Spring 2017

CRIMINAL PROCEDURE MID-TERM

Professor Rodriguez

YOUR STUDENT ID NUMBER:

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

INSTRUCTIONS:

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

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

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

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

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

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

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of known gamblers entering	

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

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

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

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

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

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

YES or NO

In the space provided below recite the applicable rule of law and apply it to the facts to support the conclusion you reached in your answer. Limit your answer to the space provided .						

Spring 2017 Criminal Procedure Mid-term Exam	ID NUMBER:
Question 4. The defendant was a passenger in his confor, as the officer sneered, "driving while black." The of the car while the car was searched. Under the passenger and a wallet. The identification in the wallet was not the defendant were arrested for receiving stolen proposite to a man who reported being robbed earliegun matched the defendant's fingerprints that were the robbery told police that the robber was behind he the robber who had threatened to blow off the viction wallet, sawed-off shotgun, and matching fingerprint robbery. The defendant moved to suppress the wallet.	the defendant and the driver were ordered out senger seat, police found a sawed-off shotgun the driver's or the defendant's. The driver and berty. Later at the police station the wallet was a that evening. Fingerprints on the wallet and on file from a previous arrest. The victim of im at all times, and that he could not identify im's head with a shotgun. However, with the ats, police charged the defendant with armed at and shotgun.

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Question 5. While two police officers were on patrol they were approaching a small car. A group of youths huddled around the car saw the officers approaching and took off running. Suspicious, the officers gave chase. Just as one of the officers caught up with one of the fleeing youths, named Houdini D., Houdini D. tossed to the ground a bag of crack cocaine that he had been carrying. Houdini D. then attempted to climb over a 6 foot tall chain link fence; however the pursuing officer, who at all times during the foot pursuit had been yelling "Stop! Police!, Stop! Police!" managed to catch and to tackle Houdini D. just before he went over the fence. The officer then arrested Houdini D. and subsequently charged him with possession of a controlled substance.				
If Houdini D. files a motion to suppress the crack cocaine how should the court rule on his motion and why? (This Question is worth 10 Points)				

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Spring 2017

CRIMINAL PROCEDURE FINAL EXAM

Professor Rodriguez

YOUR STUDENT ID NUMBER:			

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

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

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

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

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

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

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

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

ID NUMBER:
PART ONE: DIRECTED SHORT ESSAYS
This section consists of 5 questions in the form of hypotheticals, each of which describes a situation that raises a specific legal issue, or in some instances more than one issue, and which is governed by a specific procedural rule. Each question requires that you identify the specific rule, or rules, that will control the result. For those questions that require you to draft an answer you must identify the issue, state the applicable rule, and apply that rule to the facts of the hypothetical. Answers should be written in the following form:
Your answer must be a concise, proper analysis that includes: (1) Your statement of the likely result; (2) followed by an explicit statement of the governing rule of law; (3) followed by your application of that rule to the specific facts of the situation.
Question 1. A woman was arrested by federal agents for possession of narcotics that she purchased from a state-sanctioned dispensary to treat pain related to chronic illnesses. At trial, an employee of the dispensary testified against the woman, providing evidence regarding the amount of narcotics she had purchased. Just before the close of the prosecution's case, however, the woman's illness became more severe and she fell into a coma. The judge declared a mistrial. Two years later, the woman awoke from her coma, and the prosecution brought the case against her for a second time.
If the attorney for the woman files a pre-trial motion to dismiss the second criminal prosecution what is her strongest constitutional argument? How is the court likely to rule on the motion and why?
(This Question is worth 5 Points) Limit your answer to the space provided.

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Question 2. A woman was attempting to fly cross-county with her two dogs, but feder employees at the airport stopped her before she could board the plane out of concern that t dogs could pose a safety risk to other passengers. The woman became extremely agitated as physically assaulted the employees. She was arrested by the local police and put on trial f assault, but was acquitted by the jury which found she acted in self-defense. The woman we then indicted on federal charges for assaulting the employees.			
If the woman's attorney files a pre-trial motion to have the case dismissed, what is the stronges constitutional argument? How should the court rule on the motion and why? (This Question i worth 5 Points) Limit your answer to the space provided .			

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Question 3 . A man is arrested and charged with giving an insufficient funds check with intent to defraud. Under state statute, the crime is a misdemeanor punishable by a maximum of six months' imprisonment or a \$2,000 fine. At a pretrial hearing, the man requests an attorney and a jury trial. The judge denies both requests. The man is convicted and sentenced to 60 days in the county jail.
If the man were to appeal his conviction to the state's appeals court, what is his strongest constitutional argument(s). How is the court likely to rule on his appeal and why? (This Question is worth 10 Points) Limit your answer to the space provided

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Question 4 . The respondent, Paul Lewis Hay, was indicted by a State County grand jury on a charge of uttering a forged instrument in the amount of \$88.30, an offense then punishable by a term of 2 to 10 years in prison.
After arraignment, Hay, his retained counsel, and the Commonwealth's Attorney met in the presence of the Clerk of the Court to discuss a possible plea agreement. During these conferences the prosecutor offered to recommend a sentence of five years in prison if Hay would plead guilty to the indictment. The prosecutor also said that if Hay did not plead guilty and "save the court the inconvenience and necessity of a trial," he would return to the grand jury to seek an indictment under the State Habitual Criminal Act, which would subject Hay to a mandatory sentence of life imprisonment by reason of his two prior felony convictions.
Hay chose to plead not guilty, and the prosecutor obtained an indictment charging him under the Habitual Criminal Act. A jury found Hay guilty on the principal charge of uttering a forged instrument and, in a separate proceeding, further found that he had twice before been convicted of felonies. As required by the habitual offender statute, he was sentenced to a life term in the penitentiary.
If Hay appeals his conviction to the state's appeals court arguing that his Fourteenth Amendment Due Process rights were violated how is the court likely to rule on his appeal and why?
(This Question is worth 5 Points) Limit your answer to the space provided

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Question 5. Detective received information from Informant, who had given reliable information many times in the past. Specifically, Informant said that, two days before, he had visited Harry's apartment with Bill. Informant said he saw Harry sell Bill some heroin at the apartment and that there was more heroin still in the apartment when Informant left. Detective knew that Informant Harry, and Bill were friends. Thereafter, Detective put this information into affidavit form appeared before a magistrate, and secured a search warrant for Harry's apartment. The search turned up a supply of heroin.
If Harry's attorney files a motion to suppress introduction of the heroin into evidence, how is the court likely to rule on the motion and why? (This Question is worth 10 Points) Limit your answer to the space provided

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

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

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

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

QUESTION 1:

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

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

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

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

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

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

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

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

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

between he and Brad. Brad made several incriminating statements concerning the robbery of Giant Grocery which the prosecution now seeks to use as part of its case in chief at trial.
What legal issues and motions will defense counsel for Andy, Brad and Charlie raise and file
and how is the court likely to rule on the motions and why? (Be certain, as explained in the
instruction above, to include in your answer the analysis that support your conclusions.)

