anything you say can be used against you in court. You have the right to an attorney. If you cannot afford an attorney, one will be appointed for you. If you decide that you wish to speak with us, you may change your mind and stop the questioning at any time. You may also ask for a lawyer at any time.

The detective asked the woman if she understood these rights. When she replied, "Yes, and I want a lawyer," questioning ceased immediately, and she was returned to her cell.

On March 15, the detective removed the woman from her cell and took her back to the same interrogation room. The detective told her that he wanted to ask her questions about the homicide because he had new information about her involvement. The detective read her the same Miranda warnings he had read on February 4 and asked her whether she understood her rights. She said, "Yes."

The woman then asked the detective, "If I ask you to get me a lawyer, how long until one gets here?" The detective replied as follows:

We have no way of getting you a lawyer immediately, but one will be appointed for you, if you wish, if and when you go to court. We don't know when that will happen. If you wish to answer questions now without a lawyer present, you have the right to stop answering questions at any time. You also have the right to stop answering questions until a lawyer is present.

The detective's statement accurately characterized the procedure for appointment of counsel. The woman then said, "I might need a lawyer." The detective responded, "That's your call, ma'am."

After a few minutes of silence, the woman took a Miranda waiver form from the detective and checked the boxes indicating that the rights had been read to her, that she understood them, and that she wished to waive her rights and answer questions. She then signed the form. After the detective began to question her, she confessed to the homicide.

The woman was charged with murder in state court. Her lawyer filed a motion to suppress the woman's March 15 statements to the detective, alleging three violations of her Miranda rights by the detective:

- (1) Interrogating the woman on March 15 after she had invoked her Miranda right to counsel on February 4.
- (2) Incorrectly conveying to the woman her Miranda right to counsel by the statements he made on March 15.
- (3) Interrogating the woman on March 15 after she had invoked her Miranda right to counsel on March 15.

After an evidentiary hearing, the trial court denied the motion to suppress on all three grounds raised by defense counsel.

Did the court err in denying the woman's motion to suppress? Explain.

In the space provided recite the applicable, issues, rules of law and then apply them to the facts to support the conclusions you reached in your answer. (This question is Worth 90 Points)

BONUS – MULTIPLE CHOICE QUESTIONS (Each worth 2 points for a total of 10 points)

Question 1. In which of the following scenarios would a court most likely determine that the defendant's right to counsel had been violated?

- A. A defendant was bound over for trial after a magistrate reviewed the arrest warrant and accompanying affidavit and found probable cause for the arrest. The defendant was not represented by counsel during this review.
- B. A defendant was originally sentenced to probation. He violated his probation, which was revoked. The court imposed a new sentence of 18 months in prison. The defendant was not represented by counsel.
- C. A defendant was convicted for driving under the influence based upon blood toxicology taken without the benefit of counsel.
- D. A defendant was convicted in federal court. He appealed to the Circuit Court of Appeals, which affirmed his conviction. The defendant wanted to file a petition for writ of certiorari, but the court refused to appoint counsel for him.

Question 2. The police received an anonymous phone call that a man was illegally growing marijuana in a back room of his house. One evening, the police set up a thermal imaging device on the outside wall of the back room. After gathering sufficient evidence that marijuana was being grown, the police entered the home without an arrest warrant. They placed the man under arrest and seized the marijuana.

The evidence was presented before a grand jury which returned an indictment for unlawful possession of marijuana. Before the man was brought to trial, his attorney moved to dismiss the indictment, claiming the man's arrest and the seizure violated the man's Fourth Amendment rights.

Will the defense motion be likely to succeed?"

- A. Yes, because an anonymous phone call is insufficient to provide probable cause to search.
- B. Yes, because use of the thermal imaging device violated the man's reasonable expectation of privacy.
- C. No, because the marijuana was seized incident to a valid arrest.
- D. No, because the indictment was properly issued.

Question 3. Two police officers in a squad car received a BOLO (be on the lookout) message on their radio for a white van occupied by two men who had just committed a bank robbery. An hour later, the officers saw a van fitting this description traveling down a main road leading out of town. They pulled the van over and walked up to it. One of the officers told the occupants that they were under arrest for a bank robbery. The same officer observed a brown paper bag on the floor behind the front seat. He opened the side door and grabbed the bag, causing bundles of paper money to spill out of it into the view of both officers. The driver's attorney, by the appropriate procedure, makes a motion to suppress the brown paper bag and its contents, arguing that they were the fruits of an unreasonable search and seizure.

How should the court rule on the motion?

- A. Deny the motion, because the stop was valid.
- B. Deny the motion, because the brown paper bag was in plain view.
- C. Grant the motion, because the arrest was unlawful.
- D. Grant the motion, because, although the arrest was lawful, the search was not incident to the arrest.

Question 4. A husband was arrested for domestic violence against his wife. His wife agreed to testify against him. Shortly after the jury had been sworn in, but before any evidence could be presented, the couple reconciled, and the wife refused to testify. Believing that the case was not strong without the wife's testimony, the prosecution dropped the charges, and the husband was released. A few weeks later, the couple split up again and the wife filed a battery action for damages against her husband based on the original incident. The husband has filed a motion asking the court to dismiss the wife's case on double jeopardy grounds.

How should the court rule?

- A. Deny the husband's motion because jeopardy had not yet attached during the first trial since the prosecution had not yet presented any evidence against the defendant.
- B. Deny the husband's motion because this is an action for damages and not a criminal proceeding.
- C. Grant the husband's motion because battery is a lesser included offense of domestic violence.
- D. Grant the husband's motion because the prior case was not discontinued due to a manifest necessity.

Question 5. A banker was being investigated for money laundering. The police were able to establish probable cause and the banker was arrested. The case file was transferred to the prosecutor's office. The prosecutor assigned to handle the matter was involved in a six-month trial and was not able to present the case to the grand jury until that trial concluded. When the six-month trial concluded, the prosecutor took a much-needed month long vacation. Finally, when the prosecutor returned from vacation, seven months after the banker's arrest, the case was presented to the grand jury and the banker was indicted. The statute of limitations for money laundering in this jurisdiction is seven years. The banker filed a motion to dismiss the indictment, arguing that too much time has passed between his arrest and the indictment.

What is the most likely result of his motion?

- A. The motion should be granted, because it was unreasonable for the prosecutor to delay indicting the banker merely because the prosecutor was involved in another trial and then went on vacation.
- B. The motion should be granted, because the defendant's right to a speedy trial attached the moment he was arrested.
- C. The motion should be denied, because the banker did not establish any prejudice as a result of the delay.
- D. The motion should be denied, because neither the length of the delay nor the reason for the delay were unreasonable.

Enter Your Student ID Number: Click or tap here to enter text.

Spring 2020

CRIMINAL PROCEDURE FINAL EXAM

Professor Rodriguez

DURING THIS EXAM YOU ARE NOT TO HAVE ANY OTHER DOCUMENTS AND/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.

FINAL EXAM INSTRUCTIONS:

1. At the top of the page where it says “*Enter Your Student ID Number*” please click on the field to the right of the instruction and enter your five-digit student identification number.
2. 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.
3. **ALL OF YOUR WRITTEN EXAM ANSWERS INCLUDING THE MULTIPLE CHOICE MUST BE WRITTEN DIRECTLY INTO THIS WORD DOCUMENT.**
4. At the end of each essay question and the short-directed essay question, I will indicate the suggested number of pages allowed for your typed written answer. **Please note that it is more important to stay within the suggested number of pages so that you can complete the entire exam.**
5. You should have already read and acknowledge the **MSL Student Honor Code Pledge** which I posted on TWEN under **Course Materials** as a PDF document.
6. **Remember, this is a closed-book examination.** You are prohibited from using class notes, outlines and/or casebooks. Furthermore, you are prohibited from accessing the internet to research the exam question(s) or for assistance in writing any of your answers. You are not to use any professional bar preparation materials when taking the exam and you are also not to discuss the exam with anyone while you are taking the exam and after you have completed the exam. Finally, you are not permitted to have any materials on your table or at your feet other than those discussed in the **MSL Student Honor Code Pledge**.
7. If you **receive regular time** on an exam, you will have **three hours and thirty minutes** to complete the entire final exam which includes the essay section, the ten multiple choice questions, and the Bonus question. If you **receive time-and-a-half**, you will have **five hours and fifteen minutes** to complete the exam. If you **receive double time** you will have **seven hours** to complete the exam.
8. When you have completed the final exam you are to **immediately** save the exam on your computer using your student ID# as the filename. You will then upload the exam as a **WORD**

document to the **Assignment/Quizzes module** in TWEN to the **Criminal Procedure Final Exam Assignment**, using your student identification number.

9. Please make sure that prior to uploading the final exam into TWEN you have selected the correct WORD file. You **are not permitted** to save the final exam as a PDF document and upload it to TWEN unless you have received prior authorization from either myself or Dan Harayda.

10. If you incur any problems during the final exam you are to contact me by telephone at (978) 580-4242 immediately. We will then discuss your particular issue or concern and attempt to resolve it. At the conclusion of our discussion you are not permitted to have your cell phone on or near your person during the remainder of the final exam.

This exam consists of **Two** parts for a **total of 285 Points** and will account for **80% of your semester grade**. The total time for the exam is **three hours and thirty minutes**.

Part One consists of **2 essay questions** for a total value of **265 points**.

Essay Question # 1 is worth a total value of **90 points**.

Essay Question # 2 is worth a total value of **175 points**.

Part Two consists of **10 multiple choice questions** each worth **2 points** for a total value of **20 points**.

If you have extra time, there is a Bonus Question at the end, consisting of one directed short essay type question, worth 25 points, with which you may use to supplement your score.

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

PART ONE – TWO ESSAY QUESTIONS

This essay question is in the form of a hypothetical which describes a situation from which numerous procedural issues arise and which are, therefore, governed by specific criminal procedural rules. This question requires you to 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) your issue statement (3) followed by an explicit statement of the governing rule of law; (4) followed by your application of that rule to the specific facts of the situation.

ESSAY QUESTION # 1

(This question is worth 175 points. Suggested time for completion is 1 hour and 45 minutes)

While on a routine patrol in a police boat, John (a Massachusetts police officer) saw a large unoccupied and anchored powerboat leaking oil. John pulled his boat over to the boat and went on board to investigate even though the boat had a sign on it which said, “**No Trespassing – This Means You!**” To see what was causing the oil leak, John unlatched the door to the boat’s engine compartment. Immediately, John saw several very large packages of white powder. John had the boat towed to the police department’s dock where he then locked the boat to the dock with a chain and searched the entire boat without a warrant. During this search John found two unregistered automatic guns in a locked storage area below deck on the boat.

Chris, who owned the powerboat, lived nearby. When John went to Chris’s house to talk with him, only Mary was there. After John asked Mary if he could search the house, she said, “Sure, what do I care, I’m Chris’s ex-wife and I am moving the last of my stuff out now.” John searched the house and found in the basement a room full of large bags of marijuana.

John then received a call from his police department dispatcher for him to respond to a scream heard coming from another nearby house. When John arrived at that house, the front door was locked, and no one answered the doorbell. However, just as John was about to leave, he heard a woman inside the house scream. John kicked in the front door of the house, and found Nancy tied up on the floor with serious injuries. Nancy pointed at Chris, who was standing over her with a knife, and said that he had hurt her. Chris dropped the knife and ran. John tackled and handcuffed Chris and told him that he was under arrest. John also saw at this time a sawed-off shotgun on a nearby table. John then searched Chris and found several shotgun shells in his pocket.

Just as Chris was being arrested but before he received his Miranda warnings, Chris said “he was sorry and that he had “taken all kinds of pills” and “I can explain about the stuff on the boat, but

this shotgun is not mine.” Because Chris claimed to have taken all kinds of pills, John took Chris to a nearby hospital to conduct a blood test, which showed no medication in Chris’s system.

Chris was later brought before the court where he was arraigned, and bail was set. Chris requested, and was assigned, a public defender who was out of town on a fishing trip and would be unable to see Chris until the following Tuesday.

Chris was unable to make bail because the judge set his bail in the amount of \$100,000 dollars which Chris believed to be excessive and the judge never asked Chris about his financial resources, family relationships, criminal record and other related and relevant information for purposes of setting bail.

The following Monday, Chris was placed in a lineup where all the participants were told to repeat several sentences that Chris made to Nancy when he tied her up in her home. At the conclusion of the lineup, Nancy identified Chris as her assailant. At trial, the Government will seek to have Nancy testify that Chris was the man who attacked her based solely on her identification of Chris at the lineup.

Chris was later subpoenaed to appear before a grand jury to answer questions pertaining to the crimes he committed. The Government believed that Chris would likely assert his Fifth Amendment privilege. Prior to the scheduled appearances, the Government applied to the District Court for an order directing Chris 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.

At trial, his attorney plans to oppose the issuance of the order, contending that the scope of the immunity provided by the statute is not coextensive with the scope of the privilege against self-incrimination, and therefore is not sufficient to supplant the privilege and compel his testimony.

Chris was later indicted on all charges and before trial he filed motions for specific discovery requesting information about any deals, promises or inducements made to any government witnesses in exchange for their testimony. The Government did not disclose that any “deals, promises or inducements” had been made to any of its key witnesses at his later criminal trial. Chris was later convicted of all charges. It was later learned through a Freedom of Information Request that the Government had in fact paid two of its witnesses for their testimony at trial.

At trial, Nancy also took the stand to testify and when asked on direct examination if her attacker was present in the courtroom, she pointed directly at Chris and verbally identified him as her

attacker. At the close of the testimony, Chris's attorney moved for a judgment of acquittal or, alternatively to strike Nancy's courtroom identification on grounds that it violated Chris's constitutional rights. The motion was denied, and Chris was convicted on all charges.

What legal issue(s) and pretrial or post-conviction motion(s) will defense counsel raise on behalf of Chris and how are the court(s) likely to rule on the motion(s) and why? (Be certain, as explained in the instruction above, to recite the applicable rules of law and include in your answer the analysis that support your conclusions.) **(This Question is Worth 175 Points)**

The suggested number of typed written pages for this question is ten pages. If you believe that you do not need ten pages for your typed written answer simply end your typed written response once you have provided me with a complete answer. Please note that it is more important to stay within the suggested number of pages so that you can complete the entire exam.

BEGIN YOUR TYPED WRITTEN ANSWER BELOW

ESSAY QUESTION # 2

This essay question is in the form of a hypothetical which describes a situation from which numerous procedural issues arise and which are, therefore, governed by specific criminal procedural rules. This question requires you to 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) your issue statement (3) followed by an explicit statement of the governing rule of law; (4) followed by your application of that rule to the specific facts of the situation.

(This question is worth 90 points. Suggested time for completion is 55 minutes)

On February 1, a woman began serving a 60-day sentence in the county jail for operating a motor vehicle under the influence of alcohol. On February 4, a detective from the county sheriff's department took the woman from her cell to an interrogation room in the jail building. He informed her that she was a suspect in a homicide investigation and that he wanted to ask her some questions. The detective then read the woman the state's standard Miranda warnings:

You have the right to remain silent. Anything you say can be used against you in court. You have the right to an attorney. If you cannot afford an attorney, one will be appointed for you. If you decide that you wish to speak with us, you may change your mind and stop the questioning at any time. You may also ask for a lawyer at any time.

The detective asked the woman if she understood these rights. When she replied, "Yes, and I want a lawyer," questioning ceased immediately, and she was returned to her cell.

On March 15, the detective removed the woman from her cell and took her back to the same interrogation room. The detective told her that he wanted to ask her questions about the homicide because he had new information about her involvement. The detective read her the same Miranda warnings he had read on February 4 and asked her whether she understood her rights. She said, "Yes."

The woman then asked the detective, "If I ask you to get me a lawyer, how long until one gets here?" The detective replied as follows:

We have no way of getting you a lawyer immediately, but one will be appointed for you, if you wish, if and when you go to court. We don't know when that will happen. If you wish to answer questions now without a lawyer present, you have the right to stop answering questions at any time. You also have the right to stop answering questions until a lawyer is present.

The detective's statement accurately characterized the procedure for appointment of counsel. The woman then said, "I might need a lawyer." The detective responded, "That's your call, ma'am."

After a few minutes of silence, the woman took a Miranda waiver form from the detective and checked the boxes indicating that the rights had been read to her, that she understood them, and that she wished to waive her rights and answer questions. She then signed the form. After the detective began to question her, she confessed to the homicide.

The woman was charged with murder in state court. Her lawyer filed a motion to suppress the woman's March 15 statements to the detective, alleging three violations of her Miranda rights by the detective:

- (1) **Interrogating the woman on March 15 after she had invoked her Miranda right to counsel on February 4.**
- (2) **Incorrectly conveying to the woman her Miranda right to counsel by the statements he made on March 15.**
- (3) **Interrogating the woman on March 15 after she had invoked her Miranda right to counsel on March 15.**

After an evidentiary hearing, the trial court denied the motion to suppress on all three grounds raised by defense counsel.

Did the court err in denying the woman's motion to suppress? Explain.

In the space provided below recite the applicable, issues, rules of law and then apply them to the facts to support the conclusions you reached in your answer. **(This Question is Worth 90 Points)**

The suggested number of typed written pages for this question is three to five pages. If you believe that you do not need three to five pages for your typed written answer simply end your typed written response once you have provided me with a complete answer. Please note that it is more important to stay within the suggested number of pages so that you can complete the entire exam.

