

**CRIMINAL PROCEDURE  
PROFESSORS COYNE AND PULLER  
SPRING 2007 FINAL EXAM**

**“The most basic function of any government is to  
provide for the security of the individual and his property.”  
Miranda v. Arizona**

Use your social security number on the blue book and this examination. Write your answers to Question 2 in the spaces provided.

Your knowledge of the law, and ability to analyze the issues should be clear from the manner you express those thoughts on this test. Please express your thoughts completely and clearly.

Write no more than six (6) handwritten pages using only one side of each paper or four (4) typed, double-spaced pages. We will not read anything that exceeds the page limitation.

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Question One

Recently, the city of Boston, Massachusetts experienced a rise in criminal activity, including several unsolved rapes. The mayor told all police officers that they were to stop any white male between the ages of 20 and 25 who was dressed in an oversized hooded sweatshirt that was on the streets of that neighborhood between midnight and 4:00 a.m. At 2:00 A.M. on May 1st, Ryan, a Boston police officer, was conducting a routine patrol in his police cruiser in the neighborhood where the rapes occurred. He observed Jesse driving his car down the street, slowing down as he passed each house. Ryan became suspicious, turned on his overhead lights and pulled the car over.

Ryan exited his cruiser and approached Jesse's car. He asked Jesse for his license and registration and when Jesse opened his glove compartment, Ryan shined his flashlight into it, observing a bottle of pills. He ordered Jesse out of

the car, arrested and handcuffed him. Ryan then searched the front and back seat areas of the car, and under the front seat he found a plastic bag containing what appeared to be condoms. In the trunk of the vehicle he then found a pound of marijuana, duct tape and a shovel. Shortly thereafter, Jesse was brought to the Boston police station. As Ryan started to read the Miranda rights Jesse yelled out “okay I killed my father but he had it coming”. Jesse denied any involvement in any of the rapes but said he had heard two guys named Banek and Alex talking at the coffee shop about them and he knows they live over at the junkyard on Freeport Street in Dorchester.

Later, at 4:00 A. M., Joe Jones, another Boston police officer, was dispatched to the Freeport Street area to answer a call regarding a burglary. Billy Budd told Joe that he had been awakened by a noise on his porch and from his window saw a man in a black hooded sweatshirt leaving his front porch carrying a large sack. He also told him that his dog was missing. Jones left Billy’s house and as he was returning to the station, he saw Ro, dressed in a black hooded sweatshirt, running down the street. He had no sack with him. Joe screamed for Ro to stop and as he approached Ro, Ro began to run away. Joe shot Ro as he ran away. He then patted him down and felt in Ro’s pocket several condoms and some pills. Ro said he wanted medical assistance and to speak to an attorney. Joe placed Ro under arrest and told that could wait until after the lineup. At the police station, Ro was placed in a line up where he was the only person wearing a black-hooded sweatshirt with blood on the sleeve. Several of the rape victims selected Ro as the rapist.

Meanwhile Ryan and the swat team had arrived at the junkyard on Freeport Street after obtaining a search warrant from a friendly judge. The junkyard was walled off from the street by junk cars stacked on top of one another and surrounded by a chain link fence. The junkyard occupied an entire city block. Some nasty dogs were inside the fence and snarled and growled at the police officers as they approached. The police used their heat sensing equipment and audio long distance listening devices as Ryan went over the fence and went to the back of the junkyard to get closer to the house. Ryan’s personal observations and the information obtained from the heat sensing equipment and audio long distance listening devices showed the existence of a drug lab in the house. The police stormed the house and arrested all the occupants including Banek and Alex.

Discuss in detail the various Criminal Procedure issues involved.

Question Two (No Essay)

Phil, an undercover plainclothes police officer employed by the town of Andover saw an automobile driving erratically. Phil knew the car as it belonged to Jeff, whom Phil had arrested on many occasions for drug-related offenses and had used as an informant to entice Robert, the local rabbi, to once buy drugs. Phil, driving an unmarked vehicle, followed Jeff's car to an apartment on Main Street. Phil watched from a distance as Jeff opened the trunk of his car and removed an open shoe-box from the trunk.

After Jeff entered the apartment house, Phil approached Jeff's car and jimmied open the locked trunk. He saw what appeared to be a trace of a whitish, powdery substance on the trunk's floor which he recognized, from his experience, as heroin. He closed the trunk and approached the door of the apartment house, which was locked. He pressed the buzzers for the apartments and someone buzzed him in.

Inside, Phil went to Apartment 3. Phil ordered Jeff to stop and to raise his hands. At that moment, Liz slammed a hammer on Phil's shoulder causing him to pull the trigger in Jeff's direction and Phil shot him. Jeff then pulled a gun from under the sink, shoved it against Phil's stomach and said "say goodbye baby" and pulled the trigger but the gun misfired. Phil retrieved his gun, arrested Jeff and Liz, and radioed for assistance. At the station Liz confessed to everything, said it was all Jeff's idea and told them that Jeff's drug stash was hidden in the field directly behind their apartment. Jeff and Liz were tried together. Neither has any money to hire an attorney which Liz has requested and Jeff has demanded to represent himself although he only has a sixth grade education.

Please fully define each of the following terms and then explain how, if at all, it applies to the fact pattern described in Question Two.