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PART THREE: DIRECTED ESSAYS

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

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

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

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

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

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

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

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Question 2. John Bagley was indicted on charges of murder and conspiracy to commit murder.				
Before trial, he filed motions for (specific) discovery requesting information about any deals,				
promises or inducements made to Government witnesses in exchange for their testimony. The				
Government's response did not disclose that any "deals, promises or inducements" had been				
made to its two key witnesses who testified against Bagley at his later criminal trial in which he				
was convicted of all the charges. Bagley filed an appeal in the State appellate court seeking to				
have his sentence vacated, alleging that the Government's failure to turn over the requested				
discovery violated his due process rights.				
How is the court likely to rule on Bagley's appeal and what is the standard of materiality Bagley must show to support his constitutional argument? (This Question is worth 10 Points)				

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Question 4. Around 3:25am on April 29, 20015, police officers responded to a radio dispatch indicating that a man had been badly beaten and shot multiple times during a heated dispute. Police arrived within minutes and at the scene found the victim lying on the floor in a pool of blood, appearing to be in great pain, and speaking with difficulty. Unable to immediately locate
the assailant and concerned for the safety of the public, themselves, and the victim the police asked the victim, "what happened," "who stabbed you," and "where was his attacker." The victim managed to tell the police that Defendant, his neighbor, had just beaten him up, that he also shot him multiple times and that he had just run out the house as the police were pulling up. The victim's conversation with the police ended within 5 to 10 minutes when emergency medical services arrived to treat him. The victim was transported to the hospital, where he died within the
hour. The police began an immediate search for Defendant and within hours located him not far from the scene. At Defendant's trial for murder the police officers who spoke with the victim testified to what the victim had told them. The jury returned a guilty verdict on the charge of second-degree murder. Defendant is now appealing his conviction.
What is Defendant's and the Prosecution's strongest constitutional argument(s) on appeal and how is the court likely to rule and why? (This Question is worth 10 Points) Limit your answer to the space provided.

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Question 5 . The police in the city of Smud were conducting a lineup as part of a murder investigation. Wanting to conform to constitutional safeguards, Officer Green decided that they would need five persons in the lineup in addition to the suspect, Jones. Jones had been arrested without a warrant one hour earlier while walking home from work. Jones had not yet been charged with the murder in question. Because Jones was white and there were only three other persons at police headquarters who were white, Officer Green walked outside to find a citizen who would volunteer to be in the lineup.
Green spotted a man sitting on a bench. He approached the man and asked him to volunteer. The man refused. However, when Green taunted him about not fulfilling his civic duties the man agreed to be placed in the lineup.
Jones, the suspect, was $6'$ $5"$, the man was $6'$ $2"$, and the rest of the participants were $5'$ $9"$ to $6'$ $0"$.
Green placed the man next to Jones and then brought Witness into the room. As soon as Witness saw the man, he pointed at him and shouted, "Hey, that guy robbed my store this morning." Green immediately asked, "What about the guy standing to his right [referring to Jones]?" Witness replied, "He looks like the guy who shot my brother, yeah, that's him."
At pre-trial Jones objects to the admission of the eyewitness identification and files a motion to suppress all statements and the identification. What is Jones' strongest constitutional argument and how is the court likely to rule on his motion and why? (This Question is worth 10 Points) Limit your answer to the space provided.

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PART FOUR: FILL-IN-THE-BLANK (Worth 2 points each)
Question 1. Fully list the four factors used to determine whether a person's land falls within the curtilage:
1
2
3
4
Question 2 . Fully list the three requirements the Prosecution must show to prove constructive possession:
1
2
3
Question 3. In order for law enforcement to make a warrantless entry into a dwelling to render aid under the "emergency aid doctrine" what must they show:
Question 4 . In order for law enforcement to conduct a protective pat frisk of a motor vehicle what must they show:
Question 5 . In order for law enforcement to conduct a motor vehicle inventory search what must they show and what is the purpose of a motor vehicle inventory search:

correct answer below) to have identification purposes at a post			while witness(es) view pictures of him for phic display:
HAS A	RIGHT	OR	HAS NO RIGHT
	ın eyewitness	s identifi	d several factors from <u>Neil v. Biggers</u> , which cation is reliable and therefore admissible as n factors:
1			
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7			
Question 8. In Crist v. Betz, the	e United Stat	es Supre	me Court held, "The double jeopardy clause has been placed "in jeopardy", and that does
1			
2		OR	
Question 9. Write in the correc	t <u>number of</u>	jurors t	pelow for each ROL:
	equate group	delibera	ourt held, " that aperson jury was tion, to insulate members from outside action of the community.
	_		nited States Supreme Court held, "We thus than members, but that it requires at
			ourt held, "we upheld a state statute ary need concur to render a verdict in certain
_			osecution show in a detention hearing (a.k.a bail under the Bail Reform Act of 1984:

Question 6. In United States v. Ash, the U.S. Supreme Court held that a defendant (circle the

PART FIVE: BONUS QUESTIONS
This section consists of 3 questions in the form of hypotheticals, each of which describes a situation that raises a specific legal issue, or in some instances more than one issue, and which is governed by a specific procedural rule. Each question requires that you identify the specific rule, or rules, that will control the result. For those questions that require you to draft an answer you must identify the issue, state the applicable rule, and apply that rule to the facts of the hypothetical. Answers should be written in the following form:
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Question 1. Defendant was arrested, charged and convicted in the U.S. District Court with violating the federal statute on interstate gambling. At trial the government seeks to enter into evidence portions of defendant's telephone conversation which were obtained via a listening device affixed to the outside of an enclosed public telephone booth.
As the defendant's attorney, you file a motion seeking to suppress any statements made by defendant. How is the Judge likely to rule on the motion and why? (This Question is worth 10 Points) Limit your answer to the space provided.

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Question 2. A man ran an illegal casino out of the basement of his house. The police grew suspicious as to his activities after seeing a number of known gamblers entering and exiting the side door of the man's house at all hours of the night. A police officer staking out the house waited until he was sure the man had closed up his operations for the night, and snuck into the man's basement by opening and entering through a basement window. Inside, the officer saw cards, poker chips, and stacks of cash. The police officer then tracked down one of the gamblers he had seen leaving the man's house, and the gambler voluntarily gave a statement that illegal gambling was indeed occurring in the basement and that the police would find cards, poker chips and cash there. The police officer then used an affidavit of the statement to obtain a search warrant for the basement, which the officer then used to enter the basement and seize the cards, poker chips, and cash.
At trial the man brought a motion to suppress the introduction of the seized evidence.
How is the court likely to rule on the man's motion and why? (This Question is worth 10 Points) Limit your answer to the space provided.

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Question 3. The defendant was a passenger in his cousin's car when the car was stopped by police for, as the officer sneered, "driving while black." The defendant and the driver were ordered out of the car while the car was searched. Under the passenger seat, police found a sawed-off shotgun and a wallet. The identification in the wallet was not the driver's or the defendant's. The driver and the defendant were arrested for receiving stolen property. Later at the police station the wallet was matched to a man who reported being robbed earlier that evening Fingerprints on the wallet and gun matched the defendant's fingerprints that were on file from a previous arrest. The victim of the robbery told police that the robber was behind him at all times and that he could not identify the robber who had threatened to blow off the victim's head with a shotgun. However, with the wallet, sawed-off shotgun, and matching fingerprints, police charged the defendant with armed robbery. The defendant moved to suppress the wallet and shotgun.
How is the court likely to rule on the motion and why? (This Question is worth 10 Points)

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Spring 2012 CRIMINAL PROCEDURE FINAL EXAM Professor Rodriguez

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- 2. Your ANSWERS TO PARTS 1 THRU 5 MUST BE WRITTEN DIRECTLY IN THIS EXAM PACKET, which you will turn in at the end of the exam.
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- 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!!!

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

1. Consent	
2. Bruton Problem	
3. Voir Dire	
1 Evanescent Evidence	
4. Evanescent Evidence	
5. Probable Cause	
2	59

<u>PART TWO</u> - 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.

ι	Jnder 1	he	Sixth	Amendme	ent´s si	beedy	⁷ right	to tria	1 guaran	tee, w	/h1ch	1S	correct	ť:

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- (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.