BEGIN YOUR TYPED WRITTEN ANSWER BELOW

PART THREE: MULTIPLE CHOICE QUESTIONS (There are ten MBE questions each worth 2 point each for a total of 20 points. Suggested time for completion is 20 minutes)

ALL MBE ANSWER CHOICES ARE TO BE WRITTEN IN THE EXAM

Question 1. A woman was the subject of a murder investigation. The investigation continued for more than two years, with the woman frequently being called in for questioning. Finally, the woman was indicted for the murder. The woman's lawyer filed a motion to dismiss all charges against her, arguing that the excessively long investigatory period violated the woman's constitutional right to a speedy trial.

Despite the pending motion, the woman decided that she wanted to "get it over with," and she told the judge that she wished to plead guilty. The judge then explained the charges to the woman and asked her if she understood them. She replied, "Yes." The judge then asked the woman if she understood that she was not required to plead guilty. She responded in the affirmative. Finally, the judge described the maximum sentence and asked the woman if she understood that she could receive the maximum sentence, which was life imprisonment. She again responded, "Yes," and maintained that she still wished to plead guilty. The judge accepted the woman's plea and sentenced her to 30 years' imprisonment in the state penitentiary. Six months later, the woman filed a motion to set aside the guilty plea.

Which of the following provides the best argument that the woman has a constitutional basis for relief?

- A) The judge did not rule on the pending motion to dismiss before accepting her guilty plea.
- B) The judge did not attempt to determine if the woman had actually committed the murder.
- C) The judge did not determine whether the files in the prosecutor's office contained any undisclosed exculpatory evidence.
- D) The judge did not determine whether the woman understood that she had a right to a trial by jury.

TYPE ANSWER CHOICE HERE:

Question 2. 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) Ensure 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.

TYPE ANSWER CHOICE HERE:

Question 3. 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.

TYPE ANSWER CHOICE HERE:

Question 4. 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.

TYPE ANSWER CHOICE HERE:

Question 5. A defendant is arrested and charged with shoplifting. He claims that he intended to pay for the item he took and requests an attorney and a jury trial. Both requests were denied by the judge, and the defendant is found guilty. The maximum penalty for shoplifting is a \$500 fine and six months in jail. The defendant is sentenced to three months in jail, which he is allowed to serve on weekends in the county detention center.

The defendant claims that his constitutional rights have been violated. Is he correct?

- A) No, because his actual sentence was only three months.
- B) Yes, because the defendant was denied the right to counsel.
- C) Yes, because the defendant was denied the right to a jury trial.
- D) Yes, because the defendant was denied both the right to counsel and the right to a jury trial.

TYPE ANSWER CHOICE HERE:

Question 6. A man was standing on a street corner when a police officer approached him. The officer gently grabbed the man's arm and said, "Hey, I want to talk to you." The man responded, "About what ... I'm in a hurry to go home and watch the baseball game." The officer then remarked, "Listen, what were you doing at the liquor store last week?" The man stated, "All right, man, I was there during the robbery." Whereupon, the officer placed the man under arrest and charged him with robbery.

The man was taken to police headquarters where he was booked. For the first time, he was given his Miranda warnings. He then waived his rights and confessed to being an accessory during the liquor store robbery. Afterward, the court appointed an attorney to represent the man. The attorney moved to suppress both statements the man gave to the police. The trial court granted the motion with respect to the first statement as a violation of Miranda. The man's attorney now moves to suppress the second statement given at the police headquarters.

This motion should be

- A) granted, because the second statement was the fruit of the first statement.
- B) granted, because the first statement was excluded, and the second statement is tainted.
- C) not granted, because the man had already confessed to the crime.
- D) not granted, because the second statement was volunteered after a knowing Miranda waiver.

TYPE ANSWER CHOICE HERE:

Question 7. Judge Sarah was recently appointed to the trial bench. To help her prepare for her first trial, she has made a list of the rights that are waived when a criminal defendant pleads guilty. Which of the following rights should not be on her list?

- A) Jury Trial
- B) Confrontation
- C) Effective Assistance of Counsel
- D) Self-Incrimination

TYPE ANSWER CHOICE HERE:

Question 8. A defendant was charged with murder. The medical examiner had not finished the autopsy report at the time of the preliminary hearing, so the prosecutor was unable to prove the cause or manner of death. As such, the case was dismissed. A few weeks later, the medical examiner finished the autopsy report and the prosecutor presented the case to the grand jury. The defendant testified in front of the grand jury that he had killed the victim in self-defense. The grand jury issued an indictment. The defendant moved to dismiss the indictment, arguing that jeopardy had attached at the preliminary hearing.

What is the most likely outcome of the defendant's motion to dismiss?

- A) The motion will be granted because jeopardy attached at the preliminary hearing.
- B) The motion will be granted because the defendant has standing to challenge the grand jury indictment.
- C) The motion will be denied because there is no basis for a double jeopardy challenge.
- D) The motion will be denied because jeopardy only attaches after trial.

TYPE ANSWER CHOICE HERE:

Question 9. A defendant is on trial for robbery. A witness picked the defendant's picture out of a photo array that was conducted by a police officer at the police station after the defendant's arrest. The photo array was impermissibly suggestive. No counsel was present for the defendant at the photo array. Later, at trial, the witness identified the defendant. Because of the witness's extended opportunity to view the defendant at the time of the crime, this identification was reliable.

The defendant moves to suppress the identification.

Should the court grant this motion?

- A) Yes, because the defendant's right to counsel was violated.
- B) Yes, because the identification procedure was impermissibly suggestive.
- C) No, because the identification was reliable.
- D) No, because the photo array was conducted by a police officer at the police station.

TYPE ANSWER CHOICE HERE:

Question 10. If an identification is improperly admitted at trial, which of the following statements is true?

- A) The conviction will be reversed and dismissed with prejudice.
- B) The conviction will be reversed and dismissed without prejudice.\
- C) The conviction will be reversed unless the error was harmless.
- D) The conviction will be reversed and vacated.

TYPE ANSWER CHOICE HERE:

(GO ON TO NEXT PAGE FOR BONUS QUESTION)

BONUS QUESTION: (Worth 25 points)

This Bonus Question consists of a short-directed essay question, 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. The Bonus question requires that you identify the specific rule, or rules, that will control the result. For this Bonus Question you must identify the issue(s), 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) your issue statement (3) followed by an explicit statement of the governing rule of law; (4) followed by your application of that rule to the specific facts of the situation.

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 the 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 is the Defendant's strongest constitutional argument(s) and what must the Defendant show in order to prevail? (This Question is Worth **25 Points**)

The suggested number of typed written pages for this question is two to three pages. If you believe that you do not need two to three pages for your typed written answer simply end your typed written response once you have provided me with a complete answer.

BEGIN YOUR TYPED WRITTEN ANSWER BELOW

Spring 2019

CRIMINAL PROCEDURE FINAL EXAM

Professor Rodriguez

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 **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 **THREE** parts for a **total of 150 Points** and will account for **75% of your semester grade**. The total time for the exam is **three hours**.

Part One consists of **4 directed short answer questions** for a total value of **65 points**;

Part Two consists of **1 essay question** for a total value of **55 points**; and

Part Three consists of **30 multiple choice questions** worth a total value of **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 ESSAY QUESTIONS

This exam consists of four 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. Defendant pleaded guilty in a trial court to an indictment charging him with capital murder. 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 numerous aggravating circumstances and no mitigating circumstances and sentenced Defendant to death on each of the murder counts.

If the defendant were to appeal his conviction to the state's appeals court, what is his strongest constitutional argument(s). How is the court likely to rule on his appeal and why? (This Question is worth **25 Points**) **Limit your answer to the space provided**

Question 2. A man ran an illegal casino out of the basement of his house. The police grew suspicious as to his activities after seeing a number of known gamblers entering and exiting the side door of the man's house at all hours of the night. A police officer staking out the house waited until he was sure the man had closed up his operations for the night and snuck into the man's basement by opening and entering through a basement window. Inside, the officer saw cards, poker chips, and stacks of cash. The police officer then tracked down one of the gamblers he had seen leaving the man's house, and the gambler voluntarily gave a statement that illegal gambling was indeed occurring in the basement and that the police would find cards, poker chips and cash there. The police officer then used an affidavit of the statement to obtain a search warrant for the basement, which the officer then used to enter the basement and seize the cards, poker chips, and cash.

At trial, the man brought a motion to suppress the introductions of the seized evidence. What is the man's strongest constitutional argument and how should the court rule on the motion and why? (This Question is worth **20 Points**) **Limit your answer to the space provided.**

ID NUMBER: _ _ _ _ _

Do Not Write in This Space
(Turn The Page For The Next Question)

Question 3. Around 3:25am on April 29, 2015, 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 is your attacker.” The victim managed to tell the police that 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 Defendant and, within hours, located him not far from the scene. At 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. Defendant is now appealing his conviction.

What are both the Defendant’s and the Prosecution’s strongest constitutional argument(s) on appeal and how is the court likely to rule and why? (This Question is worth **10 Points**) **Limit your answer to the space provided.**

Question 4. The Idaho Police Department received an anonymous tip that a young Hispanic male standing at a particular bus stop and wearing a plaid shirt and was carrying a gun. The police knew nothing about the informant and there was no audio recording of the call. Two officers were dispatched to check the area and when they arrived six minutes later, they saw three Hispanic males standing around in the area. One of the three Hispanic males (Carlos) was wearing a plaid shirt but other than that the officers did not see a firearm and Carlos made no threatening or otherwise unusual movements. One of the officers approached Carlos told him to put his hands on the bus stop, frisked him, and seized a gun from Carlos's pocket.

Carlos, a minor who was 10 days shy of his 16th birthday, was charged with carrying a concealed firearm without a license and possessing a firearm while under the age of 18.

If Carlos' attorney moves to suppress the gun, how should the motion judge rule on the motion and why? (This Question is worth **10 Points**) **Limit your answer to the space provided.**

ID NUMBER: _____

Do Not Write in This Space
(Turn The Page For The Next Question)

PART TWO: ESSAY QUESTION (This question is worth 55 points. Suggested time for completion is 45 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 Ben'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.

As Defense counsel for Ben what are the strongest constitutional issues you would raise to suppress the evidence?

PART THREE: MULTIPLE CHOICE QUESTIONS (This question is worth 30 points.**Suggested time for completion is 60 minutes)**

Part Three consists of thirty multiple choice questions. Each answer must be marked on the bubble sheet in pencil to obtain credit.

Question 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. Ensure 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.

Question 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.

Question 3

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.

Question 4

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.

Question 5

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 6

The police suspected that a man was dealing in illegal drugs. They gathered a sufficient amount of evidence and obtained a search warrant. They went to the man's home, arrested him, and conducted a thorough search. They found and confiscated large amounts of cocaine.

At a preliminary hearing, the man brought a motion to suppress the evidence against him. The prosecution informed the court that the warrant had been issued on the basis of information provided by an informant. The man's attorney requested the prosecution produce the informant for questioning. When the prosecution refused to do so, the attorney made a further motion to suppress all of the evidence against his client obtained from the search based on his client's right of confrontation by the prosecution's refusal to produce the informant.

The attorney's motion to be suppressed should be:

- A. Granted, because the denial of the right of cross-examination effectively prevents a fair trial
- B. Granted, because the rights of the defendant override any right of the police to keep an informant anonymous.
- C. Denied, because defendants have no right to know the identity of informants.
- D. Denied, because the prosecution is not required to either name or produce the informant.

Question 7

The police received a report that women dressed as superheroes had robbed a man in his house and stolen many of his valuables. The only way onto or off the island where he lived was a ferry. The last ferry was getting ready to leave for the night when the report came to the police.

Without attempting to get a warrant, the police stopped all the cars waiting for the ferry. In one vehicle, the police noticed three women fidgeting rather nervously. Upon searching their auto, the police found the victim's stolen property hidden under the front seat. The defendants were immediately placed under arrest.

At their trial for armed robbery, the defendants move to suppress the use of the property confiscated by the police as evidence.

Their motion should be:

- A. Granted, because the police did not have a warrant to search their car.
- B. Granted, because the police did not have probable cause to suspect that their car contained evidence of the crime.
- C. Denied, because the police had probable cause to search their car and, under the circumstances, no warrant was required.
- D. Denied, because even though the detention was unlawful, the police had reasonable suspicion to believe that their car contained evidence of the crime since they observed the women fidgeting nervously.

Question 8

A defendant was arrested for assault. He knew that he was a "three strike" candidate and did not want to spend the rest of his life in prison, so he asked for an opportunity to set up his boss, who he claimed sells a substantial amount of professionally stolen merchandise. The police agreed to work with the defendant and sent him to the boss's condo with marked merchandise that contained transmitters. When the defendant left his boss's condo, he no longer had the merchandise. He was under surveillance from the time he left the police van until he went in the front door of the condo, and again from the moment he left the condo until he returned to the van.

The police immediately move in to arrest the boss for receiving stolen property. They knock and announce their presence three times, but there is no answer. They ram the door and enter, finding the marked stolen property and numerous other items of expected stolen property, but not the boss, who had exited by the back stairwell to take his dog for a walk. The boss then moved to suppress the seized property.

The court should:

- A. Suppress the evidence, because there were no exigent circumstances.
- B. Suppress the evidence, because the police had no warrant.
- C. Admit the evidence, because the police knocked and announced their presence before entering.
- D. Admit the evidence, because they had evidence against the boss for the offense.

Question 9

A man spent the weekend at his cousin's apartment. The police arrived, flashed a piece of paper that they indicated was a warrant, and asked to search the premises. The man allowed the police to enter and search the apartment. The police found cocaine in the apartment and charged the defendant (the tenant of the apartment) with possession of drugs. Before trial, the defendant's attorney moved to dismiss the charges, arguing that the search violated her Fourth Amendment rights.

Should the motion be granted?

- A. Yes, because defendant's cousin did not voluntarily consent to the search.
- B. Yes, because defendant's cousin was a guest, and, therefore, could not consent to the search.
- C. No, because the defendant's cousin voluntarily consented to the search.
- D. No, because defendant did not have an expectation of privacy in the apartment while her cousin was staying there.

Question 10

A federal officer had probable cause to believe a woman had participated in a bank robbery. Two days after the robbery, the woman checked into a local hotel room. When the woman left for the evening, the hotel manager opened the hotel room door so the officer could enter the room and look inside. The officer did not find any of the stolen money but did see, lying open on the bed, the woman's diary. The diary contained an entry describing the woman's involvement in robbing the bank. The woman was charged in federal court with bank robbery. She moved to suppress the diary.

Should the court suppress the diary?

- A. Yes, because the officer had no warrant.
- B. Yes, because admitting the diary would violate the woman's privilege against self-incrimination.
- C. No, because the hotel manager had actual authority to allow the officer into the hotel room.
- D. No, because the officer reasonably relied on the hotel manager's apparent authority to allow the officer into the hotel room

Question 11

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.

Question 12

Harvey was arrested and charged with a robbery. His bail was lowered at his initial bail hearing, but not enough for him to get out of jail. The State's case was somewhat thin, but they had suspicions that Harvey was the mastermind behind more than 25 high-end robberies. In an attempt to bolster their case they put Alex in the cell next to him. He was instructed not to ask any questions of Harvey but just to listen, and let prosecutors know if Harvey incriminated himself. After returning from his preliminary hearing, Harvey made a statement in his cell that, "money buys 'justice,' my lawyer will have me walking out the door in no time. Those dumb ass prosecutors better realize they need more than a guilty defendant, they need evidence."

What is the likely result of Harvey's motion to disallow the statement at trial?

- A. It will be denied, because Alex did not elicit the statement from Harvey.
- B. It will be denied, because Alex was not a police officer.
- C. It will be granted, because Alex was an agent of the police and did not Mirandize Harvey.
- D. It will be granted, because Alex's actions violated the Massiah Rule.

Question 13

A woman was arrested by federal agents for the possession of narcotics that she purchased from a state-sanctioned dispensary to treat pain related to a chronic illness. 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. The employee, however, now recants his earlier testimony, claiming he was coerced by the prosecution. The woman argues double jeopardy prevents her from being tried again.

Should the court dismiss the case?

- A. Yes, because the employee has recanted his testimony.
- B. Yes, because jeopardy attached in the first trial when the jury was impaneled and sworn.
- C. No, because jeopardy does not attach until the close of the prosecution's case.
- D. No, because the woman was neither acquitted nor convicted in the first trial.

Question 14

A defendant suspected her long-term boyfriend was cheating on her. On a hunch, she went to her boyfriend's apartment one afternoon and, using her key, she entered the apartment. Once inside, she found her boyfriend and his new girlfriend in bed together. In a rage, the defendant retrieved the gun from the nightstand and killed her boyfriend and his new girlfriend.

After the shooting, the defendant left on a two-day trip to the mountains to get the week's events off her mind. She called her teenage neighbor to take care of her apartment while she was gone and to look after her 4-year-old daughter. That night, after the defendant left, the police came to the apartment. They asked the neighbor if they could search the apartment, and the neighbor gave them permission. The police found in the defendant's bedroom the gun used to kill her boyfriend.

