

Spring 2022

Criminal Procedure Final Exam

Professor Hetu

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This is a closed book examination. You may not have anything in front of you other than your exam- taking computer, bluebook and hardcopy of the exam.

This exam consists of three parts. The total time for this exam is three hours unless you have an accommodation. Those with an accommodation have their appropriate accommodation time.

Part One consists of 10 directed short answers to be answered in IRAC format.

Part Two consists of 20 fill in the blanks, definitions, and true/false.

Part Three consists of 20 multiple-choice questions.

BE SURE TO ANSWER THE CALL OF THE QUESTION!!!!

Good Luck and enjoy your summer.

PART one: DIRECTED ESSAYS

This section consists of ten (10) questions in the form of hypotheticals, each of which describes a situation that raises a specific legal issue, or in some instances more than one issue, and which is governed by a specific procedural rule. Each question requires that you identify the specific rule, or rules, that will control the result. For those questions that require you to draft an answer you must identify the issue, state the applicable rule, and apply that rule to the facts of the hypothetical. Answers should be written in the following form:

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

Question 1. Defendant pleaded guilty in a trial court to an indictment charging him with capital murder. At his plea colloquy, Defendant, feeling bad about what he had done, told the judge that he had committed a string of burglaries, that he had no significant prior criminal record, and that at the time of his criminal spree he was under extreme stress caused by being married and his inability to support his family. In preparing for the sentencing hearing, Defendant's defense counsel spoke with him about his background but did not seek out any character witnesses or any of Defendant's immediate family, nor did he request a psychiatric examination. Defense counsel failed to do a number of things, including requesting a presentence report because he was worried it might include Defendant's criminal history, thereby undermining his claim of no significant prior criminal record. At the sentencing hearing the judge told Defendant that he had "a great deal of respect for people who are willing to step forward and admit their responsibility." However, the judge found numerous aggravating circumstances and no mitigating circumstances and sentenced Defendant to death on each of the murder counts.

If the defendant were to appeal his conviction to the state's appeals court, what is his strongest constitutional argument(s). (15 points)

Question 2. Tony Montoya 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 Tony Montoya 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 Tony Montoya 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 the Government may not compel testimony from an unwilling witness who invokes his Fifth Amendment privilege against self-incrimination, by conferring on the witness immunity.

How should the U.S. District Court rule on your motion and why?(12 points)

Question 3. Boston Police Officers arrived at the home of Dolores Sapp based on information that a person was hiding out in her home and who was wanted in connection with the bombing of a Downtown building. When the officers knocked on her door demanding to be let in, Sapp refused, telling the officers that her Attorney had advised her to not let the police in unless they had a search warrant. Three hours later the police returned to Sapp's home and forced their way in through an unlocked door. Sapp asked if they had a warrant, to which one of the officers held out a piece of paper. Sapp snatched the paper and placed in her bosom. A struggle ensued between the police and Sapp as the police attempted to retrieve the "alleged" warrant from her. She was eventually restrained, and the police began searching her home. The officers discovered stolen televisions in the basement of her home, for which she was eventually arrested. At trial, the police were unable to produce the warrant, nor were they able to explain its disappearance.

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

How is the motion judge likely to rule on Sapp's motion and why? (15 points)

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

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

How should the Appeals Court judge rule on Murphy's appeal and why? (10 points)

Question 5. 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? (8 points)

Question 6. The defendant was charged with capital felony murder. In accordance with state law, the trial judge at voir dire removed for cause, over the defendant's objections, those prospective jurors who stated that they could not under any circumstances vote for the imposition of the death penalty. Eight prospective jurors were excluded for this reason. The jury convicted the defendant of capital felony murder, but rejected the State's request for the death penalty, instead setting the defendant's punishment at life imprisonment without parole.

The Defendant now brings a motion in the state appellate court to set aside the lower state court's verdict raising, inter alia, the claim that "death qualification," or the removal for cause of prospective jurors whose opposition to the death penalty is so strong, violated his right under the 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? (15 points)

Question 7. 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? (10 points)

Question 8. 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 of the dispatch call 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 shot you," and "where is your attacker." The victim managed to tell the police that Defendant, his

neighbor, had just beaten him up, that he also shot him multiple times and that he had just run out the house as the police were pulling up. The victim's conversation with the police ended within 5 to 10 minutes when emergency medical services arrived to treat him. The victim was transported to the hospital, where he died within the hour. The police began an immediate search for Defendant and, within hours, located him not far from the scene. At Defendant's trial for murder, the police officers who spoke with the victim testified to what the victim had told them. The jury returned a guilty verdict on the charge of second-degree murder. Defendant is now appealing his conviction.

What are both the Defendant's and the Prosecution's strongest constitutional argument(s) on appeal and how is the court likely to rule and why? (15 points)

Question 9. 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; the other warrant 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 backpack, 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? (15 points)

Question 10. Boston police detectives who were investigating the armed robbery of Bung Hole Liquors assembled sufficient evidence to establish probable cause to believe that the defendant robbed the liquor store. Two days later, without prior judicial authorization, detectives went to the home of the defendant to arrest him.

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

If the defendant's attorney files a motion to suppress the gun and ski mask found inside the defendant's apartment what is the defendant's strongest constitutional argument and how should the court rule on the motion and why? (10 points)

Part II: Fill in the blanks, true/false and definitions. Each question is worth 5 points

When presented with a true/false question write the correct answer, i.e. **TRUE**.

When presented with a definition, simply write the definition.

When presented with a “what are the factors” simply write the factors.

When presented with “fully explain” write the rule and then **FULLY EXPLAIN THE RULE**.

When presented with a rule and factor question. State the rule and the factors.

Question 1. What are the factors the court looks at in deciding bail based on the bail reform act of 1964 found in *US v. Salerno*

Question 2. Define Harmless error.

Question 3. Fully explain when a defendant has the right to counsel.

Question 4. What is the balancing test the court uses in determining a speedy trial right and what factors do they look at?

Question 5. Fully explain the Brady Rule in regards to disclosure.

Question 6. Define the Strickland Test.

Question 7. Explain what Witherspoon excludables are.

Question 8. What are the three constitutionally permissible ways for a trial judge to handle a combative defendant?

Question 9. Fully explain testimonial and non-testimonial statements.

Question 10. Define curtilage and list the four factors a court will look at in determining curtilage.

Question 11. What is the two-prong test for reasonable expectation of privacy established in *Katz v United States*?

Question 12. Fully explain when the *Leon* good faith exception would NOT be valid.

Question 13. What is the Rule of the Fruit of the Poisonous Tree Doctrine?

Question 14. What are the three exceptions to the Fruit of the Poisonous Tree Doctrine and explain each.

Question 15. What level of information or standard of evidence must the Government possess to conduct a protective pat frisk?