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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
7. Brady Materials
8. Alford Plea

9. Double Jeopardy			
, ,			
10. Exculpatory Evidence	e		

<u>PART FOUR</u> – 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 be show in order to prevail?
What constitutional argument should Rocco raise, and what must be show in order to prevail?
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QUESTION 2: Sometime during the early evening hours, Cameron Diaz, Wynona Rider, Kim Basinger, Mary Tyler Moore and Sharon Stone where 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 point)	<u>FIVE</u> – TRUE OR FALSE (Circle the correct answer. Each question	is worth 1
1.	The exclusionary rule was held inapplicable in grand jury hearings where quinformation 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 per not live there?	rson who does
		True or False
		True of Talse
3.	A person subpoenaed in connection with a grand jury proceeding has an ev privilege against self-incrimination?	
3.		
		identiary True or False es to Miranda
	privilege against self-incrimination? For purposes of determining whether a person is in "custody" when it come	identiary True or False es to Miranda
	privilege against self-incrimination? For purposes of determining whether a person is in "custody" when it come	True or False es to Miranda e? True or False

Spring 2013 CRIMINAL PROCEDURE Quiz # 1 Professor Rodriguez

YOUR EN	TIRE STUDENT ID NUM	IBER: - 59

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

INSTRUCTIONS:

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

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

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

- 1. <u>Part One</u> 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. <u>Part Two</u> 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 <u>15 minute warning</u>, at which point <u>no one may leave the room</u> until the quiz ends.

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

GOOD LUCK!

PART ONE

The Amendment	provides that, "The right	of the people to	be secure in their
,,		, and	, against
	and		_, shall not be violated,
and no			
supported by oath or affirmation	on, and		the place
be, and	d the persons or things to	be	·"
2. Fill in the blanks (clearly,	fully and correctly.)		
The requirements of	are: "W	here the	and
withi	n the police officer's		are such that a
reasonably	and	man would	believe that an offense
, or1	peing"		
The level of information or the either an arrest or a search of a 4. Fill in the blanks (clearly,	person is:		
of t			
The warrant clause of the Four			
"except one	_		-
and the			
5. Fill in the blank (clearly, f	ully and correctly.)		
The level of information or the	evidentiary standard req	uired for law en	nforcement to justify the
stop of a person or motor vehic	ele is:		·

<u>PART TWO</u> – 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]

$\underline{PART\ THREE}$ - MULTIPLE CHOICE (\underline{Circle} the best possible answer. Each question is worth 1 point)

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

The trial court will

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

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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.

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

1. "Evanescent Evidence" is:					
2. List the Exceptions to the Warrant Requirement : (List ONLY)					

4 ______5

3. Katz' "Reasonable Expectation of Privacy" 2 Prong Test is:				
4. Scope of a lawful "Search" is:				
5. According to your text the federal system, and roughly half of the states, define a felony as:				

Spring 2013 CRIMINAL PROCEDURE Quiz # 2 Professor Rodriguez

YOUR ENTIRE STUDENT ID NUMBER:				5	9

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

INSTRUCTIONS:

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

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

This quiz consists of 4 short answer questions, worth 5 points each. Answer each question clearly, fully and correctly using only the lines provided, I will not read anything written beyond the lines provided. I will evaluate your answer on your ability to recognize issues, your knowledge of the applicable law, and <u>your analysis and application of the law to facts</u>. 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 <u>5 minutes left</u> and <u>1 minute left</u>. When I call time, you are to bring stop writing *immediately*.

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. <u>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.</u>

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 co	ounsel files a motion to suppress the statements made to Officer Smith. At a
preliminary hearing, wha	t is the Judge likely to rule and why?
1(a). What is the fund	ctional equivalent of interrogation?

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

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

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

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

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							
ight to the Assistance of Counsel was improperly denied, how will judge rule, and why?							

4. Answer the following question clearly, fully and correctly, <u>using no more than the lines</u> 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 wha
must the prosecution show in order to convict the judge?

Spring 2013

CRIMINAL PROCEDURE FINAL EXAM

Professor Rodriguez

YOUR ENTIRE STUDENT ID #:	59
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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.

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

<u>Part Two</u> consists of 4 directed questions worth 2 point each, for a total value of 8 points;

<u>Part Three</u> 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.

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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. $\lceil \sqrt{ } \rfloor \rceil$

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

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

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

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

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

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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?

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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?				

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cause	Detectives from the Raymond New Hampshire Police Department, who had probable
	, asked Robert Murphy to come down to the police station in order to speak with him
regar	ding 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 questionin
Murp	hy announced that he wished to leave, however the detectives were concerned that if they
let M	urphy leave they would not have enough time to obtain a warrant to collect physical
evide	nce from Murphy. Over Murphy's protests, and without a warrant, the detectives took
samp	es from underneath Murphy's fingernails, discovering evidence used to subsequently
convi	ct him.
M	Surphy appeals his conviction to the New Hampshire's Appellate Court, claiming that the
	rnail scrapings were the product of an unconstitutional search under the Fourth and
_	eenth Amendments.

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5.	Federal Agents arrived at the home of Samuel Adams with a warrant for his arrest for the
burgla	ry of a gas station. One of the agents handed Adams the arrest warrant and asked for
consen	t 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 v	which they intend to use at his criminal trial.
Dri	or to his criminal trial Adams filed a motion to exclude the items arguing that they were

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?	

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6.	Ulysses S. Grant was arrested for driving with a suspended license, hand-cuffed, and	
lock	ed in the back of a patrol car, while a police officer searched his car and discovered a load	ed
firea	rm in a backpack on the backseat.	
F	Prior to trail Grant files a motion to suppress arguing that the firearm should be excluded	
beca	use he no longer had access to the vehicle or to the gun at the time of the search.	
I	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?

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8. Federal C	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. Ba	ased on the information Customs Agents searched the plane and discovered five
packages contain	ing large amounts of cocaine. Hezekiah and several others, including a man
named Kurt Olso	on, were charged with possession of narcotics aboard a United States vessel.
During his arraig	nment Hezekiah retained a lawyer, plead not guilty, and was released on bail
together with Ols	son. Several days later Olson, secretly cooperating with the federal agents,
prearranged a me	eeting with Hezekiah. Hezekiah made several incriminating statements during
the course of the	conversation.
A + twick I I lorge	trick abjects to the introduction of the inquincipatine statements energing that his
	kiah objects to the introduction of the incriminating statements, arguing that his
constitutional rig	hts had been violated because the incriminating statements were deliberately
elicited from him	n without counsel being present.
How should	the court rule on Hezekiah's objection and why?

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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 viol	ent
alterca	tion 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 ta	king an officer's gun during the incident. Although he was never charged with a crime, a	ınd
his ans	swers were never used against him in any criminal proceeding, Ricardo filed a 42 U.S.C	. §
1983 s	suit alleging that the police interrogation violated his Fifth Amendment right to not be	
compe	elled in any criminal case to be a witness against himself, as well as his Fourteenth	
Amen	dment substantive due process right to be free from coercive questioning.	
Но	ow should the Federal District Court judge rule on Ricardo's civil rights suit and why?	

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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?

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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?			

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

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

What standard must McHale show in regard to his defense counsel's representation and wh		
two prong test must be met in order to have his criminal conviction set aside?		

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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 variou
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?

An officer from the Carver Police Department observed Phillip Russo operating a

14.

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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?		

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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 appear 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?		

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17.	Larry Gene Hagman hired Stefan Wonder and Raymond St. Charles to kill his wife
Jessic	a Hagman for a sum of \$2000.00. Hagman gave Wonder and Charles the keys to his car
and hi	s 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
bruise	d body with a single gunshot wound to the head in the trunk of the Hagman's car just over
the lin	ne in Providence Rhode Island.
	Both Massachusetts and Rhode Island pursued dual investigations into the murder of
Jessic	a and several months later the Massachusetts' Bristol County District Attorney's Office
indict	ed Hagman for the offense of "malice" murder. Hagman was convicted and sentenced to
life in	nprisonment for his wife's murder.
	Several months later the State of Rhode Island indicted Hagman for the capitol offense of
murde	er during a kidnapping. A guilty verdict was returned at trial, and after a sentencing hearing
the ju	ry recommended the death penalty, which the judge accepted.
Oı	n appeal Hagman argued that his conviction and sentence in the Commonwealth of
Massa	schusetts barred his prosecution and conviction in the State of Rhode Island. How should
the co	urt rule on Hagman's appeal and why?