At a motion to suppress the gun prior to trial, which of the following facts would the defendant's attorney be **LEAST** likely to attempt to prove?

- A. The defendant gave her neighbor the keys to her apartment.
- B. The police did not have a search warrant.
- C. The defendant told her neighbor not to answer the door to anyone.
- D. The police told the neighbor she would be taken to the police station if she refused permission to search.

Question 15

A police officer saw a man who was a convicted drug dealer walking down the street. The officer temporarily detained the man based on a reasonable suspicion that the man was illegally carrying a weapon. The officer conducted a pat-down of the man and felt an indeterminate lump in the man's jacket pocket. The officer removed the object, which turned out to be a pocket Bible. Protruding from the Bible was a plastic bag containing a white powder. The officer recognized the powder as heroin, and immediately arrested the man. Later tests confirmed that the powder was heroin. At trial, the man's attorney moved to exclude evidence of the heroin.

How should the judge rule?

- A. Deny the motion, because the evidence was discovered during a valid Terry stop.
- B. Deny the motion, because the officer had reasonable suspicion that the man was carrying a weapon.
- C. Grant the motion, because the pocket Bible did not immediately resemble a weapon or contraband.
- D. Grant the motion, because the officer did not have probable cause to stop the man and conduct a pat-down.

Question 16

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.

Question 17

A defendant is arrested and charged with shoplifting. He claims that he intended to pay for the item he took and requests an attorney and a jury trial. Both requests were denied by the judge, and the defendant is found guilty. The maximum penalty for shoplifting is a \$500 fine and six months in jail. The defendant is sentenced to three months in jail, which he is allowed to serve on weekends in the county detention center.

The defendant claims that his constitutional rights have been violated. Is he correct?

- A. No, because his actual sentence was only three months.
- B. Yes, because the defendant was denied the right to counsel.
- C. Yes, because the defendant was denied the right to a jury trial.
- D. Yes, because the defendant was denied both the right to counsel and the right to a jury trial.

Question 18

A man was standing on a street corner when a police officer approached him. The officer gently grabbed the man's arm and said, "Hey, I want to talk to you." The man responded, "About what ... I'm in a hurry to go home and watch the baseball game." The officer then remarked, "Listen, what were you doing at the liquor store last week?" The man stated, "All right, man, I was there during the robbery." Whereupon, the officer placed the man under arrest and charged him with robbery.

The man was taken to police headquarters where he was booked. For the first time, he was given his Miranda warnings. He then waived his rights and confessed to being an accessory during the liquor store robbery. Afterward, the court appointed an attorney to represent the man. The attorney moved to suppress both statements the man gave to the police. The trial court granted the motion with respect to the first statement as a violation of Miranda. The man's attorney now moves to suppress the second statement given at the police headquarters.

This motion should be

- A. granted, because the second statement was the fruit of the first statement.
- B. granted, because the first statement was excluded, and the second statement is tainted.
- C. not granted, because the man had already confessed to the crime.
- D. not granted, because the second statement was volunteered after a knowing Miranda waiver.

Question 19

A police officer was sitting in her squad car when she received a radio message from the police dispatcher that a suspect in a recent robbery had been spotted near her location. Two minutes later, a bartender who matched the detailed description provided by the dispatcher walked by the officer. When the officer got out of her squad car, the bartender began running toward the front door of his home. The officer ran after him and apprehended him before he reached the door to his house. The officer arrested the bartender and advised him of his Miranda rights, which the bartender promptly waived. The officer then asked the bartender, "Is the stuff from the robbery in your house?" The bartender shrugged his shoulders and replied, "It might be." The officer entered the bartender's house and found a briefcase on the kitchen table. When she opened the briefcase, the officer found several thousand dollars, which turned out to be proceeds from the robbery.

At the bartender's trial for robbery, the prosecution sought to admit the briefcase and its contents into evidence. The bartender moved to suppress.

How should the court rule on the bartender's motion?

- A. Grant the motion, because even though the entry into the house was proper, the search of the briefcase was improper.
- B. Grant the motion, because both the entry into the bartender's house and the search of the briefcase were improper.
- C. Deny the motion, because the police officer had probable cause to believe that there might be evidence in the house.
- D. Deny the motion, because there was no Miranda violation.

Question 20

A student was shopping at a department store for clothing and took several shirts into the fitting room to try them on. While inside, she decided to steal one of the shirts and so she put it on, removed the tags, and placed a sweater over the shirt. She left the fitting room, walked around the store, and then moved towards the exit, but was stopped by the store security guard, who asked her to come to his office. She came to his office and the guard questioned her about the theft and told her she could not leave until she confessed. She confessed to stealing the shirt. The security guard then called the police, and a police officer also asked the student about the theft. She again confessed, after which the police officer gave her Miranda warnings and arrested her. At trial, the prosecution seeks to admit the confessions to both the security guard and the police officer. The student objects.

How will the court decide?

- A. Admit the confession to the security guard, but not the police officer.
- B. Admit the confession to the police officer, but not the security guard.
- C. Admit both confessions.
- D. Admit neither confession.

Question 21

A man and a woman were arrested and charged with bank robbery. After receiving Miranda warnings, both requested an attorney. Following their arrests, the man and the woman were placed in separate jail cells.

The next day before arraignment, the man asked a police officer if he could see his friend, the woman. The man was taken to the woman's jail cell and allowed to talk to her. Neither defendant knew that the police had placed a listening device in the woman's jail cell. As a result, their conversation was being overheard and recorded by the police. The police planted the listening device without securing a warrant.

While they were together, the man told the woman not to admit to anything because they could beat the charges with the help of a good lawyer. At trial, the prosecution sought to introduce the man's incriminating statement into evidence. The man's attorney has filed a motion to exclude.

The man's motion to exclude should be:

- A. Denied, because the defendants did not have a reasonable expectation of privacy.
- B. Denied, because the statement did not violate the man's Fifth Amendment privilege against self-incrimination.
- C. Granted, because both defendants requested an attorney before engaging in their conversation.
- D. Granted, because the police did not secure a warrant before installing the listening device.

Question 22

A plainclothes police officer who frequently ate lunch at a certain deli heard rumors that the deli's owner often placed illegal bets on sporting events. Based on the rumors, the officer peeked into an envelope next to the register and saw betting slips. The officer asked his waitress about the envelope, and she told him that the owner had given it to her and that a man in brown cap was to pick it up at 2 p.m. The officer stayed at the deli until 2p.m. and watched the waitress hand the envelope to a man in a brown cap.

The officer passed the information on to a friend in the F.B.I. Several weeks later, based on that information, F.B.I. agents obtained a search warrant for the owner's home- a condominium in a large multi-unit complex. The agents went to the home in the early evening, while the owner was at the deli. After announcing their purpose to the owner's wife, they searched the home and found betting slips and other materials related to illegal gambling.

The owner was indicted for conspiracy to violate a federal statute prohibiting the use of interstate phone lines to conduct gambling, and for the possession of betting slips.

Which of the following would be the best reason for excluding the evidence found at the owner's home?

- A. The owner was not home when the warrant was executed.
- B. The search was conducted in the evening when it easily could have been conducted during the daylight hours.
- C. The warrant failed to specify which condominium unit was to be searched.
- D. The waitress had never before been used as an informant.

Question 23

A man is a suspect in the disappearances and suspected murders of three female students at the local college. A police detective is convinced that the man is the culprit and that he continues to stalk young women, but he has been unable to gather sufficient evidence to obtain a search warrant. He has requested permission to search the man's home and been refused. In desperation, he takes to parking down the street from the man's house, hoping to see something that will tip the scales and allow him to obtain a warrant. One afternoon while the detective is staking out the man's house, a furnace repair truck pulls up. The detective approaches the truck and explains the situation, suggesting that if the repairman has the opportunity to look around a bit, he might be able to help crack the case. The repairman, alone in the basement, opens some boxes and finds four college IDs and a woman's blouse with blood on it. He stuffs the items into his toolbox and takes them to the detective. The names on three of the IDs match the missing girls.

If the state attempts to introduce the IDs at trial, the court should rule them:

- A. Inadmissible.
- B. Admissible, because the repairman is a private citizen.
- C. Admissible, because of the inevitable discovery doctrine.
- D. Admissible, because the repairman was invited onto the property by the man.

Question 24

A motorist was driving through an apartment building area plagued with an unusually high incidence of burglaries and assaults. Acting pursuant to a police department plan to combat crime by the random stopping of automobiles in the area between midnight and 6:00 a.m., a police officer stopped the motorist and asked him for identification. As the motorist handed the officer his license, the officer directed a flashlight into the automobile and saw what appeared to be the barrel of a shotgun protruding from under the front seat on the passenger side of the car. The officer ordered the motorist from the car, searched, and discovered marijuana cigarettes and a shotgun.

At the motorist's trial for unlawful possession of narcotics, his motion to suppress the use of marijuana as evidence should be:

- A. Sustained, because the marijuana was discovered as a result of the unlawful stopping of the motorist's automobile.
- B. Sustained, because the use of the flashlight constituted a search of the interior of the motorist's automobile without probable cause.
- C. Denied, because the officer's conduct was consistent with established police plan.
- D. Denied, because the discovery of the gun in plain view created the reasonable suspicion necessary to justify the arrest and search of the motorist.

Question 25

The defendant was arrested for shoplifting while trying to leave Target. The arresting officer asked the defendant where his car was parked. The car was in a large lot that serviced Target and other stores in a shopping complex that was open 24 hours a day. The officer called for a tow truck and then inventoried the vehicle before it was towed. During the inventory, the officer found a handgun in the glove compartment. The defendant was charged with improperly handling a firearm in a vehicle, in addition to the shoplifting charge. The defense moved to suppress the handgun.

The handgun is:

- A. Inadmissible because the impoundment and inventory was illegal.
- B. Inadmissible because the defendant should have been issued a summons and allowed to drive the car away from the scene of the arrest.
- C. Admissible because the impoundment and inventory was legal.
- D. Admissible because the defendant was in custody and the inventory was incident to a lawful arrest.

Question 26

Judge Sarah was recently appointed to the trial bench. To help her prepare for her first trial, she has made a list of the rights that are waived when a criminal defendant pleads guilty. Which of the following rights should not be on her list?

- A. Jury Trial
- B. Confrontation
- C. Effective Assistance of Counsel
- D. Self-Incrimination

Question 27

You are an architect who is designing a grand jury deliberation room in a new federal courthouse. How many grand jurors should the new room accommodate during deliberations?

- A. 9
- B. 12
- C. 23
- D. 50

Question 28

The defendant robbed an elderly woman at gunpoint. An off-duty police officer witnessed the incident from a distance while walking his dog. He chased down the defendant and placed him under arrest. After being informed of his Miranda rights, the defendant immediately invoked his right to counsel. The defendant was taken to the police station, and before the defendant's attorney arrived, the defendant was placed in a lineup. The defendant did not object to being placed in the lineup. The elderly woman immediately identified the defendant as the robber. The defendant's attorney moved to suppress the identification because it was conducted without an attorney present.

Is the defendant's motion likely to be granted?

- A. No, because the defendant waived his right to have counsel present.
- B. No, because the defendant was not entitled to the presence of counsel.
- C. Yes, because the defendant invoked his right to counsel.
- D. Yes, because the lineup was a corporeal identification.

Question 29

An indigent defendant was indicted for driving under the influence of alcohol, a misdemeanor. The lawyer who had been appointed to represent the defendant suffered a fatal heart attack on his way to the courthouse on the day scheduled for trial. In discussing the absence of the defendant's lawyer with the defendant, the trial judge learned from the defendant that he intended to plead guilty. The judge indicated that, in exchange for the defendant's guilty plea, the defendant would not serve time in prison. The defendant agreed and was sentenced to two months in prison, with the sentence suspended.

The defendant appealed his conviction, contending that he was denied his Sixth Amendment right to counsel at trial.

Should the judge reverse the defendant's conviction?

- A. No, because the defendant was convicted of a misdemeanor.
- B. No, because the defendant's prison sentence was suspended.
- C. Yes, because the defendant was convicted of a crime for which a sentence of incarceration was imposed.
- D. Yes, because the defendant was convicted of a crime that was punishable by imprisonment.

Question 30

A defendant is on trial for robbery. A witness picked the defendant's picture out of a photo array that was conducted by a police officer at the police station after the defendant's arrest. The photo array was impermissibly suggestive. No counsel was present for the defendant at the photo array. Later, at trial, the witness identified the defendant. Because of the witness's extended opportunity to view the defendant at the time of the crime, this identification was reliable.

The defendant moves to suppress the identification.

Should the court grant this motion?

- A. Yes, because the defendant's right to counsel was violated.
- B. Yes, because the identification procedure was impermissibly suggestive.
- C. No, because the identification was reliable.
- D. No, because the photo array was conducted by a police officer at the police station.

Spring 2019
CRIMINAL PROCEDURE MID-TERM EXAM

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 **TWO** parts for a **total of 85 Points** and will account for **15% of your semester grade**. The total time for the exam is **1 hour and 15 minutes**.

Part One consists of a **3 directed short answer questions** for a total value of **30 points**;

Part Two consists of **20 fill-in-the-blank questions** for a total value of **55 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 (NOT
Massachusetts) constitutional law.**

PART ONE – DIRECTED SHORT ESSAY QUESTIONS

This exam consists of three 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. Defendant was arrested, charged and convicted in the U.S. District Court with violating the federal statute on interstate gambling. At trial, the government seeks to enter into evidence portions of defendant’s telephone conversation which were obtained via a listening device affixed to the outside of an enclosed public telephone booth.

As the defendant’s attorney, you file a motion seeking to suppress any statements made by defendant. What is the defendant’s strongest constitutional argument and how is the Judge likely to rule on the motion and why? (This Question is worth **10 Points**) **Limit your answer to the space provided.**

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**) **Limit your answer to the space provided.**

Do Not Write in This Space
(Turn The Page For The Next Question)

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.

Upon seeing the youth leave Rage’s trailer, 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 in The Holy Grail in the refrigerator all of which was seized.

If Rage’s attorney files a motion to suppress the marijuana, plastic bags and scale what is his strongest constitutional argument and how should the motion judge rule and why? (This Question is worth **10 Points**) **Limit your answer to the space provided.**

PART TWO: FILL-IN-THE-BLANK

Question 1. What level of information or standard of evidence must the Government possess to conduct an evidentiary search? (This Question is worth **2 Points**) **Limit your answer to the space provided.**

Question 2. What level of information or standard of evidence must the Government possess to conduct a Terry stop (threshold inquiry, brief detention, investigatory stop) (This Question is worth **2 Points**) **Limit your answer to the space provided.**

Question 3. What level of information or standard of evidence must the Government possess to make an arrest? (This Question is worth **2 Points**) **Limit your answer to the space provided.**

Question 4. What level of information or standard of evidence must the Government possess to conduct a protective pat frisk (This Question is worth **2 Points**) **Limit your answer to the space provided.**

Question 5. During a criminal prosecution, what level of information or standard of evidence must the Government prove to properly convict a criminal defendant? (This Question is worth **2 Points**) **Limit your answer to the space provided.**

Question 6. Fully list the four factors used to determine whether a person's land falls within the curtilage: (This Question is worth **4 Points**) **Limit your answer to the space provided.**

1. _____

2. _____

3. _____

4. _____

Question 7. In *Payton v. New York*, the Court concluded that the Fourth Amendment, requires that police, before entering a dwelling with a valid arrest warrant must have: (This Question is worth **2 Points**) **Limit your answer to the space provided.**

1. _____

2. _____

Question 8. Fully list the three requirements the Prosecution must show to prove constructive possession: (This Question is worth **2 Points**) **Limit your answer to the space provided.**

1. _____
2. _____
3. _____

Question 9. In *Coolidge v. New Hampshire*, the U.S. Supreme Court set forth the three requirements necessary for a plain view seizure. Fully list the three requirements: (This Question is worth **2 Points**) **Limit your answer to the space provided.**

1. _____
2. _____
3. _____

Question 10. In *United States v. Mendenhall*, the U.S. Supreme Court set forth the standard used to determine whether a person has been seized in a constitutional sense. Fully recite the standard the Court applied: (This Question is worth **2 points**) **Limit your answer to the space provided.**

Question 11. In *California v. Hodari D.*, the U.S. Supreme Court applied a new standard used to determine whether a person has been seized in a constitutional sense. Fully recite the standard applied by the Court: (This Question is worth **2 points**) **Limit your answer to the space provided.**

Question 12. In *Maryland v. Garrison*, the U.S. Supreme Court defined what the scope of a lawful search was. Fully recite below the scope of a lawful search is: (This Question is worth **2 points**) **Limit your answer to the space provided**

Question 13. In *United States v. Robinson*, the U.S. Supreme Court announced that a search-incident-to-a-lawful arrest (S-I-A) is an established exception to the warrant requirement. (The following questions are worth a total of **4 points**) **Limit your answer to the space provided**

a. If a defendant challenges the lawfulness of a SIA at a suppression hearing what must the Government show to prove that this type of search was permissible?

b. What is the purpose of a S-I-A?

c. What is the scope of a S-I-A?

Question 14. In *Cupp v. Murphy*, the U.S. Supreme Court held that the police were justified in subjecting Murphy to a very limited search necessary to preserve the highly evanescent evidence they found under his fingernails.