Question 16. Fully define the Plain View Doctrine.

Question 17. In order for an impartial jury the 6th Amendment requires a jury verdict to be what?

Question 18. True or False: An attorney must relay an offer from the government to his client even if the attorney knows the offer is no different than a guilty plea and will not be accepted?

Question 19. True or False: There is a constitutional right to self-representation.

Question 20. Fully explain in the right to defend what lies in the defendant's province and what lies in the attorney's province.

Part III: Multiple Choice 3 points each

Select the most correct answer.

Question 1. A defendant was lawfully arrested without a warrant for bank robbery. He was not given Miranda warnings, but was immediately taken to a police station where he and five other men were placed in a lineup to be viewed by the bank teller. Each man was required to say the words spoken by the bank robber: "Give me all your money. I've got a gun." After all the men in the lineup spoke those words, the teller identified the defendant as the robber.

The defendant subsequently moved to suppress the testimony of the teller, claiming the lineup violated his privilege against self-incrimination. At a suppression hearing, the teller testified that she had not gotten a good look at the robber's face, because the robber

had been wearing a hat pulled down over most of his face, but that she was certain the defendant was the robber because she had recognized his voice at the lineup.

Should the defendant's motion be granted?

- A. No, because being required to speak at the lineup, while compelled, was not testimonial or communicative.
- B. No, because testimony of a witness based on firsthand observation is not subject to exclusion as the fruit of the poisonous tree.
- C. Yes, because the defendant was compelled to speak at the lineup, and this compelled speech led to the witness's identification testimony.
- D. Yes, because the defendant was never informed that he could refuse to make a statement and that any statement could be used as evidence against him.

Question 2. Police, who had probable cause to arrest a man for a series of armed robberies, obtained a warrant to arrest him. At 6am they surreptitiously entered the man's house and, with guns drawn, went to the man's bedroom, where they awakened him. Startled the man asked "What's going on?" and an officer replied, "we've got you now." Another officer immediately asked the man if he had committed a particular robbery, and the man said that he had. The police informed him that he was under arrest and ordered him to get dressed.

Charged with robbery, the man has moved to suppress the use of his statement as evidence. What is the man's best argument for granting the motion?

- A. The statement was hearsay.
- B. The police did not give him the required *Miranda warnings*.
- C. He was not informed that he was under arrest until after he made the statement.
- D. The police did not have a search warrant authorizing entry into the house.

Question 3. A. Hernandez sold heroin to Little Papi. Papi was later stopped by the police for speeding. The Police searched Papi's car and found heroin concealed under the rear seat. Hernandez is charged with illegally selling heroin.

Hernandez's motion to prevent the introduction of the heroin into evidence will most likely be

- A. Granted, because the heroin was not in plain view.
- B. Granted, because the scope of the search was excessive.
- C. Denied, because Hernandez has no standing to object to the search.
- D. Denied, because the search was proper as incident to a valid full custodial arrest.

Question 4. The defendant belonged to a fraternity at the U. Members of the fraternity who paid a rent of 500 hundred dollars per semester were entitled to a double-occupancy bedroom in the fraternity house. Although house residents shared kitchen and dining room facilities, the bedrooms were not communal and were normally kept locked by their

occupants. With the knowledge of its members, the fraternity kept duplicates of all keys so that copies could be made in the event a resident lost his key.

A football player who was a member of the fraternity suspected, based on the stream of visitors to the defendant's room at all hours of the day and night that defendant was selling the club drug molly. One weekend, when he knew the defendant had gone home to visit his parents, the football player called the police and told them of his suspicions and the facts that had given rise to them. In response to his call, two officers immediately came to the fraternity house to interview the football player. During the course of the interview the football player stated he was the defendant's roommate, and offered to let them in the defendant's room. In fact, he was not the defendant's roommate. The football player used one of the duplicate keys to open the defendant's bedroom door. Upon entering, the officers saw a "drug scale" and pills in the idle of the coffee table. The defendant was subsequently prosecuted for possession of molly. Prior to trial, the defendant made an appropriate motion to suppress the use of the scale and pills found on the coffee table as evidence.

The motion should be

- A. Denied, because the football player had apparent authority to permit the entry in to the room.
- B. Denied, because the police had probable cause to believe that they would find the club drug molly in the room.
- C. Allowed, because the police did not have a warrant to search the room and the football player did not have authority to let them search it.
- D. Allowed, because the police did not have probable cause to believe that they would find drugs in the room.

Question 5. A police officer stopped a driver who had run a red light. Upon approaching the car, the officer noticed a strong odor of alcohol and immediately asked whether the driver had been drinking alcohol. The driver admitted having had several alcoholic drinks that evening.

The Driver, charged with driving while under the influence, moved to suppress the officer's testimony regarding the driver's statement about his drinking. The driver argued that the officer had elicited the statement without providing the requisite *Miranda* warnings. The prosecutor has responded that the statement should be allowed in the prosecutions case-in-chief or, at a minimum, should be allowed as impeachment in the event the driver testifies and denies drinking.

How should the court rule regarding the driver's statement admitting his drinking alcohol?

- A. allowed, because although the driver was in custody, the officer's spontaneous utterance upon smelling alcohol did not rise to the level of interrogation

- B. allowed, because the driver was not in custody for *Miranda* purposes when the admission was made.
- C. Suppressed both in the prosecution's case-in-chief and as impeachment evidence, even if the driver testifies.
- D. Suppressed in the prosecution's case-in-chief, but it may be used as impeachment evidence if the driver testifies.

Question 6. A defendant was charged with and tried for murder. At trial, the defendant testified that he had acted in self-defense.

The trial court instructed the jury that the defendant had the burden of proving by a preponderance of the evidence that he had acted in self-defense. The defendant objected, arguing that this instruction violated the constitutional requirement that the prosecution prove the offense beyond a reasonable doubt.

Did the trial court's instruction violate the defendant's federal constitutional rights?

- A. No, because due process does not preclude requiring a defendant to prove self-defense by a preponderance of the evidence.
- B. No, because due process does not regulate the burdens of proof in criminal cases.
- C. Yes, because due process precludes placing any evidentiary burden on a criminal defendant.
- D. Yes, because due process precludes requiring a criminal defendant to bear the burden on an issue that would make an act unlawful.

Question 7. Without a warrant, police officers searched the garbage cans in the alley behind a man's house and discovered chemicals used to make methamphetamine, as well as cooking utensils and containers with the man's fingerprints on them. The alley is a public thoroughfare maintained by the city, and the garbage was picked up once a week by a private sanitation company. Most homeowner's store their garbage cans in the alley in this neighborhood. The items found inside the garbage can were in black plastic bags that had been tied closed and further secured with duct tape. The man was charged in federal court with the manufacture of methamphetamine.