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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.

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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 <i>Payton v New York</i> (citing <i>Steagald v. United States</i>):
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 <i>Introductory material Sec. 4 Ch. 6 (Harris v New</i>
	York):

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	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 <i>Moran v. Burbine</i> – (citing Colorado v. Spring):			
4.	George Washington was arrested and charged with the arson of several buildings and			
	structures in Chelsea, Massachusetts and was subsequently indicted by the grand jury.			
	Following his indictment the police showed several witnesses who were present at each			
	of the fire scenes a picture of Washington. Each of the witnesses was able to positively			
	identify Washington as being present at the time of the fire.			
	identity 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 <i>Kirby v. Illinois</i> (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.

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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.

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

Assume that you have been hired as defense counsel to represent each of these
defendants, Brown and Demi-Glaze. Please fully discuss what, if any, constitutional issue(s) and
the applicable rule of law you would raise in your defense strategy on behalf of each of these
clients at the subsequent Federal criminal trial.

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Bonus	Questions – Each is worth two possible points:		
1.	Jamal Wilkins was arrested and charged with assault and battery with a dangerous weapon (<i>to wit</i> : 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 <i>Boykin v. Alabama – citing Footnote (a)</i> :		
	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 <i>Brady v. Maryland</i> :		

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Spring 2014 CRIMINAL PROCEDURE MID-TERM QUIZ

Professor Rodriguez

YOUR STUDENT ID NUMBER:	59
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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 <u>total of 50 Points</u>. 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!!!

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<u>PART ONE</u> - 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)
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.
device arrixed to the outside of a public telephone that was not enclosed in a booth.
A.D. '' '' 1' ' 11 ' ' 11 D ''
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?

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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.

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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.

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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.

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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.	
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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.

and a preliminary nearing, 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.

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Question # 9 (This question is worth 5 points)
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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.

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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.	
possession of a meann.	
You represent the Prosecution at a motion to suppress the firearm that Officer McGuinness four 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)

The federal exclusionary rule is a command of the Fourth Amendment?
True [] False []
The federal rule permits a person to raise the Doctrine of Automatic Standing in order to nallenge the legality of a search anytime a defendant is charged with a crime as to which essession of certain seized evidence at the time of a contested search is an essential element of nilt?
True [] False []
The four factors used to determine whether land falls within the curtilage are:
1
2
3.
4.
Under Aguilar-Spinelli, the two prong test used to determine the validity of a warrant is:
1
2.
When a person is held in federal police custody as a result of a warrantless arrest he/she 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:	50
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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.

<u>The DEFENDANT</u>: 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.

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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

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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.					

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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.

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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.

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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 you		
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.

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law in your	r answer and a	apply the RO	OL to the fa	cts in your	analysis.		

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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.

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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.

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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.

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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.		

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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 []

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

The trial court will

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

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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.

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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

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

The evidence is

- (A) Admissible under the search incident to arrest doctrine if speeding in a school zone is an arrestable offense in the jurisdiction.
- (B) Admissible because the officer has the authority to order a legally stopped motorist from his or her vehicle and to frisk the motorist for the officer's safety.
- (C) Inadmissible because speeding is not an arrestable offense and an officer may not search incident to a speeding stop.
- (**D**) Inadmissible because the motorist was not under arrest when the officer conducted the search.
- 10. Add the following facts to those in Question 9. When the officer ordered the motorist out of the vehicle, the motorist was very surly, mumbled responses to the officer's questions, seemed to fidget inordinately, and indicated to the officer that she needed to get away from the area immediately. The officer responded to the motorist's reaction by ordering the motorist to sit in the back of the police cruiser. The officer frisked the motorist for a weapon before placing her in the back of the cruiser but found no weapon on the motorist's person. The officer checked the motorist's license and registration and determined that there was no outstanding warrant for the motorist. The officer wrote the traffic ticket and walked the motorist back to her car. Before allowing the motorist to get in her car, the officer reached into the car and found a gun under the driver's seat. The officer arrested the motorist for carrying a concealed weapon. The defense has moved to suppress the gun.

The gun is

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

Spring 2016

CRIMINAL PROCEDURE MID-TERM

Professor Rodriguez

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

INSTRUCTIONS:

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

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

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

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

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

Remember, all questions are based on federal constitutional law.

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Spring 2016 Criminal Procedure Mid-term Exam	ID NUMBER:		

Spring 2016 Criminal Procedure Mid-term Exam	ID NUMBER:
Spring 2010 Criminal Procedure Wild term Exam	15 NOMBER:
Question 2. A detective received information from information many times in the past, that a particular informant said that this dealer sold some heroin informant, the dealer, and the friend were acquain information into affidavit form, appeared before a the dealer's apartment. The search turned up a supple	man was a narcotics dealer. Specifically, the to his friend. The detective knew that the tances. Thereafter, the detective put all this magistrate, and secured a search warrant for
If the dealer's attorney files a motion to supp the motion and why? (This Question is worth space provided.	

Spring 2016 Criminal Procedure Mid-term Exam	ID NUMBER:		

ID	NUMBER:		

Question 3. Texas police detectives who were investigating the rape and murder of a local
fashion model assembled sufficient evidence to establish probable cause to believe that the
defendant raped and murdered the woman. Some days later, detectives went to the home of the
defendant to arrest him. The police immediately made a forcible entry into the defendant's home
and arrested the defendant inside his bedroom.

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

Spring 2016 Criminal Procedure Mid-term Exam	ID NUMBER:

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

YES or NO

In the space provided below recite the applicable rule of law and apply it to the facts to support the conclusion you reached in your answer. Limit your answer to the space provided .		
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ID NUMBER:		

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

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

Spring 2016 Criminal Procedure Mid-term Exam	ID NUMBER:

ID NUMBER:
were approaching a small car. A

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

icer then arrested Houdini D. and subsequently charged him with possession of ed substance.			
If Houdini D. files a motion to suppress the crack cocaine how should the court rule of his motion and why? (This Question is worth 10 Points)			

Spring 2016 Criminal Procedure Mid-term Exam	ID NUMBER:

Spring 2015

CRIMINAL PROCEDURE MID-TERM

Professor Rodriguez

YOUR STUDENT ID NUMBER:				5	9
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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:

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- 2. Your **ANSWERS MUST BE WRITTEN DIRECTLY IN THIS EXAM PACKET**, which you will turn in at the end of the exam. **Limit your answer to the lines provided.** I will not read anything written beyond the lines provided. Pay particular attention to the call of the question.
- 3. Do not identify yourself in the exam packet in any way other than by student ID. Do not write any information that might reveal who you are.
- 4. This is a closed-book examination. Other than writing implements, you are not to have any materials on your table or at your feet. Place all books, knapsacks, briefcases, etc. at the side or front of the room.

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

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

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

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

Remember, all questions are based on federal constitutional law.