Entrapment \_\_\_\_\_  
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Bruton Problem \_\_\_\_\_

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Challenge to a Juror \_\_\_\_\_

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Exceptions to the warrant requirement for a lawful search \_\_\_\_\_

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Alford Plea \_\_\_\_\_

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Curtilage \_\_\_\_\_

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Terry Stop \_\_\_\_\_

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Right to Counsel \_\_\_\_\_

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Inevitable Discovery Doctrine \_\_\_\_\_

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Ineffective Assistance of Counsel \_\_\_\_\_

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**Question One**

Recently, the town of Newburyport, Massachusetts experienced a rash of criminal activity, including several unsolved burglaries. At 2:00 A.M. on May 1st, Lynne, a Newburyport police officer, was conducting a routine patrol in her police cruiser in the area where the burglaries occurred. She observed Larry driving his car down the street, slowing down as he passed each house. Lynne became suspicious, turned on her overhead lights and pulled the car over.

Lynne exited her cruiser and approached Larry's car. She asked Larry for his license and registration and when he opened his glove compartment, she shined her flashlight into it, observing a revolver. She ordered Larry out of the car, arrested and handcuffed him. Lynne then searched the front and back seat areas of the car, and under the front seat she found a plastic bag containing what appeared to be marijuana. In the trunk she then found a machine gun. Shortly thereafter, Larry was brought to the Newburyport police station, where Lynne read him his *Miranda* rights and he gave a statement admitting that the bag contained marijuana and that when he was stopped he was looking for an address to meet someone to “boost some jewelry.”

Later, at 3:00 A. M., Joe, another Newburyport police officer, was dispatched to Rosa's home where a burglary had just taken place. Rosa told Joe that she had been awakened by a noise on her porch and had seen from her window a man in a black hooded sweatshirt leaving her house carrying a large sack. She also told him that she was missing valuable jewelry and several antique coins. Joe left Rosa's house and as he was returning to the station, he saw Ro, dressed in a black hooded sweatshirt, walking down the street. He had no sack with him. Joe exited his car and as he approached Ro, Ro began to run away. Joe

chased and caught him and threw him violently to the ground. He then patted him down and felt in Ro's pants pocket what seemed to be several coins. He reached into Ro's pocket and pulled out a number of antique coins. He then asked Ro where he had hidden the sack. At first, Ro denied any knowledge of a sack and said he wanted to speak to an attorney. When asked again, he disclosed the sack's location. Joe placed Ro under arrest and later retrieved the hidden sack, which contained more coins and Rosa's jewelry. At the police station, Ro was placed in a line up where he was the only person wearing a black-hooded sweatshirt. Rosa selected Ro as the robber.

Larry and Ro were indicted by the grand jury for various offenses related to the activities for which they were arrested.

Discuss in detail the various Criminal Procedure issues involved

### **Question Two (No Essay)**

Pete, an undercover plainclothes police officer employed by the town of Plymouth saw an automobile go through a red light. Pete knew the car as it belonged to James, whom Pete had arrested on many occasions for drug-related offenses and had used as an informant to entice Robert, the parish priest, to once buy drugs. Pete, driving an unmarked vehicle, followed James's car to an apartment on Main Street. Pete watched from a distance as James, looking furtively around (as it seemed to Pete), opened the trunk of his car and removed an open shoe-box from the trunk. Sunlight glinted on the box's contents which looked to Pete like filled cellophane sandwich bags.

After James entered the apartment house, Pete approached James's car and jimmed open the locked trunk. He saw what appeared to be a trace of a whitish, powdery substance on the trunk's floor which he recognized, from his experience, as heroin. He closed the trunk and approached the door of the apartment house, which was locked. He pressed the buzzers of the four apartments and someone buzzed him in.

Inside, Pete went to Apartment 3, where he believed James lived. He heard music coming from the apartment and rapped on the door. Receiving no response, he attempted to pick the lock but failed. He then slammed his body against the door, which gave way. He then rushed into the apartment and, pointing his gun, shouted "Police! Where's James?" Annette, James's girlfriend who lived in the apartment, pointed to the kitchen, where Pete found James starting to flush the contents of the bags down the drain. Pete ordered James to stop and to raise his hands. At that moment, Annette slammed a hammer on Pete's shoulder causing him reflexively to pull the trigger in James's direction and he shot him. James then pulled a gun from under the sink, shoved it against Pete's stomach and said "You're a goner, pig!" and pulled the trigger but the gun misfired. Annette, meanwhile, finished flushing the contents of the bags. Pete retrieved his gun, arrested James and Annette, and radioed for assistance. At the station Annette confessed to everything, said it was all James' idea and told them that James' drug stash was hidden in the field directly behind their apartment. James and Anette were tried together. Neither has any money to hire an attorney.

Please fully define each of the following terms and then explain how, if at all, it applies to the fact pattern described in Question 1.

Entrapment \_\_\_\_\_  
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Double Jeopardy \_\_\_\_\_  
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Grand Jury \_\_\_\_\_  
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Exceptions to the warrant requirement for a lawful search \_\_\_\_\_

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Alford Plea \_\_\_\_\_

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Curtliage \_\_\_\_\_

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Griffin-Douglas Principle \_\_\_\_\_

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Bruton Problem \_\_\_\_\_

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Immunity \_\_\_\_\_

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Ineffective Assistance of Counsel \_\_\_\_\_

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