Did the search of the garbage cans violate the Fourth Amendment?

- A. Yes, because there is a reasonable expectation of privacy in one's secured garbage containers.
- B. No, because the man had no reasonable expectation of privacy in garbage left in the alley.
- C. Yes, because the alley was within the curtilage of the man's home and entry without a warrant was unconstitutional.
- D. No, because the probative value of the evidence outweighs the man's modest privacy claims in his garbage.

Question 8. A man was in jail after being arrested for burglary. When the police attempted to question him, the man invoked his *Miranda* rights and refused to answer any questions. The man was subsequently tried, convicted, and sentenced to a prison term for the burglary. Three years later, while serving his prison sentence for the burglary, a police detective from a nearby town questioned him about an unsolved homicide. The detective did not know that the man had invoked *Miranda* at an earlier time. The man waived his *Miranda* rights and made several incriminating statements to the detective. When he was later charged with the homicide, the man moved to suppress these statements, claiming that his earlier refusal to waive his *Miranda* rights should have been honored.

Should the court suppress the statements?

- A. No, because the detective was unaware that the man had originally invoked his *Miranda* rights.
- B. No, because the man's prior invocation of his *Miranda* rights did not preclude the later interrogation.
- C. Yes, because the man had earlier invoked his *Miranda* rights, and the police were not permitted to resume questioning, even after a time lapse of years.
- D. Yes, because the man was incarcerated, and his earlier invocation of his *Miranda* rights shielded him from further questioning until he was released.

Question 9. A defendant was charged with attempted murder. At the preliminary hearing, the presiding judge heard the testimony of four prosecution witnesses and found that the prosecution had failed to establish probable cause. Accordingly, the judge dismissed the charge.

The prosecutor then called the same four witnesses before a grand jury. The grand jury indicted the same defendant for attempted murder.

The defendant has moved to quash the indictment on the ground of double jeopardy.

How should the court proceed?

- A. Grant the motion, because the dismissal of the first charge on the merits, whether incorrect or correct, bars any further prosecution.
- B. Grant the motion, unless the prosecution has evidence that was not presented in the first case.
- C. Deny the motion, because the defendant has not yet been in jeopardy of conviction on the attempted murder charge.
- D. Deny the motion, because the protection of the double jeopardy clause does not come into play until there has been a conviction or acquittal.

Question 10. A bank robber handed a teller a handwritten note demanding money. Shortly thereafter, the defendant was arrested for the robbery. At the police station, the

defendant was required, over his protest, to write out the words on the note and have his fingerprints taken. He was then, for the first time, allowed to telephone a lawyer, who thereafter represented him.

The prosecution, after introducing the robber's note to the teller, also offers in evidence the defendant's writing of the words on the note at the request of the police. On appropriate action, the court should rule this...

- A. Inadmissible, because he was not advised that his handwriting sample could be admitted into evidence against him.
- B. Inadmissible, because he was not advised of his right to refuse to give a handwriting sample.
- C. Inadmissible, because he had not been informed he had a right to have counsel present.
- D. Admissible.

Question 11. Officer Liddel stops Ortiz, an operator of a vehicle, for driving with an expired registration sticker. In this jurisdiction driving with an expired sticker is a misdemeanor, and that under local police department procedures, a driver for such an offense is virtually never arrested, but is instead given a summons to be answered at a later date. Officer Liddel orders Ortiz out of the car and does a pat down, he finds no weapons on Ortiz. He then searches the front seat and finds a baggie in between the console and seat. The baggie is determined to contain heroin. Ortiz is charged with possession of heroin.

Ortiz moves to dismiss charge of possession of heroin.

The suit should...

- A. dismissed, because the officer didn't find anything on Ortiz during the pat down
- B. dismissed, because the search of his person and car were done without a warrant, both a violation of his 4th amendment rights and there are no exceptions
- C. allowed to continue, because Officer Liddel had probable cause to search both Ortiz's person and car
- D. allowed to continue, because this was a lawful search incident to arrest

Question 12. State troopers lawfully stopped a driver on 495 for exceeding the speed limit by 4 miles per hour. One trooper approached the car to warn the driver to drive within the speed limit. The other trooper remained in the patrol car and ran a computer check of the license number of the driver's car. The computer check indicated that there was an outstanding warrant for the driver's arrest for unpaid traffic tickets. The troopers then arrested the driver. After handcuffing her and putting her in the cruiser, the troopers searched the car, and discovered 10 glassine

bags of heroin in a paper bag on the back seat of the car. Later it was learned that the driver had paid the outstanding traffic tickets 10 days earlier and the warrant had been quashed, but the clerk of the court failed to update the system. Procedure in the state details that the vehicle must be towed back to the lot and an inventory search would be conducted there. The driver of the car was charged with unlawful possession of heroin. Her attorney filed a motion to suppress the use as evidence of the heroin found in the car.

Should the motion be granted?

- A. No, because the troopers could reasonably rely on the computer report and the search was incident to arrest.
- B. No, because troopers may lawfully search the passenger compartment of a car incident to a valid traffic stop.
- C. Yes, because the troopers did an inventory search on 495.
- D. Yes, because the paper bag was not in the immediate control of the driver.

Question 13. Slippery Pete was charged with armed robbery. Slippery Pete only had an eight-grade education and no legal knowledge.

At a pretrial hearing, Slippery Pete told the judge that he was unhappy with the public defender who had been appointed to him and he wanted the judge to appoint another lawyer to represent him.

The judge refused to appoint another lawyer, telling Slippery Pete, with no further explanation, that his only other choice was to represent himself. Slippery Pete said he would represent himself at trial then, as "anything was better than having this lawyer." Slippery Pete did not raise the subject again, and he represented himself at trial. After overwhelming evidence of Slippery Pete's guilt, the jury convicted him. On appeal, Slippery Pete has requested a new trial on the ground that he was deprived of his right to counsel.

Should the appellate court grant the request?

- A. No, because Slippery Pete voluntarily waived his right to counsel.
- B. No, because the trial court's error was harmless error in light of the overwhelming evidence.
- C. Yes, because Slippery Pete was not capable of effectively representing himself.
- D. Yes, because the record does not establish a valid waiver of the right to counsel.

Question 14. A criminal was indicted in a state court in January 2015 for a robbery and murder that occurred in December 2012. He retained counsel, who filed a motion to dismiss on the ground that the criminal had been prejudiced by a 25-month delay in obtaining an indictment. Thereafter, the criminal, with his counsel, appeared in court for arraignment and stated that he wished to plead guilty. The presiding judge asked the criminal whether he understood the nature of the charges, possible defenses, and

maximum allowable sentences. The criminal replied that he did, and the judge reviewed all of those matters with him. He then asked the criminal whether he understood that he did not have to plead guilty. When the criminal responded that he knew that, the judge accepted the plea and sentenced the criminal to 25 years.