What is evanescent evidence **and** if the police are faced with this type of evidence what are the police constitutionally permitted to do with it? (This Question is worth **2 points**) **Limit your answer to the space provided**

Question 15. In *Illinois v. Lafayette*, the U.S. Supreme Court held “the governmental interests underlying a stationhouse [booking room inventory] of the arrestee’s person and possession may in some circumstances be even greater than those supporting a search immediately following arrest.” (The following questions are worth a total of **4 points**) **Limit your answer to the space provided**

a. A booking room inventory is evidentiary in nature?

TRUE [] or FALSE []

b. What must the police have within the police department in order to perform a booking room inventory?

c. What is the scope of a booking room inventory?

Question 16. In *Birchfield v. North Dakota*, the U.S. Supreme Court has determined that blood tests (venipunctures of the skin) of a suspect or defendant are:

Circle the correct statement: (This Question is worth **2 points**)

Significantly more intrusive or **minimally intrusive**

Question 17. In *Maryland v. Buie*, the U.S. Supreme Court announced the protective sweep doctrine. (The following questions are worth a total of **4 points**) **Limit your answer to the space provided**

a. What level of information or standard of evidence must the police possess to conduct a protective sweep in an adjoining area to the arrest:

b. What is the purpose of a protective sweep:

c. What is the scope of a protective sweep:

d. What level of information or standard of evidence must the police possess to conduct a protective sweep beyond an adjoining area?

Question 18. In *Brigham City, Utah v. Stuart*, the U.S. Supreme Court held that the emergency aid exception doctrine was an exception to the warrant requirement. (The following questions are worth a total of **3 points**) **Limit your answer to the space provided**

a. In order to raise the emergency aid exception doctrine what must the Government must show?

b. What is the purpose and scope of the emergency aid exception doctrine?

Question 19. In *Arizona v. Gant*, the issue before the U.S. Supreme Court was whether a search-incident-to-arrest of a recent occupant of a motor vehicle is unreasonable under the Fourth Amendment when the occupant of the motor vehicle has been physically detained and can no longer access the vehicle to retrieve weapons or evidence?

What was the holding in *Gant*? (This Question is worth **5 Points**) **Limit your answer to the space provided.**

Question 20. In *Terry v. Ohio*, the issue before the U.S. Supreme Court was whether an on-the-street encounter (pat frisk) of a suspect believed to be committing a crime and armed and presently dangerous constitutes an unreasonable search and seizure under the Fourth Amendment? (The following questions are worth a total of **5 points**) **Limit your answer to the space provided**

a. What must the Government show in order to conduct a pat frisk?

b. What is the purpose of a pat frisk?

c. What is the permissible scope of a pat frisk?

d. What must the Government show in order to permit a police officer to seize evidence under the plain feel doctrine?

Spring 2018
CRIMINAL PROCEDURE FINAL EXAM

Professor Rodriguez

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 **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 **SIX** parts for a **total of 260 Points** and will account for **85% of your semester grade**. The total time for the exam is **three hours**.

Part One consists of **4 directed short answer questions** for a total value of **40 points**;

Part Two consists of **8 fill-in-the-blank questions** for a total value of **20 points**;

Part Three consists of **1 essay questions** question worth **70 points**;

Part Four consists of a **4 directed short answer questions** for a total value of **50 points**;

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

Part Six consists of:

5 directed short answer questions which require an analysis allowing for a total value of **50 points**.

5 directed short answer questions which DO NOT require an analysis allowing for a total value of **10 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 ESSAY QUESTIONS

This exam consists of four 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. Defendant was arrested, charged and convicted in the U.S. District Court with violating the federal statute on interstate gambling. At trial the government seeks to enter into evidence portions of defendant’s telephone conversation which were obtained via a listening device affixed to the outside of an enclosed public telephone booth.

As the defendant’s attorney, you file a motion seeking to suppress any statements made by defendant. What is the defendant’s strongest constitutional argument and how is the Judge likely to rule on the motion and why? (This Question is worth **10 Points**) **Limit your answer to the space provided.**

Question 2. Boston police detectives who were investigating the armed robbery of Bung Hole Liquors assembled sufficient evidence to establish probable cause to believe that the defendant robbed the liquor store. Two days later without prior judicial authorization detectives went to the home of the defendant to arrest him.

Upon seeing the lights on and hearing music coming from inside the defendant’s apartment the police immediately made a forcible entry into the apartment and began searching for the defendant. After searching the apartment for the defendant, the police quickly learned that the defendant was not present inside the apartment. However, while searching for the defendant the police discovered a gun and ski mask used during the robbery and seized both items as evidence to be used at trial.

If the defendant’s attorney files a motion to suppress the gun and ski mask found inside the defendant’s apartment what is the defendant’s strongest constitutional argument and how should the court rule on the motion and why? (This Question is worth **10 Points**) **Limit your answer to the space provided.**

Question 3. 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.**

ID NUMBER: _ _ _ _ _

Do Not Write in This Space

(Turn The Page For The Next Question)

Question 4. 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.

Upon seeing the youth leave Rage's trailer 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 in The Holy Grail in the refrigerator all of which was seized.

If Rage's attorney files a motion to suppress the marijuana, plastic bags and scale what is his strongest constitutional argument and how should the motion judge rule and why? (This Question is worth **10 Points**) **Limit your answer to the space provided.**

PART TWO: FILL-IN-THE-BLANK

Question 1. What level of information or standard of evidence must the Government possess to conduct an evidentiary search? (This Question is worth **2 Points**) **Limit your answer to the space provided.**

Question 2. What level of information or standard of evidence must the Government possess to conduct a Terry stop (threshold inquiry, brief detention, investigatory stop) (This Question is worth **2 Points**) **Limit your answer to the space provided.**

Question 3. What level of information or standard of evidence must the Government possess to make an arrest? (This Question is worth **2 Points**) **Limit your answer to the space provided.**

Question 4. What level of information or standard of evidence must the Government possess to conduct a protective pat frisk (This Question is worth **2 Points**) **Limit your answer to the space provided.**

Question 5. During a criminal prosecution what level of information or standard of evidence must the Government prove to properly convict a criminal defendant? (This Question is worth **2 Points**) **Limit your answer to the space provided.**

Question 6. Fully list the four factors used to determine whether a person's land falls within the curtilage: (This Question is worth **4 Points**) **Limit your answer to the space provided.**

1. _____

2. _____

3. _____

4. _____

Question 7. In *Payton v. New York*, the Court concluded that the Fourth Amendment, requires that police, with a valid arrest warrant, prior to making an arrest in home possess the following information: (This Question is worth **2 Points**) **Limit your answer to the space provided.**

1. _____

2. _____

Question 8. Fully list the three requirements the Prosecution must show to prove constructive possession: (This Question is worth **2 Points**) **Limit your answer to the space provided.**

1. _____

2. _____

3. _____

Question 9. In *Coolidge v. New Hampshire* the U.S. Supreme set forth the three requirements necessary for a plain view seizure. Fully list the three requirements. (This Question is worth **2 Points**) **Limit your answer to the space provided.**

1. _____

2. _____

3. _____

Do Not Write in This Space

(Turn The Page For The Next Question)

PART THREE – ESSAY QUESTION (This question is worth 70 points. Suggested time for completion is 36 minutes)

Part Three 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 V & W Grocery in Worcester. 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 V & W 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 by threatening him with baseball bats.

When Victor arrived at the bank, his car was blocked by the van driven by Charlie. Andy and Brad got out of the van wearing black stocking masks and carrying aluminum 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 bank heard the commotion and looked out her apartment window to witness two men wearing black stocking masks, carrying aluminum baseball bats getting into a brown van. The van quickly sped away from the bank. The witness dialed 911 and told the police dispatcher that after hearing a gunshot she looked out her window and observed two white males in their forties wearing black stocking masks and carrying aluminum baseball bats get into an older brown Chevy van with tinted windows and a bubble window, mag wheels and large tires with large bright white lettering on the sidewall of each

tire that states "FIRESTONE". The witness also thought that she noticed that 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. Even though the witness did not leave her name and address her call was recorded and her telephone number could be traced.

The Boston Police Department quickly broadcasted a report to all police patrol cars to be on the lookout for a dark colored Chevy van with tinted windows and a bubble window, mag wheels and large tires with large bright white lettering on the sides of each tire that read "FIRESTONE" and a yellow decal in the left rear window. 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 immediately 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. 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 and two red rubber bands on the front passenger seat.

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 and Brad are arraigned in the Boston Municipal Court for the robbery of V & W 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, after meeting and speaking briefly with his court appointed lawyer is brought back

down to lock-up and is 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 between he and Brad. Brad made several incriminating statements concerning the robbery of Giant Grocery which the prosecution now seeks to use as part of its case in chief at trial.

What legal issues and motions will defense counsel raise for Andy, Brad and Charlie and how is the court likely to rule on the motions and why? (Be certain, as explained in the instruction above, to include in your answer the analysis that support your conclusions.)

ID NUMBER: _____

**Do Not Write in This Space
(Turn The Page For The Next Question)**

PART FOUR: DIRECTED SHORT ESSAYS

This section consists of 4 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 attempting to fly cross-county with her two dogs, but federal employees at the airport stopped her before she could board the plane out of concern that the dogs could pose a safety risk to other passengers. The woman became extremely agitated and physically assaulted the employees. She was arrested by the local police and put on trial for assault but was acquitted by the jury which found she acted in self-defense. The woman was then indicted on federal charges for assaulting the employees.

If the woman’s attorney files a pre-trial motion to have the case dismissed, what is the strongest constitutional argument? How should the court rule on the motion and why? (This Question is worth **5 Points**) **Limit your answer to the space provided.**

Question 2. A man is arrested and charged with giving an insufficient funds check with the intent to defraud. Under state statute, the crime is a misdemeanor punishable by a maximum of six months imprisonment or a \$2,000 fine. At a pretrial hearing, the man requests an attorney and a jury trial. The judge denies both requests. The man is convicted and sentenced to 60 days in the county jail.

If the man were to appeal his conviction to the state's appeals court, what is his strongest constitutional argument(s). How is the court likely to rule on his appeal and why? (This Question is worth **10 Points**) **Limit your answer to the space provided**

ID NUMBER: _ _ _ _

Do Not Write in This Space

(Turn The Page For The Next Question)

Question 3. 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-up 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.

The man's attorney files a motion to suppress both the eye witness identification as well as any statements made during the identification procedure. What is the man's strongest constitutional argument and 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**

Question 4. 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 numerous aggravating circumstances and no mitigating circumstances and sentenced Defendant to death on each of the murder counts.

If the defendant were to appeal his conviction to the state’s appeals court, what is his strongest constitutional argument(s). How is the court likely to rule on his appeal and why? (This Question is worth **25 Points**) **Limit your answer to the space provided**

PART FIVE: FILL-IN-THE-BLANK (Each Question is Worth **2 points each**)

Question 1. The primary function of the grand jury is to:

Question 2. A subpoena is:

Question 3. 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. The grand jury meets in a _____ and hears only the evidence presented by the _____. The defendant has no right to offer his own _____ or to be _____ during grand jury proceedings.

Question 5. If a majority of the grand jurors conclude that the prosecution’s evidence is sufficient, the grand jury will issue the indictment requested by the prosecutor . . . The indictment will set forth a _____, and the grand jury’s approval of that charge will be indicated by its designation of the indictment as a “_____”:

Question 6. In *United States v. Ash*, the U.S. Supreme Court held a defendant (**circle the correct answer below**) to have 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

**Do Not Write in This Space
(Turn The Page For The Next Question)**

Question 7. In **Chapter 8 Investigations by Subpoena** in the Introductory Material we discussed the three requirements that must be met under *United States v. Hoffman* (the *Link in the Chain Test*) where the Fifth Amendment privilege applies to witnesses “in any proceeding” who are compelled to give testimony of potential use against him in a subsequent “criminal” prosecution. **Fully list all three requirements:**

1. _____

2. _____

3. _____

Question 8. In *Crist v. Betz*, the U.S., 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 *Apodaca 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.”

In *Burch v. Louisiana*, the U.S. Supreme Court held, “. . . that [a] conviction by a _____, _____-member jury in a state criminal trial for a nonpetty offense deprives an accused of his constitutional right to trial by jury.”

Question 10. The subpoena authority utilized in grand jury investigation comes from the: _____.

PART SIX: DIRECTED SHORT ESSAYS

This section consists of 10 questions, 5 of which are 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 ran an illegal casino out of the basement of his house. The police grew suspicious as to his activities after seeing a number of known gamblers entering and exiting the side door of the man's house at all hours of the night. A police officer staking out the house waited until he was sure the man had closed up his operations for the night, and snuck into the man's basement by opening and entering through a basement window. Inside, the officer saw cards, poker chips, and stacks of cash. The police officer then tracked down one of the gamblers he had seen leaving the man's house, and the gambler voluntarily gave a statement that illegal gambling was indeed occurring in the basement and that the police would find cards, poker chips and cash there. The police officer then used an affidavit of the statement to obtain a search warrant for the basement, which the officer then used to enter the basement and seize the cards, poker chips, and cash.

At trial the man brought a motion to suppress the introduction of the seized evidence. What is the man's strongest constitutional argument and how should the court likely rule on the motion and why? (This Question is worth **20 Points**) **Limit your answer to the space provided**

ID NUMBER: _ _ _ _ _

Do Not Write in This Space

(Turn The Page For The Next Question)

Question 2. Around 3:25am on April 29, 2015, 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 is your attacker.” The victim managed to tell the police that 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 Defendant and, within hours, located him not far from the scene. At 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. Defendant is now appealing his conviction.

What are both the Defendant’s and the Prosecution’s strongest constitutional argument(s) on appeal and how is the court likely to rule and why? (This Question is worth **10 Points**) **Limit your answer to the space provided.**

Question 3. The defendant was subpoenaed to appear before a grand jury in the United States District Court to answer questions pertaining to an interstate human trafficking ring. The Government believed that the defendant would likely assert his Fifth Amendment privilege. Prior to the scheduled appearance, the Government applied to the District Court for an order directing the defendant to answer questions and produce evidence before the grand jury pertaining to his role in the illegal human trafficking enterprise pursuant to 18 U.S.C. ss. 6002 and 6003.

As Defense counsel for the defendant you oppose the issuance of the order, contending that if your client testifies and produces evidence he could be prosecuted in a subsequent state 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.

How should the U.S. District Court rule on your motion and why? (This Question is worth **10 Points**) **Limit your answer to the space provided.**

Question 6. 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. The patrolman arrested Guinness 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 **2 Points**)

Yes [] **No** []

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

Do Not Write in This Space

(Turn The Page For The Next Question)

Question 7. After arresting and booking the defendant for the murder of his wife, Detectives from the Boston Police Department brought the defendant into the interrogation room to question him about the details of the murder. After the Detectives read the defendant his *Miranda* rights, he invoked his right to remain silent, at which point the police ceased all questioning. May the police go back and reinitiate the earlier attempt to speak with the defendant about the murder?

YES or **NO**

In the space provided below recite the applicable rule of law **only**. (This Question is Worth **2 Points**)

Do Not Write in This Space

(Turn The Page For The Next Question)

Question 9. In the spring of 1966, within the period of a fortnight, a series of armed robberies occurred in Mobile, Alabama. The victims in each case were local shopkeepers open at night, who were forced by a gunman to hand over money. While robbing one grocery store, the assailant fired his gun once, sending a bullet through a door into the ceiling. A few days earlier in a drugstore, the robber had allowed his gun to discharge in such a way that the bullet ricocheted from the floor and struck a customer in the leg. Shortly thereafter, a local grand jury returned five indictments against petitioner, a 27-year-old Negro, for common law robbery—an offense punishable in Alabama by death.

Before the matter came to trial, the court determined that petitioner was indigent and appointed counsel to represent him. Three days later, at his arraignment, petitioner plead guilty to all five indictments. So far as the record shows, the judge asked no questions of petitioner concerning his plea, and petitioner did not address the court. Trial strategy may of course make a plea of guilty seem the desirable course, but the record is wholly silent on that point and throws no light on it.

Did the Court commit reversal error?

YES or **NO**

In the space provided below recite the applicable rule of law only. (This Question is Worth 2 Points)

Do Not Write in This Space

(Turn The Page For The Next Question)

Question 10. Respondent was charged in a New York state court with criminal possession of a weapon. The record showed that a woman approached two police officers who were on road patrol, told them that she had just been raped, described her assailant, and told them that the man had just entered a nearby supermarket and was carrying a gun. While one of the officers radioed for assistance, the other (Officer Kraft) entered the store and spotted the respondent, who matched the description given by the woman. The respondent ran toward the rear of the store and Officer Kraft pursued him with a drawn gun, but lost sight of him for several seconds. Upon regaining sight of respondent, Officer Kraft ordered him to stop and put his hands over his head, frisked him, and discovered that he was wearing an empty shoulder holster. After handcuffing him, Officer Kraft asked him where the gun was. Respondent nodded toward some empty cartons and responded that “the gun is over there.” Officer Kraft then retrieved the gun from one of the cartons, formally arrested respondent, and read him his rights under Miranda. Respondent indicated that he would answer questions without an attorney being present and admitted that he owned the gun and had purchased it in Florida.

