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 !!!

1

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

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2. Bruton Problem

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3. Voir Dire

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4. Evanescent Evidence

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5. Probable Cause

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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 reprosecuted 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

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7. Brady Materials

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8. Alford Plea

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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
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INSTRUCTIONS:

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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 seat belt, 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: ______________________________________________________
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2. List the Exceptions to the Warrant Requirement : (List ONLY)
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3. Katz’ “Reasonable Expectation of Privacy” 2 Prong Test is: __________________________
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4. Scope of a lawful “Search” is: ________________________________
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5. According to your text the federal system, and roughly half of the states, define a felony as:
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YOUR ENTIRE STUDENT ID NUMBER: ___ ___ ___ ___ ___ ___ -- 59

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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?

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

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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?

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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?
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.)
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 where 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?

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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?

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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?

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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 shotgun, 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?
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*):

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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)*:

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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):
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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):
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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 meetings he agreed to be a witness against his co-defendant, Demi-Glaze and he wrote a full confession implicating Demi-Glaze as the mastermind 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 \( (to \text{ wit: } \text{a lead pipe}) \). 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):

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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*:

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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 Bangazi 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
raise in order to enter the heroin into evidence? **Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.**
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.

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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.
How should the State Supreme Court rule on Wainwright’s Habeas Corpus petition and why? Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.
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 Riddik’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.
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.
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 seat belt, 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
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.