Six months later, the criminal filed a motion to set aside his guilty plea on each of the following grounds. Which of these grounds provides a constitutional basis for relief?

- A. The judge did not rule on his motion to dismiss before accepting the guilty plea.
- B. The judge did not determine that the criminal had robbed and killed the victim.
- C. The judge did not determine whether the criminal understood that he had a right to a jury trial
- D. The judge did not determine whether the prosecutor's file contained any undisclosed exculpatory evidence.

Question 15. A businessman was the target of a grand jury investigation into the alleged bribery of American and foreign officials in connection with an international construction project. The businessman had stated at a press conference that no bribes had been offered or taken and that no laws of any kind had been offered or taken and that no laws of any kind had been broken. The grand jury issued a subpoena requiring the businessman moved to quash the subpoena on the ground that his testimony could tend to incriminate him. The prosecutor responded with a grant of use immunity (under which the businessman's compelled statements before the grand jury could not be used against him in any state or federal prosecution.) The businessman responded that the grant of use immunity was not sufficient to protect his Fifth Amendment rights.

Should the businessman be compelled to testify?

- A. No, because the businessman remains subject to the risk of foreign prosecution.
- B. No, because use immunity does not prevent the government from prosecuting the businessman on the bribery scheme.
- C. Yes, because the businessman has denied any criminal liability and therefore his Fifth Amendment rights are not at stake.
- D. Yes, because the grant of use immunity is coextensive with the businessman's Fifth Amendment rights.

Question 16. A valid warrant as issued for a woman's arrest. The police learned that a person with the woman's name and physical description lived at that particular address. When police officers went to that address, the house appeared to be unoccupied: the windows and doors were boarded up with plywood, and the lawn had not been mowed

for a long time. A neighbor confirmed that the house belonged to the woman but said that the woman had not been there for several months.

The officers knocked repeatedly on the front door and shouted, “Police!! Open Up!!” Receiving no response, they tore the plywood off the door, smashed through the door with a sledgehammer, and entered the house. They found no one inside, but they did find an illegal sawed-off shotgun. Upon her return to the house a few weeks later, the woman was charged with unlawful possession of the shotgun.

The woman has moved to suppress the use of the shotgun as evidence at her trial. Should the court grant the motion?

- A. No, because the officers acted in good faith under the authority of a valid warrant.
- B. No, because the officers did not violate any legitimate expectation or privacy in the house since the woman had abandoned it.
- C. Yes, because the officers entered the house by means of excessive force.
- D. Yes, because the officers had no reason to believe that the woman was in the house.

Question 17. 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 the 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 ground that this statement was elicited in violation of his *Miranda* rights.

Should the motion be granted?

- A. No, because although the defendant effectively asserted his 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 a lawyer?” constituted custodial interrogation.

Question 18. A police officer had a hunch, not amounting to probable cause or reasonable suspicion, that a man was a drug dealer. One day while the officer was on highway patrol, her radar gun clocked the man’s car at 68 mph in an area where the maximum posted speed limit was 65 mph. The officer’s usual practice was not to stop a car unless it was going at least 5 mph over the posted speed limit, but contrary to her usual practice, she decided to stop the man’s car in the hope that she might discover evidence of drug dealing. After she stopped the car and announced that she would be writing a speeding ticket, the officer ordered the man and his passenger to step out of the car. When the passenger stepped out, the officer saw that the passenger had been sitting on a clear bag of what the officer immediately recognized as marijuana. The officer arrested both the man and the passenger for possession of marijuana.

At their joint trial, the man and the passenger claim that their Fourth Amendment rights were violated because the officer improperly (1) stopped the car for speeding as a pretext for investigating a hunch rather than for the stated purpose of issuing a traffic ticket and (2) ordered the passenger to step out of the car even though there was no reason to believe that the passenger was a criminal or dangerous.

Are the man and the passenger correct?

- A. No, as to both the stop of the car and the officer’s order that the passenger step out of the car.
- B. No, as to the stop of the car, but yes as to the officer’s order that the passenger step out of the car.
- C. Yes as to the stop of the car, but no as to the officer’s order that the passenger step out of the car.
- D. Yes, as to both the stop of the car and the officer’s order that the passenger step out of the car.

Question 19. At a defendant’s criminal trial, defense counsel decided not to put the defendant on the stand or to interview the defendant’s alibi witness because counsel did not believe that either the defendant or the defendant’s alibi witnesses would tell the truth. Counsel felt that it was her ethical duty to avoid assisting in the commission of perjury. The defendant’s alibi witnesses were his mother and sister who were prepared to support the defendant and who would testify that he was home with them at 2:00am, the time at which the crime was committed.

At trial, the prosecution called the defendant’s mother and sister to the stand. They both testified that the defendant was at home watching television with them on the

night of the crime, but that they went to bed at 11:00pm and could not be positive that the defendant was in the house at 2:00am. The defendant was convicted and is now seeking a writ of habeas corpus on the grounds that his counsel gave inadequate assistance.

Will the writ issue?

- A. yes, because counsel failed to interview the witnesses.
- B. No, because defense counsel is prohibited from assisting in the commission of perjury.
- C. No, because this decision is within counsel's trial strategy.
- D. No, because the failure to interview the witnesses or call them to testify did not result in any prejudice.

Question 20. A detective received information from an informant, who had given reliable information many times in the past, and in fact was the detective's most reliable informant, that a man was a narcotics dealer. Specifically, the informant said that, two months before, he had visited the man's apartment with a friend and that on that occasion he saw the man sell his friend some heroin. The detective knew that the informant, the man, 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 man's apartment. The search turned up a supply of heroin.

The man's motion to suppress introduction of the heroin into evidence will most likely be...

- A. granted, because a search warrant cannot validly be issued solely on the basis of an informant's information.
- B. Granted, because the information supplied to the detective concerned an occurrence too remote in time to justify a finding of probable cause at the time of the search.
- C. Granted, because a search for mere evidence alone is improper and illegal.
- D. Denied, because the informant had proven himself to be reliable in the past, and the information he gave was specific and turned out to be correct.

Spring 2023

Criminal Procedure Final Exam

Professor Hetu

DURING THIS EXAM YOU ARE NOT TO HAVE ANY OTHER DOCUMENT, 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:

You are allowed to use scrap paper and/or the notes, highlights, etc. provided by examsoft. Any use of anything outside of what is provided by examsoft and provided bluebook will result in a failure of the final and class.

Do not identify yourself on the exam in any way other than by your Student ID. Do not write any information that might reveal who you are.

This is a closed book examination. You may not have anything in front of you other than your exam-taking computer.

This exam consists of three parts. The total time for this exam is three hours unless you have an accommodation. Those with an accommodation have their appropriate accommodation time.