Were the police required to give Miranda warnings?”

YES or **NO**

In the space provided below recite the applicable rule of law **only**. (This Question is Worth **2 Points**)

Do Not Write in This Space

(Turn The Page For The Next Question)

Spring 2018
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 **TWO** parts for a **total of 60 Points** and will account for **15% of your semester grade**. The total time for the exam is **1 hour and 15 minutes**.

Part One consists of a **4 directed short answer questions** for a total value of **40 points**;

Part Two consists of **9 fill-in-the-blank questions** for a total value of **20 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 (NOT
Massachusetts) constitutional law.**

PART ONE – DIRECTED SHORT ESSAY QUESTIONS

This exam consists of four 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. Defendant was arrested, charged and convicted in the U.S. District Court with violating the federal statute on interstate gambling. At trial, the government seeks to enter into evidence portions of defendant’s telephone conversation which were obtained via a listening device affixed to the outside of an enclosed public telephone booth.

As the defendant’s attorney, you file a motion seeking to suppress any statements made by defendant. What is the defendant’s strongest constitutional argument and how is the Judge likely to rule on the motion and why? (This Question is worth **10 Points**) **Limit your answer to the space provided.**

Question 2. Boston police detectives who were investigating the armed robbery of Bung Hole Liquors assembled sufficient evidence to establish probable cause to believe that the defendant robbed the liquor store. Two days later, without prior judicial authorization, detectives went to the home of the defendant to arrest him.

Upon seeing the lights on and hearing music coming from inside the defendant’s apartment, the police immediately made a forcible entry into the apartment and began searching for the defendant. After searching the apartment for the defendant, the police quickly learned that the defendant was not present inside the apartment. However, while searching for the defendant, the police discovered a gun and ski mask used during the robbery and seized both items as evidence to be used at trial.

If the defendant’s attorney files a motion to suppress the gun and ski mask found inside the defendant’s apartment what is the defendant’s strongest constitutional argument and how should the court rule on the motion and why? (This Question is worth **10 Points**) **Limit your answer to the space provided.**

Question 3. 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.**

Do Not Write in This Space

(Turn The Page For The Next Question)

Question 4. 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.

Upon seeing the youth leave Rage’s trailer, 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 in The Holy Grail in the refrigerator all of which was seized.

If Rage’s attorney files a motion to suppress the marijuana, plastic bags and scale what is his strongest constitutional argument and how should the motion judge rule and why? (This Question is worth **10 Points**) **Limit your answer to the space provided.**

PART TWO: FILL-IN-THE-BLANK

Question 1. What level of information or standard of evidence must the Government possess to conduct an evidentiary search? (This Question is worth **2 Points**) **Limit your answer to the space provided.**

Question 2. What level of information or standard of evidence must the Government possess to conduct a Terry stop (threshold inquiry, brief detention, investigatory stop) (This Question is worth **2 Points**) **Limit your answer to the space provided.**

Question 3. What level of information or standard of evidence must the Government possess to make an arrest? (This Question is worth **2 Points**) **Limit your answer to the space provided.**

Question 4. What level of information or standard of evidence must the Government possess to conduct a protective pat frisk (This Question is worth **2 Points**) **Limit your answer to the space provided.**

Question 5. During a criminal prosecution, what level of information or standard of evidence must the Government prove to properly convict a criminal defendant? (This Question is worth **2 Points**) **Limit your answer to the space provided.**

Question 6. Fully list the four factors used to determine whether a person's land falls within the curtilage: (This Question is worth **4 Points**) **Limit your answer to the space provided.**

1. _____

2. _____

3. _____

4. _____

Question 7. In *Payton v. New York*, the Court concluded that the Fourth Amendment, requires that police, before entering a dwelling with a valid arrest warrant must have: (This Question is worth **2 Points**) **Limit your answer to the space provided.**

1. _____

2. _____

Question 8. Fully list the three requirements the Prosecution must show to prove constructive possession: (This Question is worth **2 Points**) **Limit your answer to the space provided.**

1. _____
2. _____
3. _____

Question 9. In *Coolidge v. New Hampshire*, the U.S. Supreme Court set forth the three requirements necessary for a plain view seizure. Fully list the three requirements: (This Question is worth **2 Points**) **Limit your answer to the space provided.**

1. _____
2. _____
3. _____

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.

Question 1. Defendant was arrested, charged and convicted in the U.S. District Court with violating the federal statute on interstate gambling. At trial the government seeks to enter into evidence portions of defendant’s telephone conversation which were obtained via a listening device affixed to the outside of an enclosed public telephone booth.

As the defendant’s attorney, you file a motion seeking to suppress any statements made by defendant. How is the Judge likely to rule on the motion and why? (This Question is worth **10 Points**) **Limit your answer to the space provided.**

Question 2. A man ran an illegal casino out of the basement of his house. The police grew suspicious as to his activities after seeing a number of known gamblers entering and exiting the side door of the man’s house at all hours of the night. A police officer staking out the house waited until he was sure the man had closed up his operations for the night, and snuck into the man’s basement by opening and entering through a basement window. Inside, the officer saw cards, poker chips, and stacks of cash. The police officer then tracked down one of the gamblers he had seen leaving the man’s house, and the gambler voluntarily gave a statement that illegal gambling was indeed occurring in the basement and that the police would find cards, poker chips and cash there. The police officer then used an affidavit of the statement to obtain a search warrant for the basement, which the officer then used to enter the basement and seize the cards, poker chips, and cash.

At trial the man brought a motion to suppress the introduction of the seized evidence.

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

Do Not Write in This Space

(Turn The Page For The Next Question)

Question 3. Texas police detectives who were investigating the rape and murder of a local fashion model assembled sufficient evidence to establish probable cause to believe that the defendant raped and murdered the woman. Some days later without prior judicial authorization detectives went to the home of the defendant to arrest him. The police immediately made a forcible entry into the defendant’s home and arrested the defendant inside his bedroom.

(a) If the defendant files a motion to dismiss the arrest inside the home what is his strongest constitutional argument and how should the court rule on the motion and why? (This Question is worth **10 Points**) **Limit your answer to the space provided.**

(b) When the police arrest the defendant inside his bedroom they immediately check a nearby closet to see if anyone may be hiding inside. While checking the closet the police observe on the floor 10 kilos of heroin which they seize and later charge the defendant with the illegal possession of a controlled substance. If the defendant files a motion to suppress the heroin will he likely succeed on the motion? (This Question is worth **10 Points**)

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. **Limit your answer to the space provided.**

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.

How should the court rule on the motion and why? (This Question is worth **10 Points**)

Lined area for writing answers.

Do Not Write in This Space

(Turn The Page For The Next Question)

Question 5. While two police officers were on patrol they were approaching a small car. A group of youths huddled around the car saw the officers approaching and took off running. Suspicious, the officers gave chase. Just as one of the officers caught up with one of the fleeing youths, named Houdini D., Houdini D. tossed to the ground a bag of crack cocaine that he had been carrying. Houdini D. then attempted to climb over a 6 foot tall chain link fence; however the pursuing officer, who at all times during the foot pursuit had been yelling “Stop! Police!, Stop! Police!” managed to catch and to tackle Houdini D. just before he went over the fence. The officer then arrested Houdini D. and subsequently charged him with possession of a controlled substance.

If Houdini D. files a motion to suppress the crack cocaine how should the court rule on his motion and why? (This Question is worth **10 Points**)

Do Not Write in This Space

(Turn The Page For The Next Question)

Spring 2017
CRIMINAL PROCEDURE FINAL EXAM
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 **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 **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.**

Question 2. A woman was attempting to fly cross-county with her two dogs, but federal employees at the airport stopped her before she could board the plane out of concern that the dogs could pose a safety risk to other passengers. The woman became extremely agitated and physically assaulted the employees. She was arrested by the local police and put on trial for assault, but was acquitted by the jury which found she acted in self-defense. The woman was then indicted on federal charges for assaulting the employees.

If the woman’s attorney files a pre-trial motion to have the case dismissed, what is the strongest constitutional argument? How should the court rule on the motion and why? (This Question is worth **5 Points**) **Limit your answer to the space provided.**

ID NUMBER: _ _ _ _ _

Do Not Write in This Space
(Turn The Page For The Next Question)

Question 3. A man is arrested and charged with giving an insufficient funds check with intent to defraud. Under state statute, the crime is a misdemeanor punishable by a maximum of six months' imprisonment or a \$2,000 fine. At a pretrial hearing, the man requests an attorney and a jury trial. The judge denies both requests. The man is convicted and sentenced to 60 days in the county jail.

If the man were to appeal his conviction to the state's appeals court, what is his strongest constitutional argument(s). How is the court likely to rule on his appeal and why? (This Question is worth **10 Points**) **Limit your answer to the space provided**

ID NUMBER: ____ _

Do Not Write in This Space
(Turn The Page For The Next Question)

Question 4. The respondent, Paul Lewis Hay, was indicted by a State County grand jury on a charge of uttering a forged instrument in the amount of \$88.30, an offense then punishable by a term of 2 to 10 years in prison.

After arraignment, Hay, his retained counsel, and the Commonwealth's Attorney met in the presence of the Clerk of the Court to discuss a possible plea agreement. During these conferences the prosecutor offered to recommend a sentence of five years in prison if Hay would plead guilty to the indictment. The prosecutor also said that if Hay did not plead guilty and “save the court the inconvenience and necessity of a trial,” he would return to the grand jury to seek an indictment under the State Habitual Criminal Act, which would subject Hay to a mandatory sentence of life imprisonment by reason of his two prior felony convictions.

Hay chose to plead not guilty, and the prosecutor obtained an indictment charging him under the Habitual Criminal Act. A jury found Hay guilty on the principal charge of uttering a forged instrument and, in a separate proceeding, further found that he had twice before been convicted of felonies. As required by the habitual offender statute, he was sentenced to a life term in the penitentiary.

If Hay appeals his conviction to the state’s appeals court arguing that his Fourteenth Amendment Due Process rights were violated how is the court likely to rule on his appeal and why?

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

Question 5. Detective received information from Informant, who had given reliable information many times in the past. Specifically, Informant said that, two days before, he had visited Harry's apartment with Bill. Informant said he saw Harry sell Bill some heroin at the apartment and that there was more heroin still in the apartment when Informant left. Detective knew that Informant, Harry, and Bill were friends. Thereafter, Detective put this information into affidavit form, appeared before a magistrate, and secured a search warrant for Harry's apartment. The search turned up a supply of heroin.

If Harry's attorney files a motion to suppress introduction of the heroin into evidence, 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**

ID NUMBER: ___ _ _ _

Do Not Write in This Space
(Turn The Page For The Next Question)

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.**

Lined area for writing with 25 horizontal lines.

Question 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 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 is the court likely to rule on Bagley's appeal and what is the standard of materiality Bagley must show to support his constitutional argument? (This Question is worth **10 Points**)

Do Not Write in This Space
(Turn The Page For The Next Question)

ID NUMBER: _ _ _ _

Do Not Write in This Space
(Turn The Page For The Next Question)

Question 4. 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 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 Defendant and within hours located him not far from the scene. At 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. Defendant is now appealing his conviction.

What is Defendant’s and the Prosecution’s strongest constitutional argument(s) on appeal and how is the court likely to rule and why? (This Question is worth **10 Points**) **Limit your answer to the space provided.**

ID NUMBER: _ _ _ _ _

Do Not Write in This Space
(Turn The Page For The Next Question)

Question 5. The police in the city of Smud were conducting a lineup as part of a murder investigation. Wanting to conform to constitutional safeguards, Officer Green decided that they would need five persons in the lineup in addition to the suspect, Jones. Jones had been arrested without a warrant one hour earlier while walking home from work. Jones had not yet been charged with the murder in question. Because Jones was white and there were only three other persons at police headquarters who were white, Officer Green walked outside to find a citizen who would volunteer to be in the lineup.

Green spotted a man sitting on a bench. He approached the man and asked him to volunteer. The man refused. However, when Green taunted him about not fulfilling his civic duties the man agreed to be placed in the lineup.

Jones, the suspect, was 6' 5", the man was 6' 2", and the rest of the participants were 5' 9" to 6' 0".

Green placed the man next to Jones and then brought Witness into the room. As soon as Witness saw the man, he pointed at him and shouted, "Hey, that guy robbed my store this morning." Green immediately asked, "What about the guy standing to his right [referring to Jones]?" Witness replied, "He looks like the guy who shot my brother, yeah, that's him."

At pre-trial Jones objects to the admission of the eyewitness identification and files a motion to suppress all statements and the identification. What is Jones' strongest constitutional argument and how is the court likely to rule on his motion and why? (This Question is worth **10 Points**) **Limit your answer to the space provided.**

ID NUMBER: ____ _

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:

PART FIVE: BONUS QUESTIONS

This section consists of 3 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. Defendant was arrested, charged and convicted in the U.S. District Court with violating the federal statute on interstate gambling. At trial the government seeks to enter into evidence portions of defendant’s telephone conversation which were obtained via a listening device affixed to the outside of an enclosed public telephone booth.

As the defendant’s attorney, you file a motion seeking to suppress any statements made by defendant. How is the Judge likely to rule on the motion and why? (This Question is worth **10 Points**) **Limit your answer to the space provided.**

Question 2. A man ran an illegal casino out of the basement of his house. The police grew suspicious as to his activities after seeing a number of known gamblers entering and exiting the side door of the man's house at all hours of the night. A police officer staking out the house waited until he was sure the man had closed up his operations for the night, and snuck into the man's basement by opening and entering through a basement window. Inside, the officer saw cards, poker chips, and stacks of cash. The police officer then tracked down one of the gamblers he had seen leaving the man's house, and the gambler voluntarily gave a statement that illegal gambling was indeed occurring in the basement and that the police would find cards, poker chips and cash there. The police officer then used an affidavit of the statement to obtain a search warrant for the basement, which the officer then used to enter the basement and seize the cards, poker chips, and cash.

At trial the man brought a motion to suppress the introduction of the seized evidence.

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

ID NUMBER: _ _ _ _ _

Do Not Write in This Space
(Turn The Page For The Next Question)

Question 3. 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.

How is the court likely to rule on the motion and why? (This Question is worth **10 Points**)

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

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 5 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 [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 !!!

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

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.

Over in **Session Three** was Judge Mathis hearing a complicated matter which involved Roger Clemens' alleged steroid use and perjured testimony. Clemens had already undergone a very long and grueling 4 month trial but because of a mistrial declared by the judge due to manifest necessity Clemens was being re-prosecuted on the same issues once again. At the start of the trial Clemens raised all sorts of objections and poor Judge Mathis wasn't quite sure how to rule.

Define the principles listed below, fully and correctly and then explain how, if at all, it applies to the fact pattern in Part Three. I will evaluate on your ability to recognize the issues, knowledge of the applicable law, and your analysis and application of the law to facts.

6. Peremptory Challenge _____

7. Brady Materials _____

8. Alford Plea _____

9. Double Jeopardy _____

10. Exculpatory Evidence _____

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

The following short-answer questions raise a single issue and require a short answer **ONLY**. Please review the following hypotheticals, reflect on each, consider your response before you write it, and limit your answer to the space provided. I will not read anything written beyond the lines provided. Please pay particular attention to the call of the question.

QUESTION 1: Rocco pleaded guilty in a trial court to an indictment charging him with capital murders. At his plea colloquy, Rocco, 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, Rocco's defense counsel, from Dewey, Cheatum and Howe, spoke with him about his background, but did not seek out any character witnesses or any of Rocco's immediate family, nor did he request a psychiatric examination. Quite frankly, defense counsel failed to do a number of things, including requesting a presentence report because he was worried it might include Rocco's criminal history, thereby undermining his claim of no significant prior criminal record. At the sentencing hearing the judge told Rocco 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 Rocco to death on each of the murder counts.

What constitutional argument should Rocco raise, and what must he show in order to prevail?

QUESTION 2: Sometime during the early evening hours, Cameron Diaz, Wynona Rider, Kim Basinger, Mary Tyler Moore and Sharon Stone were all playing cribbage at Cameron’s home. Suddenly three or four masked men, armed with a shotgun and pistols, broke into Cameron’s lavish home and robbed each of the cribbage players of money and various articles of personal property. The robbers then fled in a car belonging to one of the victims of the robbery. Unfortunately, the car they stole ran out of gas so they had to walk the rest of the way and later that morning they were arrested by a state trooper while they were walking on a highway not far from where the abandoned car had been found. The four were subsequently charged with seven separate offenses of armed robbery of each of the five cribbage players, and the theft of the car. The first of the four robbers (Donald Knight) went to trial on the charges against only one of the victims. The State’s evidence that Knight had been one of the robbers was weak and subsequently Knight was acquitted of all charges. However, six weeks later the prosecution filed the same charges against Knight again, but this time it was for the robbery of another participant in the cribbage game.

Knight files a motion to dismiss based on the previous acquittal, how should the court rule?

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?