GOOD LUCK!!!

himself, sat in an unmarked police vehicle on a stake out across from the man's home for several hours.
Frustrated that he had not observed any illegal activity, the deputy decided to get a closer look inside the man's home. The deputy climbed over a six foot tall privacy fence and snuck onto the man's enclosed back porch from which he was able to look inside one of the rear porch windows. The deputy observed the man in his living room packaging small packets of crystal meth for sale.
Based on his observations the deputy applied for, and was granted, a search warrant for the man's home to seize all drugs, drug manufacturing equipment, drug paraphernalia and cash. The deputy later executed the search warrant and seized more than 100 pounds of crystal meth. The man was subsequently arrested and charged with various drug offenses.
(a) If the defendant later files a motion to suppress the evidence seized inside of his home what constitutional argument should the man raise, and how should the Court rule on his motion? (This Question is worth 10 Points)

Question 1. Sheriff's Deputies from the Hillsboro County Sheriff's Department had suspected

for some time that a man living in town had been manufacturing and distributing crystal methamphetamine out of his home. One evening a young deputy, looking to make a name for

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 (b) At the suppression hearing the man raises an issue concerning the deputy climbing over his six foot tall privacy fence and onto his back porch. Please list (only) the factors used by the court to determine whether the man's back porch falls within the curtilage: (This Question is worth 5 Points)
2
3
4.
Question 2. A detective received information from an informant, who had given reliable information many times in the past, that a particular man was a narcotics dealer. Specifically, the informant said that this dealer sold some heroin to his friend. The detective knew that the informant, the dealer, and the friend were acquaintances. Thereafter, the detective put all this information into affidavit form, appeared before a magistrate, and secured a search warrant for the dealer's apartment. The search turned up a supply of heroin.
If the dealer's attorney files a motion to suppress the heroin how should the court rule on the motion and why? (This Question is worth 10 Points)

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Question 3. Philadelphia detectives who were investigating the robbery and murder of a taxi cab driver assembled sufficient evidence to establish probable cause to believe that the defendant robbed and murdered the driver. Some days later, detectives went to the apartment of the defendant to arrest him. The police knocked and announced their presence and waited a reasonable amount of time before they made entry after which they arrested the defendant inside his apartment. While inside the apartment the police observed a blood covered knife on the defendant's dining room table which they seized and now seek to use in the Prosecution's case-in-chief against the defendant.
(a) If the defendant files a motion to dismiss the arrest inside the apartment how should the court rule on the motion and why? (This Question is worth 8 Points)

riminal Procedure Midterm Spring 2015	
(b) Assume that the defendant's motion to dismiss the arrest	

speed limit and stopped the defendant intending to issue him a citation for speeding. While running a check of the defendant's license the officer discovered that the defendant had two outstanding warrants for his arrest. One of the warrants was for a past violation of a restraining order and the other was for unpaid child support. The officer ordered the defendant out of the car, arrested him on the warrants and secured the defendant in the rear of his police vehicle. The officer then returned to the defendant's vehicle and observed a grey backpack on the front passenger seat. Opening the back pack, the officer discovered 17 individually wrapped bags of marijuana. In addition to being arrested on the two outstanding warrants the defendant was charged with possession with intent to distribute a controlled substance.
If the defendant files a motion to suppress the 17 bags of marijuana how should the court rule on his motion and why? (This Question is worth 8 Points)

Question 4. While on patrol an officer observed the defendant traveling in excess of the posted

Criminal Procedure Midterm	Spring 2015				59
Question 5. Highway patrol of and erratic manner and stopped operation of her vehicle. When to step out of the vehicle and to protective pat frisk of the femal wrapped in a plastic baggie in to officer arrested and charged the pocket.	the defend the patrol walk to the le operator the woman	dant intendi officer appraise rear of he and he imr 's front jack	ng to issue a citat roached the femal or car. The officer nediately felt what tet pocket which l	ion for the improper e operator he ordered her then conducted a t he believed to be cocair ne then seized. The patrol	ne I
(a) Was the Patrol Office worth 2 Points)	cer's exit o	rder to the t	female operator la	wful? (This Question is	
	YES	or	NO		

(b) If the woman's attorney files a motion to suppress the cocaine how s rule on the motion and why? (This Question is worth 10 points)	hould the court

Criminal Procedure Midterm Spring 2015	59

(This Space Is Intentionally Left Blank)

Question 6. While two police officers were on patrol they were approaching a small car. A group of youths huddled around the car saw the officers approaching and took off running. Suspicious, the officers gave chase. Just as one of the officers caught up with one of the fleeing youths, named Houdini D., Houdini D. tossed to the ground a bag of crack cocaine that he had been carrying. Houdini D. then attempted to climb over a 6 foot tall chain link fence; however the pursuing officer, who at all times during the foot pursuit had been yelling "Stop! Police!, Stop! Police!" managed to catch and to tackle Houdini D. just before he went over the fence. The officer then arrested Houdini D. and subsequently charged him with possession of a controlled substance. If Houdini D. files a motion to suppress the cocaine how should the court rule on his						
motion and why? (This Question is worth 10 Points)						

Criminal Pr	ocedure Midterm Spri	ng 2015		 59

Spring 2015

CRIMINAL PROCEDURE FINAL EXAM

Professor Rodriguez

YOUR STUDENT ID NUMBER:				59

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

INSTRUCTIONS:

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

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

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

Part Two consists of one essay question worth 20 points;

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

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

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

GOOD LUCK!!!

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

- 1. For a guilty plea to satisfy federal requirements the trial judge must do all of the following, EXCEPT:
 - a. inform the defendant that a guilty plea will save the court time and trial resources.
 - b. insure that the plea is voluntary.
 - c. assure himself that there is a factual basis for the plea.
 - d. inform the defendant of the mandatory minimum penalty if there is one, even if the agreed-upon deal exceeds the mandatory minimum.
- 2. A state legislature passed a statute providing that juries in criminal trials are to consist of 6 rather than 12 jurors, and also providing that jury verdicts do not have to be unanimous but rather could be based on 5 votes out of 6 jurors.

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

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

- a. It will set aside the conviction, because the jury was composed of fewer than 12 members.
- b. It will set aside the conviction, because the 6-person jury verdict was not unanimous.
- c. It will set aside the conviction for both reasons.
- d. It will uphold the conviction.
- 3. A defendant was charged with manslaughter. At the preliminary hearing, the magistrate dismissed the charge on the grounds that the evidence was insufficient. The prosecutor then brought the case before a grand jury. After hearing the evidence presented by the

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

Should the motion be granted?

- a. No, because jeopardy had not attached.
- b. No, because there has been no conviction or acquittal.
- c. Yes, because any proceeding after the preliminary hearing would violate double jeopardy.
- d. Yes, because bringing the case before the second grand jury was a violation of double jeopardy.
- 4. A woman who is a computer whiz decided to dedicate herself to exposing persons who traffic in child pornography. She posted a number of sexually oriented photographs on her web site. The file for each photograph contained an embedded Trojan horse program.

The defendant downloaded one of those photographs onto his personal computer. Using the embedded program, the woman entered the defendant's computer and found a file containing a pornographic photograph of a child. She copied the file and turned it over to a federal law enforcement agency. A federal agent told her that a successful prosecution would require more than one photograph and offered her a monetary reward for additional photos leading to a conviction of the defendant. The woman entered the defendant's computer again, and this time she found hundreds of child pornography photos, which she turned over to the federal agency.

The defendant is charged with multiple counts of violating federal statutes prohibiting child pornography. He moves to suppress the photographs that the woman discovered on his computer. The motion is based on both the Fourth Amendment and a federal statute forbidding interception of electronic communication without permission. The parties have stipulated that the woman's conduct in downloading photos from the defendant's computer violated the interception statute.

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

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

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

Should the defendant's motion be granted?

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

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

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

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

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

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

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

Which of the following is NOT barred by double jeopardy?

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

- d. Multiple punishments for the same offense.
- 9. Under the Blockburger approach to double jeopardy, which of the following is the correct test to determine whether "larceny from the person" and "robbery" are the "same offense"?
 - a. Are there some common elements in the two crimes?
 - b. Does each crime require proof of a fact that the other does not?
 - c. Did the legislature intend for someone to be prosecuted for both crimes?
 - d. Did the two offenses occur during the same transaction or set of acts?
- 10. A defendant was validly arrested for the murder of a store clerk and was taken to a police station where he was given Miranda warnings. When an interrogator asked the defendant, "Do you understand your Miranda rights, and are you willing to give up those rights and talk to us?" the defendant replied, "Yes." When asked, "Did you kill the clerk?" the defendant replied, "No." When asked, "Where were you on the day the clerk was killed?" the defendant replied, "Maybe I should talk to a lawyer." The interrogator asked, "Are you sure?" and the defendant replied, "I'm not sure." The interrogator then asked, "Why would you want to talk with a lawyer?" and the defendant replied, "Because I killed the clerk. It was an accident, and I think I need a lawyer to defend me." At that point all interrogation ceased. Later, the defendant was formally charged with murdering the clerk.