Part One consists of 20 fill in the blanks, definitions, and true/false.

Part Two consists of 11 short fact patterns.

Part Three consists of 20 multiple-choice questions.

BE SURE TO ANSWER THE CALL OF THE QUESTION!!!!

Good Luck and enjoy your summer.

PART one: fill in the blanks, definitions, and true/false 4 pts each

When presented with a true/false question write the correct answer, i.e. **TRUE**.

When presented with a definition, simply write the definition.

When presented with a “what are the factors” simply write the factors.

When presented with “fully explain” write the rule and then **FULLY EXPLAIN THE RULE**.

When presented with a rule and factor question. State the rule and the factors.

Question 1. What are the factors the court looks at in deciding bail based on the bail reform act of 1964 found in *US v. Salerno*

Question 2. Define Harmless error.

Question 3. Fully explain when a defendant has the right to counsel.

Question 4. What is the balancing test the court uses in determining a speedy trial right and what factors do they look at?

Question 5. Fully explain the Brady Rule in regards to disclosure.

Question 6. Define the Strickland Test.

Question 7. Explain what Witherspoon excludables are.

- Question 8.** What are the three constitutionally permissible ways for a trial judge to handle a combative defendant?
- Question 9.** Fully explain testimonial and non-testimonial statements.
- Question 10.** Define curtilage and list the four factors a court will look at in determining curtilage.
- Question 11.** What is the two-prong test for reasonable expectation of privacy established in *Katz v United States*?
- Question 12.** Fully explain when the *Leon* good faith exception would NOT be valid.
- Question 13.** What is the Rule of the Fruit of the Poisonous Tree Doctrine?
- Question 14.** What are the three exceptions to the Fruit of the Poisonous Tree Doctrine and explain each.
- Question 15.** What level of information or standard of evidence must the Government possess to conduct a protective pat frisk?
- Question 16.** Fully define evanescent evidence.
- Question 17.** In order for an impartial jury the 6th Amendment requires a jury verdict to be what?
- Question 18. True or False:** An attorney must relay an offer from government to his client even if the attorney knows the offer is no different than a guilty plea and will not be accepted?
- Question 19. True or False:** There is a constitutional right to self -representation.
- Question 20.** Fully explain in the right to defend what lies in the defendant's province and what lies in the attorney's province.

Part II: Short Fact Patterns

This section consists of eleven (11) 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: **ANSWER IN IRAC!! IF NOT ANSWERED IN IRAC, POINTS WILL BE DEDUCTED!**

Your answer must be a concise, proper analysis that includes: (1) Identify the issue (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; (4) your conclusion

QUESTION 1. (15 points) Detective Hanson has been investigating Ogie Ogelthorpe over a long period of time. Detective Hanson also had credible criminal informants Killer Carlson and Hanrahan inside Ogelthorpe's criminal network. Killer Carlson and Hanrahan informed Detective Hanson that Ogelthorpe's criminal network was prone to violence and that Ogelthorpe kept an arsenal of weapons in his home.

Detective Hanson received a reliable tip that a large black suitcase with a distinctive red stripe contained a large supply of fentanyl and had been delivered to Ogelthorpe's home for distribution within his network of cronies. Detective Hanson obtained a valid search warrant to search Ogelthorpe's home and seize the suitcase and fentanyl. Detective Hanson and other police went to Ogelthorpe's home.

The police knocked on Ogelthorpe's door and called out, "Police. Open Up. We have a warrant." After a few seconds and no response, the police forced the door open and entered. Hearing loud noises coming from the basement, the police ran down and found Ogelthorpe and the Black suitcase with the distinctive red stripe. The police cuffed Ogelthorpe searched him and the suitcase. The search revealed a loaded Glock on Ogelthorpe and the suitcase filled with fentanyl.

The police then fanned out through the house, looking in every room and closets. They found no one else, but found a two Sig Sauer, a 45 magnum, and ammunition in a box on a shelf in a bedroom closet.

Ogelthorpe's lawyer files a motion to suppress the fentanyl, the Glock, the Sig Sauer, and ammunition. What is the strongest constitutional argument{s} and how should the judge rule?

QUESTION 2. (35 points) Chesney was operating an illegal gambling and drug distribution ring out of the back of his pizza store. Acting on an anonymous tip police raid Chesney's pizza store without a warrant, search the back, discovered 2 kilos of cocaine, \$100,000.00 in cash and guns. Police immediately handcuff Chesney and question him. Chesney gives up his cocaine connection, Dominion. Dominion was not known to the police and this was the first they heard of him.

Police get a search warrant for Dominion's warehouse based on the information given to them by Chesney. Once the police arrive at Dominion's warehouse they see an individual, later identified as Shelton lying on the ground in the parking lot 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 Shelton, "what happened," "who shot you," and "where is your attacker." Shelton managed to tell the police that Moondog, had just beaten him up, that he also shot him multiple times and that he had just took off as the police were pulling up. Shelton's conversation with the police ended within 5 to 10 minutes when emergency medical services arrived to treat him. Shelton was transported to the hospital, where he died within the hour. The police began an immediate search for Moondog who was known to the police. Multiple gangs used Moondog as an enforcer. Within hours, police located him not far from the scene, arrested and charging Moondog with murder. Police searched Moondog and he had no weapons on him. They read Moondog Miranda and began questioning him about where the weapon was. Moondog immediately invoked his right to counsel and questioning stopped. Moondog was put in the back of the cruiser and on the ride back to the station Officers Lambert and Collins began talking and Collins stated to Lambert "I hope he didn't throw that gun in the park, there is a Church picnic there this weekend and it would be a shame if one of the kids found the gun and accidentally shot another kid." Upon hearing their conversation Moondog speaks up and tells the officers where he hid the gun in the park. Officer Lambert informs dispatch of the information and police head to the park and find the gun where Moondog said he hid it.

Later that night the police went back to Dominion's warehouse with the search warrant and searched Dominion's warehouse. The search revealed 100 kilos of cocaine, 50 kilos of heroin, and array of guns. Dominion was also at the warehouse and was arrested. The police read Dominion the Miranda warning and Dominion immediately invoke his right to counsel and police asked no further questions.

Chesney is charged with intent to distribute narcotics, unlicensed possession of firearms. Dominion is charged with intent to distribute narcotics and unlicensed possession of firearms. Moondog is charged with 2nd degree murder.

What motions to suppress should Attorney's for Chesney, Dominion, and Moondog file and how should the court rule?