QUESTION 4: Lieutenant Governor Timothy Murphy was out late one night driving around after a night of drinking and checking storm damage after a recent rain and wind storm. The Lieutenant Governor lost control of his state issued vehicle and crashed into the guardrail causing the vehicle to be severely damaged. Shortly thereafter, the State Police arrived on scene, administered Field Sobriety Tests to the Lieutenant Governor and determined that he was operating a vehicle under the influence of an intoxicating liquor (OUI). This was the Lieutenant Governor's first OUI offense for which the maximum penalty was up to six months of incarceration or, in the alternative 48 hours of community service while dressed identifiably as an OUI offender. In addition, the Lieutenant Governor faced a fine of \$1000 as well as being required to attend an alcohol abuse, education course.

The Lieutenant Governor, believing he knew a thing or two about criminal procedure, filed a motion demanding a trial by jury under the Sixth Amendment. How should the trial court rule on the Lieutenant Governor's motion?

QUESTION 5: Peter “That’s Amore” Malaguti was indicted in the District Court for the robbery and murder of a rambunctious old fellow name Thomas “Speedy” Martin. During the pretrial stage, Malaguti refused court-appointed counsel and indicated to the trial court on several occasions that he wished to conduct his own defense. After a lengthy debate the judge agreed to allow Malaguti to represent himself. Once the trial got under way Malaguti began to argue with the judge in a most abusive and disrespectful manner. The judge warned Malaguti that if his disruptive behavior continued he would have him removed from the court. Malaguti continued his courtroom antics and just before lunch told the judge, “When I go out for lunchtime you’re going to be a corpse here.” The judge again warned Malaguti that he would not tolerate his disruptive behavior and warned that he would remove him from the court. Wanting to have the last word, Malaguti tore up all the papers assembled in front of him, threw them in the air, and told the judge in no uncertain terms that he was “a puppet” and to “go pound sand.” The judge immediately removed Malaguti from the courtroom and for most of the remainder of the trial. Malaguti was later convicted of both robbery and murder and was sentenced to life in prison.

Malaguti raised a Sixth and Fourth Amendment claim that he had the right to be present throughout his entire trial. How should the court rule on Malaguti’s motion and could the court impose any other conditions?

QUESTION 6: Around 3:25am on April 29, 2001, Hoboken, 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 Kris Brown (not to be confused with the other Chris Brown), her boyfriend had just beaten her up, that he also stabbed her 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 her. The victim was transported to the hospital, where she died within the hour. The police began an immediate search for Brown and within hours located him not far from the scene. At Brown’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. Brown is now appealing his conviction.

What argument can Brown raise and how should the court rule on his appeal?

QUESTION 7: Officer Rand was on routine patrol in the beautiful town of Andover, Massachusetts during the early morning hours of May 6, 2012, when he observed a motor vehicle traveling with a headlight out. Officer Rand could also see that there were approximately 4 people inside the vehicle so he radioed for back up. Shortly thereafter, Officer Rand stopped the vehicle and approached the operator of the vehicle who turned out to be a mouthy fellow named Joey Devlin. Officer Rand asked Devlin for his driver’s license which he was unable to produce and when asked who’s car it was Devlin claimed it was “his cousin’s.” Officer Rand asked Devlin if he could search the car and Devlin replied, “sure, go ahead.” Prior to the search no one was threatened with arrest, no one was in police custody, and, in fact, the entire encounter was very congenial. When Officer Rand opened the glove box he found a pistol with the serial number filed off. When he searched the trunk he found various burglarious tools, cocaine, Viagra and a package of Depends. Devlin, arrested and charged with various criminal violations, at a preliminary hearing filed a motion to suppress the items found during the search claiming he was never told by the police that he had the right to refuse the search of the vehicle.

How should the trial court rule on Devlin’s motion to suppress?

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

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 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.

Section One:

1. Boston Police Officers arrived at the home of Dolores Sapp based on information that a person was hiding out in her home and who was wanted in connection with the bombing of a Downtown building. When the officers knocked on her door demanding to be let in, Sapp refused, telling the officers that her Attorney had advised her to not let the police in unless they had a search warrant. Three hours later the police returned to Sapp’s home and forced their way in through an unlocked door. Sapp asked if they had a warrant, to which one of the officers held out a piece of paper. Sapp snatched the paper and placed in her bosom. A struggle ensued between the police and Sapp as the police attempted to retrieve the “alleged” warrant from her. She was eventually restrained, and the police began searching her home. The officers discovered stolen televisions in the basement of her home, for which she was eventually arrested. At trial, the police were unable to produce the warrant, nor were they able to explain its disappearance.

Sapp filed the appropriate motion arguing that the evidence was obtained as a result of an unreasonable search and seizure in violation of her Fourth and Fourteenth Amendment rights.

How is the motion judge likely to rule on Sapp’s motion and why?

2. Detective Logan suspected Applewood and his brother of engaging in the distribution and trafficking of bath salts laced with cocaine. While conducting surveillance of the Applewood's home, Detective Logan believed that they were throwing the materials used in making the dangerous drug out in the trash. Detective Logan asked the trash collector to pick-up the Applewood's trash, and to keep it separated from the other trash they collected. After searching the trash Detective Logan applied for, and was granted, a search warrant to search the Applewood's home. The subsequent search of Applewood's home yielded quantities of cocaine and bath salts which lead to the arrest of the Applewoods on felony narcotics charges.

The Applewoods' file a motion to exclude the evidence that was seized by the police. At the suppression hearing they argue that they had a reasonable expectation of privacy in their trash that they placed out on the curb temporarily, and that there was little likelihood that it would be inspected by anyone.

How is the motion judge likely to rule on the Applewood's motion to suppress and why?

3. Officer Pringle, from the Beverly Police Department, stopped a Dodge Durango for speeding. Inside the vehicle were three occupants, Donte Rodriguez, the owner and operator of the vehicle, Otis Redding the front seat passenger, and James Brown the back-seat passenger. After issuing Rodriguez a verbal warning for the speeding offense the officer asked him if he had any drugs or weapons in his vehicle. Rodriguez stated no, and then consented to a search of his vehicle. During the search the police discovered several plastic glassine baggies containing heroin in the backseat armrest and \$500.00 in cash in the glove box. Upon asking all three men who the drugs and money belonged to all three offered no information as to the ownership of the drugs. All three were subsequently placed under arrest.

Prior to trial James Brown filed a motion to dismiss the criminal charges arguing that the police lacked probable cause to believe that as a back seat passenger in a motor vehicle he had the ability to exercise possession over the illegal narcotics found in the backseat armrest.

How is the judge likely to rule on Brown's motion, and why?

4. Detectives from the Raymond New Hampshire Police Department, who had probable cause, asked Robert Murphy to come down to the police station in order to speak with him regarding the murder of his wife who had been killed earlier in the morning. Murphy voluntarily went to the station to speak with the detectives assigned to the case. An hour into the questioning Murphy announced that he wished to leave, however the detectives were concerned that if they let Murphy leave they would not have enough time to obtain a warrant to collect physical evidence from Murphy. Over Murphy’s protests, and without a warrant, the detectives took samples from underneath Murphy’s fingernails, discovering evidence used to subsequently convict him.

Murphy appeals his conviction to the New Hampshire’s Appellate Court, claiming that the fingernail scrapings were the product of an unconstitutional search under the Fourth and Fourteenth Amendments.

How should the Appeals Court judge rule on Murphy’s appeal and why?

5. Federal Agents arrived at the home of Samuel Adams with a warrant for his arrest for the burglary of a gas station. One of the agents handed Adams the arrest warrant and asked for consent to look around the premises to which Adams objected and refused to give consent. The agents told Adams that “on the basis of the lawful arrest” they could search his home without a search warrant. The agents then searched the entire three bedroom home and seized numerous items which they intend to use at his criminal trial.

Prior to his criminal trial Adams filed a motion to exclude the items arguing that they were unconstitutionally seized under the Fourth and Fourteenth Amendment. The Prosecution, opposing the motion, argues that the warrantless search of the entire home was permissible as a search incident to a lawful arrest.

How should the judge rule on the motion and why?

6. Ulysses S. Grant was arrested for driving with a suspended license, hand-cuffed, and locked in the back of a patrol car, while a police officer searched his car and discovered a loaded firearm in a backpack on the backseat.

Prior to trial Grant files a motion to suppress arguing that the firearm should be excluded because he no longer had access to the vehicle or to the gun at the time of the search.

How should the judge rule on Grant's motion and why?

7. Officers from the Acton Police Department arrested Willie Gillespie for drug and weapons violations. Gillespie was brought before a Clerk Magistrate for a Fourth Amendment probable cause determination where he was formally apprised of the accusations against him and his bail was set. During the hearing Gillespie made several oral and written requests for appointed counsel, however one was not appointed. Gillespie was subsequently indicted and rearrested, his bail was increased and, unable to post bail, he was jailed.

Gillespie filed a 42 U.S.C. § 1983 civil rights claim in the Federal District Court arguing that his Sixth Amendment right to counsel was violated.

How should the District Court rule on Gillespie's motion and why?

8. Federal Customs Agents received information that Winston Hezekiah was going to transport a large quantity of narcotics aboard a United States airline flying from Columbia to the United States. Based on the information Customs Agents searched the plane and discovered five packages containing large amounts of cocaine. Hezekiah and several others, including a man named Kurt Olson, were charged with possession of narcotics aboard a United States vessel. During his arraignment Hezekiah retained a lawyer, plead not guilty, and was released on bail together with Olson. Several days later Olson, secretly cooperating with the federal agents, prearranged a meeting with Hezekiah. Hezekiah made several incriminating statements during the course of the conversation.

At trial Hezekiah objects to the introduction of the incriminating statements, arguing that his constitutional rights had been violated because the incriminating statements were deliberately elicited from him without counsel being present.

How should the court rule on Hezekiah's objection and why?

9. When he was interviewed by detectives from the Oxford Police Department in connection with the murder of a sailor, Sammy Davis initially waived his rights to remain silent and to counsel. About an hour and a half into the interview, he said, "Maybe I should talk to a lawyer." The police continued to question Davis who later gave a written confession fully describing the events of the murder.

Davis moved to suppress the written confession, and at the subsequent suppression hearing argues that his Fifth Amendment right to counsel had been violated when police failed to stop questioning him once he stated, "Maybe I should talk to a lawyer."

Applying the federal rule of law how should the motion judge rule on Davis' motion and why?

10. Ricky Ricardo was being medically treated for gunshot wounds received during a violent altercation with federal agents. While being treated the police questioned him without having given Ricardo any Miranda warnings. During that interview, Ricardo admitted to using heroin and taking an officer's gun during the incident. Although he was never charged with a crime, and his answers were never used against him in any criminal proceeding, Ricardo filed a 42 U.S.C. § 1983 suit alleging that the police interrogation violated his Fifth Amendment right to not be compelled in any criminal case to be a witness against himself, as well as his Fourteenth Amendment substantive due process right to be free from coercive questioning.

How should the Federal District Court judge rule on Ricardo's civil rights suit and why?

11. Dominic Savio was arrested and charged with larceny of a motor vehicle and receiving stolen property. Savio entered into an agreement with the prosecutor to plead guilty to a lesser-included offense on the larceny of a motor vehicle charge whereby the prosecutor agreed to make no recommendation as to the sentence. At Savio’s appearance for sentencing many months later a new prosecutor recommended the maximum sentence which the judge accepted and imposed.

On appeal, Savio’s attorney argues that the State was required to honor its commitment concerning the sentence recommendation made at the time of entering the guilty plea.

How should the reviewing court rule and why?

12. Bob Barker and co-defendant Chicken Wingo were arrested for the brutal murder of a pregnant woman by use of a crow-bar. Barker and Wingo were indicted, and shortly thereafter the state commenced criminal proceedings against Wingo for the murder. After 5 years of delays and multiple retrials Wingo was convicted and sentenced to life in prison. Immediately following Wingo's trial the state commenced criminal proceedings against Barker. On the day of his trial Barker moved to dismiss the indictment and alleged that his right to a speedy trial had been violated. The motion was denied and the trial began with Wingo as the chief prosecution witness. Barker was convicted and given a life sentence.

Barker filed an appeal with the State's Court of Appeals arguing that a delay of five years between his arrest and his trial was a per se violation of his Sixth Amendment right to a speedy trial.

How should the reviewing court rule on Barker's appeal and why?

13. Kevin McHale in need of some serious money robbed several gas station mini marts while armed with a shot gun, however he was later caught, arrested and charged for the string of robberies. At the plea colloquy, McHale 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, McHale’s attorney did not seek out any character witnesses or request a psychiatric examination. McHale’s attorney also did not request a pre-sentence report because he was afraid that it included McHale’s criminal history and would undermine the claim of no significant prior criminal record.

Because McHale’s defense attorney presented very few if any mitigating factors at the sentencing hearing the judge found numerous aggravating factors and sentenced McHale to the maximum sentence on each charge of aggravated robbery. McHale 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 standard must McHale show in regard to his defense counsel’s representation and what two prong test must be met in order to have his criminal conviction set aside?

14. An officer from the Carver Police Department observed Phillip Russo operating a vintage 1967 Cadillac Coupe DeVille. The officer knew that Russo had a suspended license as well as a warrant for his arrest so he pulled Russo’s vehicle over and placed Russo under arrest. Prior to impounding Russo’s vehicle the officer performed a search of the vehicle per his department’s standard operating policy and procedure. The search of the vehicle revealed various drugs, drug paraphernalia and large amounts of cash which Russo was also charged with.

At his later trial Russo’s attorney filed a motion to exclude the evidence found during the inventory search, arguing that Russo’s Fourth Amendment rights under the Federal Constitution had been violated. How should the judge rule on the motion and why?

15. Holly Berry, who was six months pregnant, and her boyfriend Ralph Cranston were involved in a violent domestic disturbance. Berry managed to call 911 and spoke with a Police Operator, to whom she told the following, “Yes, this is an emergency, he’s here jumpin’ on me again,” and, “ ‘He’s usin’ his fists to punch me in the stomach . . . please hurry the baby . . . he’s tryin’ to hurt the baby.’”

The operator then asked Berry for Cranston’s first and last name and middle initial, and at that point in the conversation Berry reported that Cranston had fled in a car. Berry did not appear at Cranston’s trial, and the State introduced the recording of her conversation with the 911 operator. The jury later returned a guilty verdict on charges of domestic assault and battery, and assault and battery on a pregnant woman.

On appeal, Cranston argues that the admission of Berry’s statements to the Police is barred by the Fourteenth Amendment Due Process Clause as well as the Sixth Amendment Confrontation Clause. How should the judge rule on Cranston’s appeal and why?

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?

17. Larry Gene Hagman hired Stefan Wonder and Raymond St. Charles to kill his wife Jessica Hagman for a sum of \$2000.00. Hagman gave Wonder and Charles the keys to his car and his home, which was located in South Attleboro, Massachusetts and the two went to his home and kidnapped Jessica. Several days' later authorities found Jessica's badly beaten and bruised body with a single gunshot wound to the head in the trunk of the Hagman's car just over the line in Providence Rhode Island.

Both Massachusetts and Rhode Island pursued dual investigations into the murder of Jessica and several months later the Massachusetts' Bristol County District Attorney's Office indicted Hagman for the offense of "malice" murder. Hagman was convicted and sentenced to life imprisonment for his wife's murder.

Several months later the State of Rhode Island indicted Hagman for the capitol offense of murder during a kidnapping. A guilty verdict was returned at trial, and after a sentencing hearing the jury recommended the death penalty, which the judge accepted.

On appeal Hagman argued that his conviction and sentence in the Commonwealth of Massachusetts barred his prosecution and conviction in the State of Rhode Island. How should the court rule on Hagman's appeal and why?

18. James Farraday and his date Sarah Fawcett were traveling home from a wedding in which Farraday had been the best man. Farraday, who happened to be intoxicated and driving too fast, struck a wall which then caused his vehicle to flip over and eject Fawcett from the vehicle killing her instantly.

Several days later Farraday was charged with operating a vehicle under the influence of intoxicating liquor, vehicular manslaughter, and a number of other motor vehicle offenses. Four months later, at the conclusion of Farraday's lengthy trial, a jury convicted him on all counts. Instead of resting on his conviction Farraday appealed his sentence to the State's Appellate Court.

If Farraday is successful on his appeal on grounds other than insufficiency of the evidence is the prosecution barred from re-prosecuting Farraday for an offense for which he has already been convicted? Fully explain your answer and state any applicable rule(s) which may apply.

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.

Meanwhile Brown, without Demi-Glaze’s knowledge, had been meeting with the District Attorney’s Office. During these meeting he agreed to be a witness against his co-defendant, Demi-Glaze and he wrote a full confession implicating Demi-Glaze as the master mind behind all the bank robberies. Brown’s deal with the District Attorney provided that he did not have to take the stand to testify against Demi-Glaze; instead his written confession would be read into the record.

Assume that you have been hired as defense counsel to represent each of these defendants, Brown and Demi-Glaze. 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 each of these clients at the subsequent Federal criminal trial.

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

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. **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 !!!

PART ONE - DIRECTED, SHORT-ANSWER QUESTIONS

The section below consists of ten questions in the form of hypotheticals, each of which describes a situation from which a particular criminal charge is likely to be brought and which is, therefore, governed by a specific rule of law. 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 the space provided. I will not read anything written beyond the lines provided. Pay particular attention to the call of the question.