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

Should the defendant's motion be granted?

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

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

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

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

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

QUESTION 1:

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

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

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

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

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

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

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

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PART THREE - DIRECTED, SHORT-ANSWER QUESTIONS

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

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

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

Question 1.

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

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

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(Turn The Page For The Next Question)

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Question 2.

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

How should the court rule on Prosecution's motion for a mistrial and why? (This Question is worth 7 Points)

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Question 3.

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

Will the victim be permitted to testify at trail that Defendant was the man who raped her based on her identification of the defendant at the lineup? (This Part of the Question is Worth 1 Point)

YES or NO

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

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Question 4.

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

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

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

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

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Question 5.

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

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

YES or NO

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

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Question 6.

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

Can the prosecutor read to the jury parts of Bob's confession that directly implicate Sue? (This Part of the Question is Worth 1 Point)

YES or NO

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

Suppose the Prosecution completely redacts or omits any reference or mention of Sue in Bob's confession. Can the Prosecution now read parts of Bob's confession to the Jury? (This Part of the Question is Worth 1 Point)					
	YES	or	NO		
In the space provided below recite the a the conclusion you reached in your ans			of law and apply it to the facts to support t of the Question is Worth 5 Points)		

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QUESTION 6A:

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Question 7.

Defendant pleaded guilty in a trial court to an indictment charging him with capital
murders. At his plea colloquy, Defendant, feeling bad about what he had done, told the judge that
he had committed a string of burglaries, that he had no significant prior criminal record, and that
at the time of his criminal spree he was under extreme stress caused by being married and his
inability to support his family. In preparing for the sentencing hearing, Defendant's defense
counsel spoke with him about his background but did not seek out any character witnesses or any
of Defendant's immediate family, nor did he request a psychiatric examination. Defense counsel
failed to do a number of things, including requesting a presentence report because he was
worried it might include Defendant's criminal history, thereby undermining his claim of no
significant prior criminal record. At the sentencing hearing the judge told Defendant that he had
"a great deal of respect for people who are willing to step forward and admit their
responsibility." However, the judge found many numerous aggravating circumstances and no
mitigating circumstances and sentenced Defendant to death on each of the murder counts.
What constitutional argument(s) should the Defendant raise, and what must the Defendant show
in order to prevail? (This Question is Worth 10 Points)

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Question 8.

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

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

	Yes	[]	No	[]
State the controlling rule from <i>Rhode Island v. Innis</i> :				

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Question 9.

The defendant was a passenger in his cousin's car when the car was stopped by the police, according to the sneering officer, for "driving while black." The defendant and the driver were ordered out of the car while the car was searched. Under the passenger seat, police found a sawed-off shotgun and a wallet. The identification in the wallet was neither the driver's nor the defendant's. They were both arrested for receiving/possession of stolen property. Later at the police station the wallet was matched to a man who reported being robbed earlier that evening. Fingerprints on the wallet and gun matched the defendant's fingerprints which were on file from a previous arrest. The victim of the robbery told police that the robber was behind him at all times, and that he could not identify the robber who had threatened to "blow off his head" with a shotgun. However, with the wallet, sawed-off shotgun, and matching fingerprints, police charged the defendant with armed robbery.

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

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Question 10.

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

Is the protective sweep of the closet adjacent to the front room in which the defendant was arrested permissible? (This Part of the Question is Worth 1 Point)

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

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Question 11.

Same facts as above however while conducting the protective sweep of the closet the police discover a gun and objects which were taken from the store during the robbery.

If the prosecution seeks to use the gun and the other objects taken from the store during the robbery as part of its case-in-chief will the evidence be admissible? (This Part of the Question is Worth 1 Point)

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

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Question 12.

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

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

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

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

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Question 13.

James Taylor, was indicted by the grand jury for aggravated kidnapping. During Taylor's						
trial a number of women were systematically excluded from the venire from which the petit jury						
was drawn. Taylor filed a motion with the trial court to quash the petit jury venire arguing that he						
was entitled to a fair trial by jury. What constitutional argument(s) should Taylor raise to						
nallenge the exclusion of women from his jury? (This Question is Worth 4 Points)						

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Question 14.

John McFee was charged with capital felony murder. In accordance with Arkansas law,
and over McFee's objections, at voir dire the trial judge removed for cause those prospective
jurors who stated that they could not under any circumstances vote for the imposition of the
death penalty. Nine prospective jurors were excluded for this reason. The jury convicted McFee
of capital murder.
McFee then timely filed a federal habeas corpus petition arguing that "death qualification"
violated his rights under the Sixth and Fourteenth Amendments to have his guilt or innocence
determined by an impartial jury selected from a representative cross section of the community.
How should the appellate court rule on his petition and why? (This Question is Worth 5 Points)

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Question 15.

Sally was arrested by the Worcester Police Vice Squad in a prostitution sting. Sally's attorney would like to raise the affirmative defense of entrapment. If Sally was arrested in the
"subjective approach" jurisdiction what must defense counsel show in order to prove Sally was
entrapped? (Please recite <u>only</u> the full and complete rule of law) (This Question is Worth 5
Points)

Question 16.

A man was subpoenaed to appear before a United States grand jury in the United States

District Court – District of Massachusetts, to give testimony regarding his involvement in human trafficking. The Government believed that the man would likely assert his Fifth Amendment privilege against self-incrimination.

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

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

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

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

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Question 17.

After arresting and booking the defendant for the murder of his wife, Detectives from the Boston Police Department bring the defendant into the interrogation room to question him about the details of the murder. After the Detectives read the defendant his *Miranda* rights he invoked his right to remain silent, at which point the police ceased all questioning. After the passage of time may the police go back and reinitiate the earlier attempt to speak with the defendant about the murder? (This Part of the Question is Worth 1 Point)

In the space provided below recite the conclusion you reached in your	the applicable ranswer. (This I	ule of law and a Part of the Quest	pply it to the faction is Worth 5 P	ts to support coints)

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Question 18.

After the arrest and booking of the defendant for the murder of his wife, Detectives from the Boston Police Department bring the defendant into the interrogation room to question him about the details of the murder. After he is read his *Miranda* rights, the defendant invokes his right to counsel and the police cease all questioning. Two hours later Detectives from the Springfield Police Department arrive to speak with the defendant about an unrelated murder. May the Detectives from the Springfield Police Department speak with the defendant? (This Part of the Question is Worth 1 Point)

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

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Question 19.

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

Under these circumstance may the Detectives from the Boston Police Department speak with the defendant regarding the murder? (This Part of the Question is Worth 1 Point)

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

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Question 20.

The defendant is arraigned in the Worcester District Court for the murder of his wife. After meeting and speaking briefly with his court appointed lawyer the defendant is brought back down to lock-up. Twenty minutes later, detectives from the Worcester Police Department approach the defendant and state that they wish to speak with him regarding an unrelated murder. May the detectives speak with the defendant regarding the unrelated murder? (This Part of the Question is Worth 1 Point)

TES OF NO
In the space provided below recite the applicable rule of law and apply it to the facts to support the conclusion you reached in your answer. (This Part of the Question is Worth 5 Points)

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Question 21.

The defendant is arraigned in the Worcester District Court for the murder of his wife. After meeting and speaking briefly with his court appointed lawyer the defendant is brought back down to lock-up and later transported to the Worcester House of Correction to be held on the murder charge. The Government places a jail house snitch in the same cell as the defendant. The Government tells the snitch to deliberately initiate conversation with the defendant and get as much information about the murder as possible. If the defendant incriminates himself regarding the murder to the snitch may the Prosecution put the snitch on the stand at the trial to testify about the defendant's incriminating statements? (This Part of the Question is Worth 1 Point)

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

Spring 2016 CRIMINAL PROCEDURE FINAL EXAM Professor Rodriguez

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

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

INSTRUCTIONS:

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

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

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

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

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

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

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

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

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PART ONE - DIRECTED, SHORT-ANSWER QUESTIONS

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

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

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

QUESTION 1:

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

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

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Question # 2:

witness immunity.