QUESTION 3. (15 points) Bill, Ted, and Larry lifelong friends are heading out to a party. Bill is driving his brand new Mercedes-Benz G class. Officer Stickney is out on his assigned shift. While waiting at a red light Officer Stickney sees Bill, Ted, and Larry drive by. Officer Stickney thinks they must be drug dealers because no young

black could afford that ride. Officer Stickney turns and follows the boys, he follows them for a couple of miles and says “screw it, I’m pulling them over.” Officer Stickney initiates his cruiser lights and Bill pulls over. He asks for Bill’s license and when he runs a check he finds a warrant for unpaid parking tickets. He put Bill in handcuffs then orders Ted and Larry out of the vehicle and searches each of them. While searching Larry he finds a baggie of cocaine and also arrests Larry.

Larry’s attorney files a motion to suppress the evidence of cocaine. What is the strongest Constitutional argument and how is the judge likely to rule?

QUESTION 4. (12 points) Detective Colombo goes to Bob’s home to question him about the disappearance of his wife. After a couple of questions Bob invokes his right to counsel and Detective Colombo stops questioning Bob and leaves. Something isn’t sitting quite right with Detective Colombo. Ten days later Detective Colombo gets an arrest warrant and arrests Bob. Bob is brought into interrogations, he is read his Miranda rights and is asked if he understands those rights to which Bob replies, “Yes.” Bob’s conscience gets the best of him and makes a full confession to the murder of his wife.

Bob’s attorney files a motion to suppress the confession. What is the strongest Constitutional argument and how is the judge likely to rule?

QUESTION 5 .(12 points) The Police suspected Wendy of dealing in stolen credit cards. Undercover Officer Ruzak knocked on Wendy’s door and told her he was willing to pay for usable credit cards. Wendy asked if he was a cop, Ruzak replied, “No,” giving her a false name and saying, “You can call Pete-He’ll vogue for me.” Wendy lets Ruzak in her house and calls in another room to call Pete. While Wendy is in another room Ruzak lifts some magazines on a table and underneath the magazines he discovers multiple credit cards bearing different names. Undercover Officer Ruzak seizes all of the credit cards, and when Wendy comes back into the room arrests her.

Wendy’s attorney moves to suppress the evidence seized. What is the strongest Constitutional argument and how should the court rule?

FOR THE FOLLOWING SHORT FACT PATTERNS ANSWER HOW THE COURT SHOULD RULE AND EXPLAIN THE PERTINENT RULE THE COURT WOULD USE PERTAINING TO THE FACTS:

QUESTION 6. (12 points) Fred Blassie a low level hood finds a new easy mark, breaking into vehicles in elderly housing complexes. Blassie is scoping out The End Is Near housing complex and sees nothing but high-end vehicles. While breaking

into vehicles, the complex “busy body” Arnold Skaaland is on his deck on the 4th floor checking to make sure no visitors are parking in resident assigned spots. He spots Blassie and calls the police; he notes the time of 2:22 am, for some reason. He gives the officer a description of Blassie, stating, “a male about 6 feet tall, skinny, and wearing a dark hoodie.” is scoping the parking lot. The officer then decides to walk around the complex and sees Blassie, who is skinny and wearing a hoodie walking through the parking lot. The officer stops Blassie and while questioning him, Arnold Skaaland walks up and states, “that’s the guy I saw.” The officer arrests Blassie. At a later lineup Arnold Skaaland is unable to identify Blassie.

Blassie’s attorney moves to suppress the identification Arnold Skaaland made in the parking lot. How is the judge likely to rule and why?

QUESTION 7. (10 points) Sam was arrested and charged with conspiracy to receive stolen property. At his arraignment, private counsel represented Sam. Sam was released after posting bond. Following his release, Sam returned to his job as a bartender at Maydays. Three weeks before Sam’s trial, Norm entered the bar. After a few beers, Norm began conversing with Sam. Unknown to Sam, Norm was a paid police informant. During the conversation, Norm told Sam that he had read about his arrest and asked Sam who sold him the goods. Unsuspectingly, Sam made some incriminating remarks, which Norm passed on the District Attorney.

Sam’s attorney moves to suppress the statements Sam made to Norm. How should the court rule and why?

QUESTION 8. (10 Points) A man kidnapped a victim in State A and transported the victim across the state border into State B. These actions violated the kidnapping laws of both states, which are identical. A jury convicted the man in State A court, but the trial judge gave what prosecutors in State B deemed an unduly lenient sentence. The state prosecutor in State B commenced a kidnapping case against the man for violating State B’s kidnapping statute.

The man’s lawyer has filed a motion in State B to dismiss the charge based on double jeopardy protection against a second prosecution for the man’s single act of kidnapping.

How should the court rule and why?

QUESTION 9. (10 points) Defendant pleaded guilty in a trial court to an indictment charging him with capital murder. At his plea colloquy, Defendant, feeling bad about what he had done, told the judge that he had committed a string of burglaries, that he had no significant prior criminal record, and that at the time of his criminal spree he was under extreme stress caused by being married and his inability to support his family. In preparing for the sentencing hearing, Defendant’s

defense counsel spoke with him about his background but did not seek out any character witnesses or any of Defendant's immediate family, nor did he request a psychiatric examination. Defense counsel failed to do a number of things, including requesting a presentence report because he was worried it might include Defendant's criminal history, thereby undermining his claim of no significant prior criminal record. At the sentencing hearing the judge told Defendant that he had "a great deal of respect for people who are willing to step forward and admit their responsibility." However, the judge found numerous aggravating circumstances and no mitigating circumstances and sentenced Defendant to death on each of the murder counts.

If the defendant were to appeal his conviction to the state's appeals court, what is his strongest constitutional argument(s)?

QUESTION 10. (10 points) Jerry, a marijuana farmer has been missing for several months. The sheriff's department received an anonymous tip that a rival Marijuana farmer (Newman) had buried Jerry in a hillside about 200 yards from Newman's farmhouse. Deputies George and Kramer went to Newman's farm. They cut the barbed wire that surrounded the hillside and entered, looking for the grave. They also searched the adjacent fields on Newman's farm that were within the area enclosed by the barbed wire and discovered Jerry's clothes hanging on a scarecrow. Newman observed Deputies George and Kramer and began shooting. Deputies George and Kramer returned fire. Newman ran to his pickup truck to escape but the keys weren't in it. Newman then took off running across the field toward his barn. Deputy Kramer tackled him just as he entered the barn.

As Newman attempted to get up, Deputy Kramer pinned his arms behind his back. Deputy George threatened, "Tell us what you did with Jerry or we'll lock you up and you'll never see your family again!" Newman responded that he had killed Jerry in a fight but did not report it because he didn't want the Sheriff's to enter his property and discover his lucrative marijuana crop. Instead, he buried Jerry behind the barn. Newman was charged with murder.

Newman's attorney moves to suppress the admission about killing Jerry. How should the court rule and why?