Question # 1: (This question is worth 5 points)

Three Cleveland Police officers went to the home of Dollree Sapp based on information that a person was hiding out in her home and who was wanted in connection with a bombing. When the officers arrived they knocked on the door and demanded to be let in but Sapp after telephoning her attorney refused to let them in without a search warrant. The officers without a search warrant made a forcible entry into Sapp’s home and began searching her entire house. In the basement of the building the police found cocaine hidden in a trunk and Sapp was eventually arrested for the possession of illegal narcotics.

If Sapp’s attorney files a motion to suppress the drugs arguing that the search and seizure was unreasonable what rule or doctrine should be raised, and how is the Court likely to rule on the motion?

Question # 2: (This question is worth 5 points)

Frank Bangrazi was arrested, charged and convicted in the U.S. District Court with violating the federal statute on interstate prostitution by telephone. At trial the government seeks to enter into evidence portions of Bangrazi’s telephone conversation which were obtained via a listening device affixed to the outside of a public telephone that was not enclosed in a booth.

As Bangrazi’s attorney, you file a motion seeking to exclude any statements made by Bangrazi under the Fourth Amendment. How is the Judge likely to rule on the motion?

Question # 3: (This question is worth 5 points)

Federal Agents from the Drug Enforcement Agency went to the home of Bang Wong who they suspected of selling heroin. When the agents rang the doorbell Bang Wong answered the door and they asked if they could speak with him. Bang Wong immediately slammed the door and started running down the hallway to a rear bedroom. The federal agents broke open the door without a warrant and followed Bang Wong down the hallway to the rear bedroom. Once inside the bedroom they placed him under arrest and handcuffed him. The agents then began searching the bedroom and discovered large quantities of heroin hidden in the bedroom closet which they later criminally charged him with.

As Bang Wong’s attorney what constitutional argument will you raise to suppress the admission of the heroin at trial? Conversely, if you are the Prosecution in this case what arguments will you

Question # 4: (This question is worth 5 points)

Officer Santiago observed Stanley Robinson driving a 1965 vintage Cadillac Coupe DeVille down Main Street. Officer Santiago had interacted with Robinson four days earlier for operating a motor vehicle without a valid driver's license. At this time Officer Santiago made a motor vehicle stop and placed Robinson under arrest for driving without a license. Upon searching the right breast pocket of Robinson's heavy coat Officer Santiago discovered a crumpled cigarette pack which contained 14 gelatin capsules of white power which later turned out to be heroin. Over Robinson's repeated objections, the Prosecution now seeks to enter into evidence the heroin seized from the search.

If you are the Prosecution what constitutional argument will you make with respect to the search and seizure of the heroin. Conversely if you represent Robinson what constitutional argument(s) will you raise with respect to the same. How is the court likely to rule on the motion? **Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.**

Question # 5 (This question is worth 5 points)

Detectives from the Massachusetts State Police Criminal Investigations Unit asked Patrick Murphy to come down and speak with them about the murder of his wife. Murphy voluntarily went to the state police barracks to speak with the Detectives. At the end of the interview the detectives had probable cause to arrest Murphy for the murder of his wife however before arresting him they asked him for permission to scrape underneath his finger nails for evidence. When Murphy refused the detectives immediately became concerned that if they did not collect and preserve the evidence right away it would disappear therefore the detectives took the scrapings of his fingernails without his consent or a warrant.

At trial Murphy's attorney seeks to suppress the evidence collected by the State Police as an unreasonable search and seizure in violation of the Fourth Amendment. How is the court likely to rule on his motion? **Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.**

Question # 6 (This question is worth 5 points)

In 2009 Alonzo Ring was arrested and charged with first and second degree assault for menacing a group of people with a shotgun. As part of the routine booking procedure for serious offenses [pursuant to State X's DNA Collection ACT], his DNA sample was taken by applying a cotton swab or filter paper – known as a buccal swab – to the inside of his cheeks. The DNA was found to match the DNA taken from a 2003 rape victim. Ring is now on trial for the rape.

As Ring's defense attorney what constitutional argument will you make concerning the admissibility of the DNA sample and how is the court likely to rule on your argument? **Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.**

Question # 7 (This question is worth 5 points)

Springfield City detectives investigating the murder of a gas station manager assembled sufficient evidence to establish probable cause to believe that Theodore Walter Payton murdered the gas station manager. A couple of days later the detectives went to Payton’s home without a valid warrant and upon seeing the lights on and hearing music inside the apartment they broke into the apartment to arrest Payton.

As Payton’s defense attorney what is the constitutional argument you will raise in his defense and how is the court likely to rule on your argument? **Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.**

Question # 8 (This question is worth 5 points)

DEA agents were watching the mobile trailer home of Charles Barney who they suspected was exchanging drugs for sex with minors. Agents watched Barney 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 and had conversation with him about his dealing with Barney. The youth told the agents that in exchange for marijuana he allowed Barney to have sexual contact with him. Upon hearing this, agents went to Barney’s trailer and knocked on the door. Barney emerged from the trailer and without a warrant, consent or exigent circumstances the agents entered Barney’s motor home and observed marijuana, plastic bags and a scale used in weighing drugs on a table. Barney was arrested and charged with possession of illegal narcotics and a subsequent search of the motor home revealed additional marijuana in the cupboards and refrigerator.

At a preliminary hearing, Barney’s attorney moves to suppress the evidence discovered in his motor home on the grounds that it was an unreasonable search and seizure, arguing that the agents should have possessed a search warrant. How is the court likely to rule on Barney’s motion to suppress the evidence? **Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.**

Question # 9 (This question is worth 5 points)

Rodney Ant was arrested for driving with a suspended license. He was subsequently hand-cuffed and locked in the back of a patrol car while police officers searched his car and discovered cocaine in the pocket of a jacket on the backseat. At the time of the search Ant could no longer access his vehicle to retrieve weapons or evidence.

If you represent Rodney Ant at a suppression hearing what constitutional argument will you raise on behalf of your client and how is the Court likely to rule on the motion? **Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.**

Question # 10 (This question is worth 5 points)

Officer McGuinness a Boston PD plainclothes detective was observing the actions of two men on a city street corner at approximately 2:30 in the afternoon. The men acting suspicious were walking back and forth along a particular stretch of street while peering into the window of a particular store. Fearing that the men may be planning to rob the store Officer McGuinness approached the men, identified himself as a police officer and asked the suspects for their names. Soon thereafter Officer McGuinness spun one of the men, Jerry, around and patted his breast pocket. McGuinness felt a pistol, which he removed and later charged the man with the unlawful possession of a firearm.

You represent the Prosecution at a motion to suppress the firearm that Officer McGuinness found on Jerry. What constitutional argument will you make concerning the admissibility of the gun into evidence, and how should the court rule on the motion? **Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.**

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.

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 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 !!!

PART ONE (each question in this section is worth 5 points)

Question # 1.

Officers from the Acton Police Department arrested Willie Rothgery for drug and weapons violations. Rothgery was brought before a Clerk Magistrate for a so-called “article 15.17 hearing.” At this hearing a Fourth Amendment probable cause determination was made, he was formally apprised of the accusations against him, and his bail was set. During the hearing Rothgery who had no money for a lawyer made several oral and written requests for appointed counsel, however one was not appointed. After the hearing, the magistrate committed Rothgery to jail, and he was released after posting a surety bond. Rothgery was subsequently indicted and rearrested, his bail was increased and, unable to post bail, he was jailed.

As defense counsel for Rothgery, what constitutional argument will you raise on appeal to the State Appellate Court and how should the Appeals Court rule on your appeal and why? Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

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 # 3.

Federal Customs Agents received information that Ralph Macchio was going to transport a large quantity of narcotics aboard a United States airline flying from Columbia to the United States. Based on the information, Customs Agents searched the plane and discovered five packages containing large amounts of cocaine. Macchio and several others, including a man named Bo Riddick, were charged with possession of narcotics aboard a United States vessel. During his arraignment Macchio retained a lawyer, pleaded not guilty, and was released on bail together with Riddick. Several days later Riddick, secretly cooperating with the federal agents, prearranged a meeting with Macchio at Riddick's home. While the federal agents were listening in on the conversation through electronic listening devices Riddick engaged Macchio in a conversation where he deliberately elicited responses from Macchio. Macchio made several incriminating statements during the course of the conversation.

As defense counsel for Macchio you file a pre-trial motion to seeking to suppress the incriminating statements. 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 # 4.

John Doe was arrested and taken into police custody without a warrant for the murder of his brother-in-law. Doe had previously retained Warren Wolfson as counsel to represent him on matters pertaining to the police investigation into the death of his brother-in-law and any criminal charges that may have been brought as a result of that investigation.

One of the arresting officers told Doe that a witness had named him as the one who shot his brother-in-law. Doe replied, "I am sorry but I would like to have advice from my lawyer." Shortly after Doe reached police headquarters, his retained lawyer arrived and spent the next three hours trying unsuccessfully to speak to his client.

Doe was brought into a room where the police began to question him without first advising him of his constitutional rights. The police initially asked Doe a few routine investigatory questions, however their line of questioning went from investigatory to

accusatory. Doe, now under pressure from the questioning by the police made several incriminating statements.

Attorney Wolfson made a motion to the trial Court Judge both before and during trial to suppress the incriminating statements. How should the trial court Judge 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 # 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.

A series of 22 horizontal lines spanning the width of the page, intended for handwritten notes.

Question # 7.

After a lengthy investigation into the murders of two Salem, Massachusetts brothers the police investigation led law enforcement to Geoveno Salirnas who had been a guest at a party that the victims hosted the night before they were killed. Police visited Salirnas at his home where he agreed to hand over his shotgun for ballistics testing and to accompany police voluntarily to the station for questioning.

Salirnas’s interview with the police lasted approximately one hour. All agree that the interview was noncustodial, and the parties litigated this case on the assumption that he was not read Miranda warnings. For most of the interview, Salirnas answered the officer's questions. But when asked whether his shotgun “would match the shells recovered at the scene of the murder,” he declined to answer. Instead, Salirnas “looked down at the floor, shuffled his feet, bit his bottom lip, clenched his hands in his lap, and began to tighten up.” After a few moments of silence, the officer asked additional questions, which Salirnas answered.

As defense counsel for Mr. Salirnas you raise an objection at trial to the prosecution’s use of Salirnas’ silence as part of their case in chief. How should the Court rule on your objection and why? Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

Question # 8.

The Middlesex County District Attorney’s Office convened a special grand jury to investigate possible violations of state criminal statutes relating to welfare fraud. The grand jury subpoenaed about 20 persons, including, Antonio Dion, to give voice exemplars for identification purposes. Dion was asked to examine a transcript of an intercepted conversation, and to go the District Attorney’s Office to read the transcript into a recording device.

As defense counsel for Dion you advise your client not to comply with the DA’s request and you file a motion in the District Court seeking to prevent the Government from obtaining voice exemplars from your client because it violates his Fourth and Fifth Amendment rights.

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 # 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 # 11.

Billy "Bud" Abbot and Louis Costello were indicted for willfully attempting to evade payment of taxes due to the United States. As part of the Government's case during the grand jury proceedings the Government called three government agents who were allowed to summarize the vast amount of evidence which had already been heard and which they had no firsthand knowledge of.

As Defense counsel for Abbot and Costello you file an appeal in the U.S. Court of Appeals seeking to dismiss the grand jury indictment because the government use of agents' testimony violates your client's Fifth Amendment rights.

How should the U.S. Court of Appeals 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 # 12.

William the “Bag” Bagley was indicted on charges of violating federal narcotics and firearms statutes. Several weeks before the trial Bagley filed a discovery motion requesting, inter alia, “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 principal witnesses. Bagley was found guilty on the narcotics charges but not guilty on the firearms charges.

Subsequently, in response to requests made pursuant to the Freedom of Information Act and the Privacy Act, Bagley received copies of a contract signed by the two principal witnesses stating that the Government would pay money to the witnesses commensurate with the information furnished.

As Defense counsel for Bagley you file a motion in the U.S. District Court of Appeals to vacate your client’s sentence, alleging that the Government’s failure in response to the discovery motion to disclose the contracts, which could have been used to impeach the witnesses, violated your client’s due process rights. How should the U.S. Court of Appeals 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 # 13.

Lieutenant Governor Timothy Durphy was out late one night driving around after a night of drinking and checking storm damage after a recent rain and wind storm. The Lieutenant Governor lost control of his state issued vehicle and crashed into the guardrail causing the vehicle to be severely damaged. Shortly thereafter, the State Police arrived on scene, administered Field Sobriety Tests to the Lieutenant Governor and determined that he was operating a vehicle under the influence of an intoxicating liquor (OUI). This was the Lieutenant Governor's first OUI offense for which the maximum penalty was up to six months of incarceration or, in the alternative 48 hours of community service while dressed identifiably as an OUI offender. In addition, the Lieutenant Governor faced a fine of \$1000 as well as being required to attend an alcohol abuse, education course.

The Lieutenant Governor, believing he knew a thing or two about criminal procedure, filed a motion in the district court demanding a trial by jury under the Sixth Amendment. How should the trial court rule on the Lieutenant Governor's 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.

Question # 15.

Clarissa Marsh and Benjamin Williams were charged with assaulting Yolonda Knighton and murdering her 4-year-old son Jordan. Prior to trial without Marsh’s knowledge, Williams had been meeting with the District Attorney’s Office. During these meetings he agreed to be a witness against his co-defendant (Marsh) and he wrote a full confession implicating Marsh as the master mind behind the murder. William’s deal with the District Attorney provided that he did not have to take the stand to testify against Marsh; instead his written confession which had been redacted to omit any reference to Marsh would be read into the record.

As Defense counsel for Marsh you object to the introduction of Williams’ redacted written confession claiming that it violates your client’s Sixth Amendment rights. How should the Court rule on your objection and why? Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

Question # 16.

George Washington was found guilty of murdering a hotel night clerk. The Superior Court of Worcester County ordered a new trial because the prosecutor had withheld exculpatory evidence from the defense. The Massachusetts Supreme Judicial Court affirmed a new trial.

During opening statements defense counsel told the prospective jurors that “there was evidence hidden from Mr. Washington at the last trial . . . that you will hear that the evidence was purposely withheld . . . that because of the conduct of the Assistant District Attorney at the time . . . the Massachusetts Supreme Judicial Court granted a new trial in this case.”

After opening statements were completed, the prosecutor moved for an immediate mistrial alleging that prejudice to the jury resulting from defense counsel’s comments

could not be repaired. In response, defense counsel strenuously objected to the motion for a mistrial claiming that his client has a valued right to have his trial completed by this tribunal. How should the Court rule on the Prosecution’s motion and why? 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.

Question 1. Defendant was arrested, charged and convicted in the U.S. District Court with violating the federal statute on interstate gambling by telephone. At trial the government seeks to enter into evidence portions of defendant’s telephone conversation which were obtained via a listening device affixed to the outside of an enclosed public telephone booth.

As the defendant’s attorney, you file a motion seeking to suppress any statements made by defendant under the Fourth Amendment. How is the Judge likely to rule on the motion and why? (This Question is worth **10 Points**) **Limit your answer to the space provided.**

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**) **Limit your answer to the space provided.**

(b) When the police arrest the defendant inside his bedroom they immediately check a nearby closet to see if anyone may be hiding inside. While checking the closet the police observe on the floor 10 kilos of heroin which they seize and later charge the defendant with the illegal possession of a controlled substance. If the defendant files a motion to suppress the heroin will he likely succeed on the motion? (This Question is worth **10 Points**)

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. **Limit your answer to the space provided.**

Question 4. While on patrol an officer observed the defendant traveling in excess of the posted speed limit and stopped the defendant intending to issue him a citation for speeding. While running a check of the defendant’s license the officer discovered that the defendant had two outstanding warrants for his arrest. One of the warrants was for a past violation of a restraining order and the other was for unpaid child support. The officer ordered the defendant out of the car, arrested him on the warrants and secured the defendant in the rear of his police vehicle. The officer then returned to the defendant’s vehicle and observed a grey backpack on the front passenger seat. Opening the back pack, the officer discovered 17 individually wrapped bags of heroin and a loaded firearm. In addition to being arrested on the two outstanding warrants the defendant was charged with possession with intent to distribute a controlled substance and the unlawful possession of a firearm.

If the defendant files a motion to suppress the 17 bags of heroin and the firearm how should the court rule on his motion and why? (This Question is worth **10 Points**)

Question 5. While two police officers were on patrol they were approaching a small car. A group of youths huddled around the car saw the officers approaching and took off running. Suspicious, the officers gave chase. Just as one of the officers caught up with one of the fleeing youths, named Houdini D., Houdini D. tossed to the ground a bag of crack cocaine that he had been carrying. Houdini D. then attempted to climb over a 6 foot tall chain link fence; however the pursuing officer, who at all times during the foot pursuit had been yelling “Stop! Police!, Stop! Police!” managed to catch and to tackle Houdini D. just before he went over the fence. The officer then arrested Houdini D. and subsequently charged him with possession of a controlled substance.

If Houdini D. files a motion to suppress the crack cocaine how should the court rule on his motion and why? (This Question is worth **10 Points**)

Lined area for student response, consisting of 25 horizontal lines.

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 !!!

Question 1. Sheriff's Deputies from the Hillsboro County Sheriff's Department had suspected for some time that a man living in town had been manufacturing and distributing crystal methamphetamine out of his home. One evening a young deputy, looking to make a name for himself, sat in an unmarked police vehicle on a stake out across from the man's home for several hours.