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

As Defense counsel for the defendant you oppose the issuance of the order, contending that if your client testifies and produces evidence he could be prosecuted in a subsequent state criminal proceeding on other related offenses to which he testifies to. You file a motion in the U.S. District Court arguing that the Government may not compel testimony from an unwilling witness

who invokes his Fifth Amendment privilege against self-incrimination, by conferring on the

How should the U.S. District Court rule on your motion and why? (This Question is worth 5 Points) Limit your answer to the space provided.

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Question #3:

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

setting the defendant's punishment at the imprisonment without parote.
The Defendant now brings a motion in the state appellate court to set aside the lower state
court's verdict raising, inter alia, the claim that "death qualification," or the removal for cause of
prospective jurors whose opposition to the death penalty is so strong, violated his right under the
the Federal Constitution to have his guilt or innocence determined by an impartial jury selected
from a representative cross section of the community. How should the Appellate Court rule on
the defendant's motion and why? (This Question is worth 5 Points) Limit your answer to the
space provided.
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Ouestion #4:

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

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

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

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

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

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Question # 5:

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

proceedings i	s deemed "nar	miess".				
	How should	the appellate court	rule on the	Petitioner's	motion to va	cate their
sentences and	d why? (This	Question is worth	10 Points)	Limit your	answer to t	he space
provided.						
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PART TWO

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

1. Officers from the Marshfield Police department have an arrest warrant for John D 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 <i>Payton v New York</i> (citing <i>Steagald v. United States</i>):		
2.	The defendant is the target of a grand jury proceeding where the prosecution is seeking to		
	indict him for rape. During the grand jury proceeding the defendant attempts to offer his		
	own evidence before the grand jury.		
	2(a). Does the defendant have a constitutional right to offer his own evidence before the		
	grand jury?		
	Yes [] No []		
	2(b). According to the introductory material in Chapter 8. Investigation by Subpoena, a		
	Superior Court Judge leads the grand jury and he or she is the only one who may present		
	evidence to the grand jury.		
	True [] False []		
3.	Officers executed a search warrant for the defendant's home seeking to recover stolen		
	jewelry from a recent jewelry heist. During their search the officers searched two or three		
	areas not specifically included within the warrant. The defendant files a motion to		
	suppress the search warrant arguing that it was facially invalid and lacked probable cause		

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	for the search. In response, the Government argued that the officers executed the warran					
	with a good faith reasonable reliance that the warrant was valid.					
	2/ \ TC4					
	3(a). If the warrant is subsequently held to be invalidated may the officers invoke the					
	Leon Good Faith Exception?					
	Yes [] No []					
	3(b). State the controlling rule cited in footnote # 19 from <i>United States v. Leon</i> :					
	5(b). State the controlling rule cited in foothote # 17 from Onited States v. Leon.					
4.	Police made a warrantless arrest of the defendant on a Friday afternoon. Monday was a					
	state and federal holiday so the district court was closed. The defendant sat in police					
	custody until Tuesday morning when he was finally brought over for his arraignment.					
	4(a). If the defendant were to later argue that his constitutional rights were violated					
	because he was denied a hearing prior to his arraignment is he correct?					
	process and was domest as are surroughness to the correct.					
	Vac [] No []					
	Yes [] No []					
	4(b). State the controlling rule in footnote (a) from United States v. Watson (citing					
	Gerstein v. Pugh):					
	Gerstein V. Lugiij.					
~						
5.	The requirement that a misdemeanor must have occurred in the officer's presence to					
	justify a warrantless arrest is not grounded in the Fourth Amendment.					
	True [] False []					

6.	After arresting the defendant, DEA agents brought her into the interrogation room and prior to giving defective warnings the defendant made a number of statements.					
	6(a). May the Prosecution use the defendant's statements at trial for impeachment purposes if the defendant takes the stand in her own defense? Yes [] No []					
	6(b). State the controlling rule from the Introductory Material in Section 4 of Chapter 6. Police Custodial Interrogations (citing <i>Harris v. New York</i>):					
7.	The Defendant was indicted on robbery charges and a week later he was appointed counsel to represent him. While out on bail, the FBI arranged a meeting between the defendant and an undercover agent who they gave explicit instructions to deliberately elicit incriminating statements from the defendant. During that meeting the defendant made a number of incriminating statements which the government seeks to use against the defendant at his later criminal trial.					
	7(a). May the Prosecution use the defendant's statements at trial for impeachment purposes if the defendant takes the stand in his own defense?					
	Yes [] No []					
	7(b). State the controlling rule from footnote (a) in the Introductory Material in Section 4 of Chapter 6. Police Custodial Interrogations (citing <i>Kansas v. Ventis</i>):					

ID NUMBER: ___ __ ___

8.	After being given valid Miranda warnings the defendant remained silent.					
	8(a). If the defendant takes the stand in her own defense may the Prosecution use the defendant's silence for impeachment purposes? Yes [] No []					
	8(b). State the controlling rule from footnote (b) in the Introductory Material in Section 4 of Chapter 6. Police Custodial Interrogations (citing <i>Doyle v. Ohio</i>):					
9.	In the introductory material to <i>Chapter 19 Retrials</i> , the double jeopardy clause becomes applicable only after the accused has been placed "in jeopardy", and that does not occur until the first witness has been sworn involving a jury trial.					
	True [] False []					
10	Several weeks prior to the start of the defendant's criminal trial the defendant seeks to replace his appointed counsel with a privately retained lawyer citing a complete breakdown in communication between he and his appointed counsel.					
	10(a). In general the defendant has no right to have appointed counsel replaced?					
	Yes [] No []					
	10(b). State the controlling rule from footnote (a) in the introductory material in <i>Chapter 17. The Role of Counsel</i> :					

ID NUMBER: ___ __ ___

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PART THREE - DIRECTED, SHORT-ANSWER QUESTIONS

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

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

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

OUESTION 1:

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

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

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

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

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QUESTION 2:

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

known of the offer.					
On appeal, the defendant argues that his rights under the Federal Constitution were					
violated because his attorney's failed to communicate the information conveyed to him from the					
Prosecution. How should an appeals court rule on the defendant's appeal and why? (This					
Question is worth 10 Points) Limit your answer to the space provided.					
					

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QUESTION 3:

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

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

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

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QUESTION 4:

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

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

conceated invarian without a needse and possessing a meanin while under the age of 16.
If Carlos' attorney moves to suppress the gun how should the motion judge rule on the
motion and why? (This Question is worth 5 Points) Limit your answer to the space provided
motion and why: (This Question is worth 3.1 oints) Elimit your answer to the space provided

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QUESTION 5:

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

other departments in which he had worked.				
The Prosecution now seeks to use the incriminating statement taken from Craft as part of				
their case-in-chief. If the defendant files a motion to suppress the incriminating statement how should the court rule on the motion and why? (This Question is worth 5 Points) Limit your				

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

Question 1:

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

Should the defendant's motion be granted?

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

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Question 2:

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

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

The defendant's double jeopardy challenge should be

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

Question 3:

Which of the following is NOT barred by double jeopardy?

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

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Question 4:

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

The motion to suppress should be:

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

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Question 5:

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

The man's motion should be

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

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PART FIVE - DIRECTED, SHORT-ANSWER QUESTIONS

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

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

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

Question 1.

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

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

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Question 2.

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

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

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Question 3.

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

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

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Question 4.

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

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

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Question 5.