QUESTION 11. (10 points) Tony Montoya 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 Tony Montoya 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 Tony Montoya 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 the Government may not compel testimony from an unwilling witness who invokes his Fifth Amendment privilege against self-incrimination, by conferring on the witness immunity.

How should the U.S. District Court rule on your motion and why?

Part III: Multiple Choice 3 pts each.

Select the most correct answer.

Question 1. A defendant was lawfully arrested without a warrant for bank robbery. He was not given Miranda warnings, but was immediately taken to a police station where he and five other men were placed in a lineup to be viewed by the bank teller. Each man was required to say the words spoken by the bank robber: “Give me all your money. I’ve got a gun.” After all the men in the lineup spoke those words, the teller identified the defendant as the robber.

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

Should the defendant’s motion be granted?

- A. No, because being required to speak at the lineup, while compelled, was not testimonial or communicative.

- B. No, because testimony of a witness based on firsthand observation is not subject to exclusion as the fruit of the poisonous tree.
- C. Yes, because the defendant was compelled to speak at the lineup, and this compelled speech led to the witness's identification testimony.
- D. Yes, because the defendant was never informed that he could refuse to make a statement and that any statement could be used as evidence against him.

Question 2. Police, who had probable cause to arrest a man for a series of armed robberies, obtained a warrant to arrest him. At 6am they surreptitiously entered the man's house and, with guns drawn, went to the man's bedroom, where they awakened him. Startled the man asked "What's going on?" and an officer replied, "we've got you now." Another officer immediately asked the man if he had committed a particular robbery, and the man said that he had. The police informed him that he was under arrest and ordered him to get dressed.

Charged with robbery, the man has moved to suppress the use of his statement as evidence. What is the man's best argument for granting the motion?

- A. The statement was hearsay.
- B. The police did not give him the required *Miranda warnings*.
- C. He was not informed that he was under arrest until after he made the statement.
- D. The police did not have a search warrant authorizing entry into the house.

Question 3. A. Hernandez sold heroin to Little Papi. Papi was later stopped by the police for speeding. The Police searched Papi's car and found heroin concealed under the rear seat. Hernandez is charged with illegally selling heroin.

Hernandez's motion to prevent the introduction of the heroin into evidence will most likely be

- A. Granted, because the heroin was not in plain view.
- B. Granted, because the scope of the search was excessive.
- C. Denied, because Hernandez has no standing to object to the search.
- D. Denied, because the search was proper as incident to a valid full custodial arrest.

Question 4. The defendant belonged to a fraternity at the U. Members of the fraternity who paid a rent of 500 hundred dollars per semester were entitled to a double-occupancy bedroom in the fraternity house. Although house residents shared kitchen and dining room facilities, the bedrooms were not communal and were normally kept locked by their occupants. With the knowledge of its members, the fraternity kept duplicates of all keys so that copies could be made in the event a resident lost his key.

A football player who was a member of the fraternity suspected, based on the stream of visitors to the defendant's room at all hours of the day and night that defendant was selling the club drug molly. One weekend, when he knew the defendant had gone home to visit his parents, the football player called the police and told them of his suspicions

and the facts that had given rise to them. In response to his call, two officers immediately came to the fraternity house to interview the football player. During the course of the interview the football player stated he was the defendant's roommate, and offered to let them in the defendant's room. In fact, he was not the defendant's roommate. The football player used one of the duplicate keys to open the defendant's bedroom door. Upon entering, the officers saw a "drug scale" and pills in the idle of the coffee table. The defendant was subsequently prosecuted for possession of molly. Prior to trial, the defendant made an appropriate motion to suppress the use of the scale and pills found on the coffee table as evidence.

The motion should be

- A. Denied, because the football player had apparent authority to permit the entry in to the room.
- B. Denied, because the police had probable cause to believe that they would find the club drug molly in the room.
- C. Allowed, because the police did not have a warrant to search the room and the football player did not have authority to let them search it.
- D. Allowed, because the police did not have probable cause to believe that they would find drugs in the room.

Question 5. A police officer stopped a driver who had run a red light. Upon approaching the car, the officer noticed a strong odor of alcohol and immediately asked whether the driver had been drinking alcohol. The driver admitted having had several alcoholic drinks that evening.

The Driver, charged with driving while under the influence, moved to suppress the officer's testimony regarding the driver's statement about his drinking. The driver argued that the officer had elicited the statement without providing the requisite *Miranda* warnings. The prosecutor has responded that the statement should be allowed in the prosecution's case-in-chief or, at a minimum, should be allowed as impeachment in the event the driver testifies and denies drinking.

How should the court rule regarding the driver's statement admitting his drinking alcohol?

- A. Allowed, because although the driver was in custody, the officer's spontaneous utterance upon smelling alcohol did not rise to the level of interrogation
- B. Allowed, because the driver was not in custody for *Miranda* purposes when the admission was made.
- C. Suppressed both in the prosecution's case-in-chief and as impeachment evidence, even if the driver testifies.
- D. Suppressed in the prosecution's case-in-chief, but it may be used as impeachment evidence if the driver testifies.

Question 6. A defendant was charged with and tried for murder. At trial, the defendant testified that he had acted in self-defense.

The trial court instructed the jury that the defendant had the burden of proving by a preponderance of the evidence that he had acted in self-defense. The defendant objected, arguing that this instruction violated the constitutional requirement that the prosecution prove the offense beyond a reasonable doubt.

Did the trial court's instruction violate the defendant's federal constitutional rights?

- A. No, because due process does not preclude requiring a defendant to prove self-defense by a preponderance of the evidence.
- B. No, because due process does not regulate the burdens of proof in criminal cases.
- C. Yes, because due process precludes placing any evidentiary burden on a criminal defendant.
- D. Yes, because due process precludes requiring a criminal defendant to bear the burden on an issue that would make an act unlawful.

Question 7. Without a warrant, police officers searched the garbage cans in the alley behind a man's house and discovered chemicals used to make methamphetamine, as well as cooking utensils and containers with the man's fingerprints on them. The alley is a public thoroughfare maintained by the city, and the garbage was picked up once a week by a private sanitation company. Most homeowner's store their garbage cans in the alley in this neighborhood. The items found inside the garbage can were in black plastic bags that had been tied closed and further secured with duct tape. The man was charged in federal court with the manufacture of methamphetamine.

Did the search of the garbage cans violate the Fourth Amendment?

- A. Yes, because there is a reasonable expectation of privacy in one's secured garbage containers.
- B. No, because the man had no reasonable expectation of privacy in garbage left in the alley.
- C. Yes, because the alley was within the curtilage of the man's home and entry without a warrant was unconstitutional.
- D. No, because the probative value of the evidence outweighs the man's modest privacy claims in his garbage.