Frustrated that he had not observed any illegal activity, the deputy decided to get a closer look inside the man's home. The deputy climbed over a six foot tall privacy fence and snuck onto the man's enclosed back porch from which he was able to look inside one of the rear porch windows. The deputy observed the man in his living room packaging small packets of crystal meth for sale.

Based on his observations the deputy applied for, and was granted, a search warrant for the man's home to seize all drugs, drug manufacturing equipment, drug paraphernalia and cash. The deputy later executed the search warrant and seized more than 100 pounds of crystal meth. The man was subsequently arrested and charged with various drug offenses.

- (a) If the defendant later files a motion to suppress the evidence seized inside of his home what constitutional argument should the man raise, and how should the Court rule on his motion? (This Question is worth **10 Points**)

(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**)

(This Space Is Intentionally Left Blank)

Question 6. While two police officers were on patrol they were approaching a small car. A group of youths huddled around the car saw the officers approaching and took off running. Suspicious, the officers gave chase. Just as one of the officers caught up with one of the fleeing youths, named Houdini D., Houdini D. tossed to the ground a bag of crack cocaine that he had been carrying. Houdini D. then attempted to climb over a 6 foot tall chain link fence; however the pursuing officer, who at all times during the foot pursuit had been yelling “Stop! Police!, Stop! Police!” managed to catch and to tackle Houdini D. just before he went over the fence. The officer then arrested Houdini D. and subsequently charged him with possession of a controlled substance.

If Houdini D. files a motion to suppress the cocaine how should the court rule on his motion and why? (This Question is worth **10 Points**)

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.

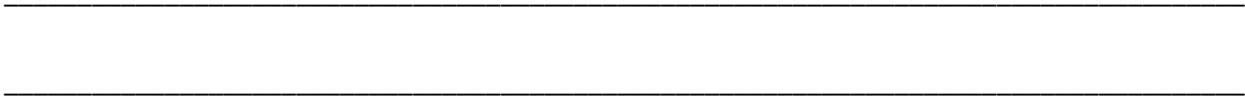
The police then forced their way into Dan’s apartment with their weapons drawn, and found Ben in his kitchen, holding a knife, and standing over Priscilla’s dismembered body. Ben dropped the knife and ran. The officers tackled and handcuffed him. All the while Ben was mumbling that he was sorry and that 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

with Ben back to Ben's apartment to continue drinking. Ben said he passed out, and when he woke up he saw that Priscilla was dead and he was only trying to "clean up the mess." The Prosecution intends to use as part of its case-in-chief all of the statements Ben made to the police.

When questioned by the police the next day, Bob denied having anything to do with Priscilla's death, but admitted that he and Priscilla planned to wait until Ben was passed out and then rob him. Bob was arrested, and when searched, the police found a large hunting knife. Bob said he "always carries the knife with him."

What motions will defense counsel for Ben and defense counsel for Bob file and how is the court likely to rule? (Be certain, as explained in the instruction above, to include in your answer the analysis that support your conclusions.)



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**)

Do Not Write in This Space
(Turn The Page For The Next Question)

Do Not Write in This Space
(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**)

Do Not Write in This Space
(Turn The Page For The Next Question)

Question 6.

On January 5, 2015, People’s United Bank was robbed by two people wearing disguises. Several eyewitnesses told investigators that one of the robbers sounded like and walked like a woman. A month later, Bob was caught breaking into a liquor store. During police interrogation, he confessed to a string of robberies in the areas, including the People’s United Bank heist that he said he committed with Sue. Bob refused to make any statements or to testify at trial. Bob and Sue are tried together in federal court for the People’s United Bank robbery.

Can the prosecutor read to the jury parts of Bob’s confession that directly implicate Sue?
 (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**)

QUESTION 6A:

Suppose the Prosecution completely redacts or omits any reference or mention of Sue in Bob's confession. Can the Prosecution now read parts of Bob's confession to the Jury? (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**)

Do Not Write in This Space

(Turn The Page For The Next Question)

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*:

Do Not Write in This Space

(Turn The Page For The Next Question)

Question 9.

The defendant was a passenger in his cousin’s car when the car was stopped by the police, according to the sneering officer, for “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 neither the driver’s nor the defendant’s. They were both arrested for receiving/possession of 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 which 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 his head” with a shotgun. However, with the wallet, sawed-off shotgun, and matching fingerprints, police charged the defendant with armed robbery.

If the defendant files a motion to suppress the wallet and gun how should the court rule and why? (This Question is Worth **10 Points**)

Do Not Write in This Space

(Turn The Page For The Next Question)

Question 10.

A police officer, who was notified late at night that the defendant was one of three people who had participated in an armed robbery in which the store manager had been shot, obtained a valid arrest warrant for the defendant and immediately went to the defendant's home with four other police officers. The officers made a valid entry into the defendant's home and placed him under arrest. Once the police had the defendant under their control in the front room, they looked into the closet of an adjacent room to determine if anyone was there who might threaten them.

Is the protective sweep of the closet adjacent to the front room in which the defendant was arrested permissible? (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**)

Do Not Write in This Space
(Turn The Page For The Next Question)

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**)

Do Not Write in This Space
(Turn The Page For The Next Question)

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**)

Question 17.

After arresting and booking the defendant for the murder of his wife, Detectives from the Boston Police Department bring the defendant into the interrogation room to question him about the details of the murder. After the Detectives read the defendant his *Miranda* rights he invoked his right to remain silent, at which point the police ceased all questioning. After the passage of time may the police go back and reinitiate the earlier attempt to speak with the defendant about the murder? (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**)

Question 18.

After the arrest and booking of the defendant for the murder of his wife, Detectives from the Boston Police Department bring the defendant into the interrogation room to question him about the details of the murder. After he is read his *Miranda* rights, the defendant invokes his right to counsel and the police cease all questioning. Two hours later Detectives from the Springfield Police Department arrive to speak with the defendant about an unrelated murder. May the Detectives from the Springfield Police Department speak with the defendant? (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**)

Question 19.

After the arrest and booking of the defendant for the murder of his wife, Detectives from the Boston Police Department bring the defendant into the interrogation room to question him about the details of the murder. After he is read his *Miranda* rights the defendant invokes his right to counsel and the police cease all questioning. Two hours later the defendant starts banging on the cell and states that he "now wishes to speak with the police."

Under these circumstance may the Detectives from the Boston Police Department speak with the defendant regarding the murder? (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**)

Question 20.

The defendant is arraigned in the Worcester District Court for the murder of his wife. After meeting and speaking briefly with his court appointed lawyer the defendant is brought back down to lock-up. Twenty minutes later, detectives from the Worcester Police Department approach the defendant and state that they wish to speak with him regarding an unrelated murder. May the detectives speak with the defendant regarding the unrelated murder? (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**)

Question 21.

The defendant is arraigned in the Worcester District Court for the murder of his wife. After meeting and speaking briefly with his court appointed lawyer the defendant is brought back down to lock-up and later transported to the Worcester House of Correction to be held on the murder charge. The Government places a jail house snitch in the same cell as the defendant. The Government tells the snitch to deliberately initiate conversation with the defendant and get as much information about the murder as possible. If the defendant incriminates himself regarding the murder to the snitch may the Prosecution put the snitch on the stand at the trial to testify about the defendant’s incriminating statements? (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**)

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 # 2:

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

As Defense counsel for the defendant you oppose the issuance of the order, contending that if your client testifies and produces evidence he could be prosecuted in a subsequent state 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.

How should the U.S. District Court rule on your motion 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.**

ID NUMBER: _ _ _ _ _

Do Not Write in This Space
(Turn The Page For The Next Question)

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.**

ID NUMBER: _ _ _ _ _

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.**

ID NUMBER: _ _ _ _

Lined writing area with 21 horizontal lines.

QUESTION 3:

Indictments have been returned in the Southern District of California charging the twelve petitioners with conspiring to violate the Federal Controlled Substance Act. Upon their arrest, bail was fixed for each petitioner in the widely varying amounts of \$2,500, \$7,500, \$75,000 and \$100,000. On motion of petitioner Schneiderman following arrest in the Southern District of New York, his bail was reduced to \$50,000 before his removal to California. On motion of the Government to increase bail in the case of other petitioners, and after several intermediate procedural steps not material to the issues presented here, bail was fixed in the District Court for the Southern District of California in the uniform amount of \$50,000 for each petitioner.

Petitioners moved to reduce bail on the ground that bail as fixed was excessive. In support of their motion, petitioners submitted statements as to their financial resources, family relationships, health, prior criminal records, and other information. The only evidence offered by the Government was a certified record showing that four persons previously convicted under the Federal Controlled Substance Act in the Southern District of New York had forfeited bail. No evidence was produced relating those four persons to the petitioners in this case.

What are the Petitioners strongest constitutional argument(s) for having their bail which was set at a fixed amount reduced and why? (This Question is worth **5 Points**) **Limit your answer to the space provided.**

QUESTION 4:

The Idaho Police Department received an anonymous tip that a young Hispanic male standing at a particular bus stop and wearing a plaid shirt and was carrying a gun. The police knew nothing about the informant and there was no audio recording of the call. Two officers were dispatched to check the area and when they arrived six minutes later they saw three Hispanic males standing around in the area. One of the three Hispanic males (Carlos) was wearing a plaid shirt but other than that the officers did not see a firearm and Carlos made no threatening or otherwise unusual movements. One of the officers approached Carlos told him to put his hands on the bus stop, frisked him, and seized a gun from Carlos's pocket.

Carlos a minor who was 10 days shy of his 16th birthday was charged with carrying a concealed firearm without a license and possessing a firearm while under the age of 18.

If Carlos' attorney moves to suppress the gun how should the motion judge rule on the motion and why? (This Question is worth **5 Points**) **Limit your answer to the space provided.**

ID NUMBER: _ _ _ _ _

QUESTION 5:

Officer Davis arranged for another officer to arrest Mr. Craft, a murder suspect, specifically instructing the officer not to advise Craft of his Miranda rights. After Craft had been taken to the police station and left alone in an "interview room" for 15 to 20 minutes, Davis questioned him for 30 to 40 minutes. After he made an incriminating statement, he was given a 20 minute break. Davis then resumed questioning, this time advising Craft of his Miranda rights. After he waived his rights, Davis confronted Craft with the incriminating statement he had made at the prewarning questioning session. As Davis acknowledged, Craft's ultimate statement was "largely a repeat of information . . . obtained during the first questioning session. An officer of the police department testified that this particular interview and interrogation strategy was promoted not only by his own department, but by a national police training organization and other departments in which he had worked.

The Prosecution now seeks to use the incriminating statement taken from Craft as part of their case-in-chief. If the defendant files a motion to suppress the incriminating statement how should the court 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.

Do Not Write in This Space

(Turn The Page For The Next Question)

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:

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.

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 2.

Texas police detectives who were investigating the rape and murder of a local fashion model assembled sufficient evidence to establish probable cause to believe that the defendant raped and murdered the woman. Some days later, detectives went to the home of the defendant to arrest him. After knocking and announcing their presence and waiting a reasonable period of time, the police made a forcible entry into the defendant’s home and arrested the defendant inside his bedroom.

If the defendant files a motion to dismiss the arrest inside the home what is his strongest constitutional argument and how should the court rule on the motion and why? (This Question is worth **5 Points**) **Limit your answer to the space provided.**

Question 3.

While on patrol an officer observed the defendant traveling in excess of the posted speed limit and stopped the defendant intending to issue him a citation for speeding. While running a check of the defendant's license the officer discovered that the defendant had two outstanding warrants for his arrest. One of the warrants was for a past violation of a restraining order and the other was for unpaid child support. The officer ordered the defendant out of the car, arrested him on the warrants and secured the defendant in the rear of his police vehicle. The officer then returned to the defendant's vehicle and observed a grey backpack on the front passenger seat. Opening the back pack, the officer discovered 17 individually wrapped bags of heroin and a loaded firearm. In addition to being arrested on the two outstanding warrants the defendant was charged with possession with intent to distribute a controlled substance and the unlawful possession of a firearm.

If the defendant files a motion to suppress the 17 bags of heroin and the firearm how should the court rule on his motion and why? (This Question is worth **5 Points**) **Limit your answer to the space provided.**

Question 4.

While two police officers were on patrol they were approaching a small car. A group of youths huddled around the car saw the officers approaching and took off running. Suspicious, the officers gave chase. Just as one of the officers caught up with one of the fleeing youths, named Houdini D., Houdini D. tossed to the ground a bag of crack cocaine that he had been carrying. Houdini D. then attempted to climb over a 6 foot tall chain link fence; however the pursuing officer, who at all times during the foot pursuit had been yelling "Stop! Police!, Stop! Police!" managed to catch and to tackle Houdini D. just before he went over the fence. The officer then arrested Houdini D. and subsequently charged him with possession of a controlled substance.

If Houdini D. files a motion to suppress the crack cocaine how should the court rule on his motion and why? (This Question is worth **10 Points**) **Limit your answer to the space provided.**

Question 6.

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**)

ID NUMBER: ___ _ _ _ _

Do Not Write in This Space
(Turn The Page For The Next Question)

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 9.

On January 5, 2015, People’s United Bank was robbed by two people wearing disguises. Several eyewitnesses told investigators that one of the robbers sounded like and walked like a woman. A month later, Bob was caught breaking into a liquor store. During police interrogation, he confessed to a string of robberies in the areas, including the People’s United Bank heist that he said he committed with Sue. Bob refused to make any statements or to testify at trial. Bob and Sue are tried together in federal court for the People’s United Bank robbery.

Can the prosecutor read to the jury parts of Bob’s confession that directly implicate Sue?

YES or NO

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

QUESTION 9A:

Suppose the Prosecution completely redacts or omits any reference or mention of Sue in Bob's confession. Can the Prosecution now read parts of Bob's confession to the Jury?

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**)

Do Not Write in This Space

(Turn The Page For The Next Question)

Question 10.

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 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*:

Do Not Write in This Space

(Turn The Page For The Next Question)

Question 12.

James Taylor, was indicted by the grand jury for aggravated kidnapping. During Taylor’s trial a number of women were systematically excluded from the venire from which the petit jury was drawn. Taylor filed a motion with the trial court to quash the petit jury venire arguing that he was entitled to a fair trial by jury. What constitutional argument(s) should Taylor raise to challenge the exclusion of women from his jury? (This Question is Worth 5 Points)

Horizontal lines for writing the answer.

Question 13.

After arresting and booking the defendant for the murder of his wife, Detectives from the Boston Police Department bring the defendant into the interrogation room to question him about the details of the murder. After the Detectives read the defendant his *Miranda* rights he invoked his right to remain silent, at which point the police ceased all questioning. After the passage of time may the police go back and reinitiate the earlier attempt to speak with the defendant about the murder?

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 14.

After the arrest and booking of the defendant for the murder of his wife, Detectives from the Boston Police Department bring the defendant into the interrogation room to question him about the details of the murder. After he is read his *Miranda* rights, the defendant invokes his right to counsel and the police cease all questioning. Two hours later Detectives from the Springfield Police Department arrive to speak with the defendant about an unrelated murder. May the Detectives from the Springfield Police Department speak with the defendant?

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 15.

After the arrest and booking of the defendant for the murder of his wife, Detectives from the Boston Police Department bring the defendant into the interrogation room to question him about the details of the murder. After he is read his *Miranda* rights the defendant invokes his right to counsel and the police cease all questioning. Two hours later the defendant starts banging on the cell and states that he “now wishes to speak with the police.”

Under these circumstance may the Detectives from the Boston Police Department speak with the defendant regarding the murder?

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 16.

The defendant is arraigned in the Worcester District Court for the murder of his wife. After meeting and speaking briefly with his court appointed lawyer the defendant is brought back down to lock-up. Twenty minutes later, detectives from the Worcester Police Department approach the defendant and state that they wish to speak with him regarding an unrelated murder. May the detectives speak with the defendant regarding the unrelated murder?

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 17.

The defendant is arraigned in the Worcester District Court for the murder of his wife. After meeting and speaking briefly with his court appointed lawyer the defendant is brought back down to lock-up and later transported to the Worcester House of Correction to be held on the murder charge. The Government places a jail house snitch in the same cell as the defendant. The Government tells the snitch to deliberately initiate conversation with the defendant and get as much information about the murder as possible. If the defendant incriminates himself regarding the murder to the snitch may the Prosecution put the snitch on the stand at the trial to testify about the defendant's incriminating statements?

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 18.

Anthony Copani, defense lawyer, and Constance Rudnick, prosecutor, are in the third day of a hotly contested criminal trial involving a mother charged with shaking her baby and thereby causing its death. The level of animosity between the lawyers has been high. As the hours go by, the decibel level has increased as the lawyers are able to agree on absolutely nothing. While cross examining one of the state's witnesses, Attorney Copani asked the witness, "isn't it true that the testimony you just gave here today was a complete fabrication concocted by the prosecution who paid you to testify?" Upon hearing this Prosecutor Rudnick sprung to her feet objecting and immediately moved for a mistrial. Defense counsel vehemently objected, arguing that a new trial was barred by double jeopardy.

How should the court rule on Prosecution's motion for a mistrial and why? (This Question is worth **5 Points**)