Prior to his trial for robbery the defendant filed a 'Motion for a Protective Order,' seeking to be excused from the rule which required a defendant, upon written demand of the prosecuting attorney, to give notice in advance of trial if the defendant intends to claim an alibi. In his motion the defendant openly declared his intent to claim an alibi, but objected to the further disclosure requirements on the ground that the rule 'compels the Defendant in a criminal case to be a witness against himself' in violation of his Fifth and Fourteenth Amendment rights.

(This Questi	on is worth 5 Po	oints) Limit	your answer	to the space p	rovided.

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Question 6.

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

discovery violated his due process rights.
How should the court rule on the Bagley's appeal and why? (This Question is worth 5
Points)

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Question 7.

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

YES or NO
In the space provided below recite the applicable rule of law and apply it to the facts to support the conclusion you reached in your answer. (This Question is Worth 5 Points)

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Question 8.

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

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

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

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

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Question 9.	
On January 5, 2015, People's United Bank was robbed by two people wearing disguises.	
Several eyewitnesses told investigators that one of the robbers sounded like and walked like a	
woman. A month later, Bob was caught breaking into a liquor store. During police interrogation,	
he confessed to a string of robberies in the areas, including the People's United Bank heist that	
he said he committed with Sue. Bob refused to make any statements or to testify at trial. Bob and	
Sue are tried together in federal court for the People's United Bank robbery.	
Can the prosecutor read to the jury parts of Bob's confession that directly implicate Sue?	
YES or NO	
In the space provided below recite the applicable rule of law and apply it to the facts to support the conclusion you reached in your answer. (This Question is Worth 5 Points)	

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QUESTION 9A:	
Suppose the Prosecution completely redacts or omits any reference or mentio Bob's confession. Can the Prosecution now read parts of Bob's confession to the Jury	
YES or NO	
In the space provided below recite the applicable rule of law and apply it to the facts the conclusion you reached in your answer. (This Question is Worth 5 Points)	to support

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Question 10.

Defendant pleaded guilty in a trial court to an indictment charging him with capital
murders. At his plea colloquy, Defendant, feeling bad about what he had done, told the judge that
he had committed a string of burglaries, that he had no significant prior criminal record, and that
at the time of his criminal spree he was under extreme stress caused by being married and his
inability to support his family. In preparing for the sentencing hearing, Defendant's defense
counsel spoke with him about his background but did not seek out any character witnesses or any
of Defendant's immediate family, nor did he request a psychiatric examination. Defense counsel
failed to do a number of things, including requesting a presentence report because he was
worried it might include Defendant's criminal history, thereby undermining his claim of no
significant prior criminal record. At the sentencing hearing the judge told Defendant that he had
"a great deal of respect for people who are willing to step forward and admit their
responsibility." However, the judge found many numerous aggravating circumstances and no
mitigating circumstances and sentenced Defendant to death on each of the murder counts.
What constitutional argument(s) should the Defendant raise, and what must the Defendant show
in order to prevail? (This Question is Worth 10 Points)

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Question 11.	
Shortly after an Uber driver who had been robbed by a man wielding a Colt 45 automati	ic
handgun identified a picture of Robert Guinness as that of his assailant a Cambridge patrolman	
spotted Guinness, who was unarmed, on the street, arrested him and advised him of his rights	
under Miranda. While driving Guinness to the station, two of the officers engaged in a	
conversation between themselves concerning the missing gun. One of the officers said to the	
other that there were "a lot of special needs children running around in this area" because a	
school for such children was located nearby; in addition he said "God forbid one of them might	
find a weapon with bullets and they might hurt themselves." Guinness interrupted the	
conversation, telling the officers to turn the car around so that he could show them where the gu	ın
was located.	
Was Guinness "interrogated" within the meaning of Miranda? (This entire Question is Worth 5	
Points)	
Yes [] No []
State the controlling rule from <i>Rhode Island v. Innis</i> :	

ID NUMBER:
Question 12.
James Taylor, was indicted by the grand jury for aggravated kidnapping. During Taylor'
trial a number of women were systematically excluded from the venire from which the petit jury
was drawn. Taylor filed a motion with the trial court to quash the petit jury venire arguing that h
was entitled to a fair trial by jury. What constitutional argument(s) should Taylor raise to
challenge the exclusion of women from his jury? (This Question is Worth 5 Points)

ID NUMBER:
Question 13.
After arresting and booking the defendant for the murder of his wife, Detectives from the
Boston Police Department bring the defendant into the interrogation room to question him about
the details of the murder. After the Detectives read the defendant his Miranda rights he invoked
his right to remain silent, at which point the police ceased all questioning. After the passage of
time may the police go back and reinitiate the earlier attempt to speak with the defendant about
the murder?
YES or NO
In the space provided below recite the applicable rule of law and apply it to the facts to support the conclusion you reached in your answer. (This Question is Worth 5 Points)

ID NUMBER:
Question 14.
After the arrest and booking of the defendant for the murder of his wife, Detectives from
the Boston Police Department bring the defendant into the interrogation room to question him
about the details of the murder. After he is read his Miranda rights, the defendant invokes his
right to counsel and the police cease all questioning. Two hours later Detectives from the
Springfield Police Department arrive to speak with the defendant about an unrelated murder.
May the Detectives from the Springfield Police Department speak with the defendant?
YES or NO
In the space provided below recite the applicable rule of law and apply it to the facts to support the conclusion you reached in your answer. (This Question is Worth 5 Points)

Question 15.
After the arrest and booking of the defendant for the murder of his wife, Detectives from
the Boston Police Department bring the defendant into the interrogation room to question him
about the details of the murder. After he is read his Miranda rights the defendant invokes his
right to counsel and the police cease all questioning. Two hours later the defendant starts banging
on the cell and states that he "now wishes to speak with the police."
Under these circumstance may the Detectives from the Boston Police Department speak
with the defendant regarding the murder?
YES or NO
In the space provided below recite the applicable rule of law and apply it to the facts to support the conclusion you reached in your answer. (This Question is Worth 5 Points)

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Question 16.
The defendant is arraigned in the Worcester District Court for the murder of his wife.
After meeting and speaking briefly with his court appointed lawyer the defendant is brought back
down to lock-up. Twenty minutes later, detectives from the Worcester Police Department
approach the defendant and state that they wish to speak with him regarding an unrelated murder
May the detectives speak with the defendant regarding the unrelated murder?
YES or NO
In the space provided below recite the applicable rule of law and apply it to the facts to support the conclusion you reached in your answer. (This Question is Worth 5 Points)

ID NUMBER:
Question 17.
The defendant is arraigned in the Worcester District Court for the murder of his wife.
After meeting and speaking briefly with his court appointed lawyer the defendant is brought bac
down to lock-up and later transported to the Worcester House of Correction to be held on the
murder charge. The Government places a jail house snitch in the same cell as the defendant. The
Government tells the snitch to deliberately initiate conversation with the defendant and get as
much information about the murder as possible. If the defendant incriminates himself regarding
the murder to the snitch may the Prosecution put the snitch on the stand at the trial to testify
about the defendant's incriminating statements?
YES or NO
In the space provided below recite the applicable rule of law and apply it to the facts to support the conclusion you reached in your answer. (This Question is Worth 5 Points)

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Question 18.

Anthony Copani, defense lawyer, and Constance Rudnick, prosecutor, are in the third day
of a hotly contested criminal trial involving a mother charged with shaking her baby and thereby
causing its death. The level of animosity between the lawyers has been high. As the hours go by,
the decibel level has increased as the lawyers are able to agree on absolutely nothing. While
cross examining one of the state's witnesses, Attorney Copani asked the witness, "isn't it true
that the testimony you just gave here today was a complete fabrication concocted by the
prosecution who paid you to testify?" Upon hearing this Prosecutor Rudnick sprung to her feet
objecting and immediately moved for a mistrial. Defense counsel vehemently objected, arguing
that a new trial was barred by double jeopardy.
How should the court rule on Prosecution's motion for a mistrial and why? (This Question is
worth 5 Points)