Question 8. A man was in jail after being arrested for burglary. When the police attempted to question him, the man invoked his *Miranda* rights and refused to answer any questions. The man was subsequently tried, convicted, and sentenced to a prison term for the burglary. Three years later, while serving his prison sentence for the burglary, a police detective from a nearby town questioned him about an unsolved homicide. The detective did not know that the man had invoked *Miranda* at an earlier time. The man

waived his *Miranda* rights and made several incriminating statements to the detective. When he was later charged with the homicide, the man moved to suppress these statements, claiming that his earlier refusal to waive his *Miranda* rights should have been honored.

Should the court suppress the statements?

- A. No, because the detective was unaware that the man had originally invoked his *Miranda* rights.
- B. No, because the man's prior invocation of his *Miranda* rights did not preclude the later interrogation.
- C. Yes, because the man had earlier invoked his *Miranda* rights, and the police were not permitted to resume questioning, even after a time lapse of years.
- D. Yes, because the man was incarcerated, and his earlier invocation of his *Miranda* rights shielded him from further questioning until he was released.

Question 9. A defendant was charged with attempted murder. At the preliminary hearing, the presiding judge heard the testimony of four prosecution witnesses and found that the prosecution had failed to establish probable cause. Accordingly, the judge dismissed the charge.

The prosecutor then called the same four witnesses before a grand jury. The grand jury indicted the same defendant for attempted murder.

The defendant has moved to quash the indictment on the ground of double jeopardy.

How should the court proceed?

- A. Grant the motion, because the dismissal of the first charge on the merits, whether incorrect or correct, bars any further prosecution.
- B. Grant the motion, unless the prosecution has evidence that was not presented in the first case.
- C. Deny the motion, because the defendant has not yet been in jeopardy of conviction on the attempted murder charge.
- D. Deny the motion, because the protection of the double jeopardy clause does not come into play until there has been a conviction or acquittal.

Question 10. A bank robber handed a teller a handwritten note demanding money. Shortly thereafter, the defendant was arrested for the robbery. At the police station, the defendant was required, over his protest, to write out the words on the note and have his fingerprints taken. He was then, for the first time, allowed to telephone a lawyer, who thereafter represented him.

The prosecution, after introducing the robber's note to the teller, also offers in evidence the defendant's writing of the words on the note at the request of the police. On appropriate action, the court should rule this...

- A. Inadmissible, because he was not advised that his handwriting sample could be admitted into evidence against him.
- B. Inadmissible, because he was not advised of his right to refuse to give a handwriting sample.
- C. Inadmissible, because he had not been informed he had a right to have counsel present.
- D. Admissible.

Question 11. Officer Liddell stops Ortiz, an operator of a vehicle, for driving with an expired registration sticker. In this jurisdiction driving with an expired sticker is a misdemeanor, and that under local police department procedures, a driver for such an offense is virtually never arrested, but is instead given a summons to be answered at a later date. Officer Liddell orders Ortiz out of the car and does a pat down; he finds no weapons on Ortiz. He then searches the front seat and finds a baggie in between the console and seat. The baggie is determined to contain heroin. Ortiz is charged with possession of heroin.

Ortiz moves to dismiss charge of possession of heroin.

The suit should...

- A. Dismissed, because the officer didn't find anything on Ortiz during the pat down
- B. Dismissed, because the search of his person and car were done without a warrant, both a violation of his 4th amendment rights and there are no exceptions
- C. Allowed to continue, because Officer Liddell had probable cause to search both Ortiz's person and car
- D. Allowed to continue, because this was a lawful search incident to arrest

Question 12. State troopers lawfully stopped a driver on 495 for exceeding the speed limit by 4 miles per hour. One trooper approached the car to warn the driver to drive within the speed limit. The other trooper remained in the patrol car and ran a computer check of the license number of the driver's car. The computer check indicated that there was an outstanding warrant for the driver's arrest for unpaid traffic tickets. The troopers then arrested the driver. After handcuffing her and putting her in the cruiser, the troopers searched the car, and discovered 10 glassine bags of heroin in a paper bag on the back seat of the car. Later it was learned that the driver had paid the outstanding traffic tickets 10 days earlier and the warrant had been quashed, but the clerk of the court failed to update the system. Procedure in the state details that the vehicle must be towed back to the lot and an inventory search

would be conducted there. The driver of the car was charged with unlawful possession of heroin. Her attorney filed a motion to suppress the use as evidence of the heroin found in the car.

Should the motion be granted?

- A. No, because the troopers could reasonably rely on the computer report and the search were incident to arrest.
- B. No, because troopers may lawfully search the passenger compartment of a car incident to a valid traffic stop.
- C. Yes, because the troopers did an inventory search on 495.
- D. Yes, because the paper bar was not in the immediate control of the driver.

Question 13. Slippery Pete was charged with armed robbery. Slippery Pete only had an eight-grade education and no legal knowledge.

At a pretrial hearing, Slippery Pete told the judge that he was unhappy with the public defender that had been appointed to him and he wanted the judge to appoint another lawyer to represent him.

The judge refused to appoint another lawyer, telling Slippery Pete, with no further explanation, that his only other choice was to represent himself. Slippery Pete said he would represent himself at trial then, as "anything was better than having this lawyer." Slippery Pete did not raise the subject again, and he represented himself at trial. After overwhelming evidence of Slippery Pete's guilt, the jury convicted him. On appeal, Slippery Pete has requested a new trial on the ground that he was deprived of his right to counsel.

Should the appellate court grant the request?

- A. No, because Slippery Pete voluntarily waived his right to counsel.
- B. No, because the trial court's error was harmless error in light of the overwhelming evidence.
- C. Yes, because Slippery Pete was not capable of effectively representing himself.
- D. Yes, because the record does not establish a valid waiver of the right to counsel.

Question 14. A criminal was indicted in a state court in January 2015 for a robbery and murder that occurred in December 2012. He retained counsel, who filed a motion to dismiss on the ground that the criminal had been prejudiced by a 25-month delay in obtaining an indictment. Thereafter, the criminal, with his counsel, appeared in court for arraignment and stated that he wished to plead guilty. The presiding judge asked the criminal whether he understood the nature of the charges, possible defenses, and maximum allowable sentences. The criminal replied that he did, and the judge reviewed all of those matters with him. He then asked the criminal whether he understood that he did not have to plead guilty. When the criminal responded that he knew that, the judge accepted the plea and sentenced the criminal to 25 years.

Six months later, the criminal filed a motion to set aside his guilty plea on each of the following grounds. Which of these grounds provides a constitutional basis for relief?

- A. The judge did not rule on his motion to dismiss before accepting the guilty plea.
- B. The judge did not determine that the criminal had robbed and killed the victim.
- C. The judge did not determine whether the criminal understood that he had a right to a jury trial
- D. The judge did not determine whether the prosecutor's file contained any undisclosed exculpatory evidence.

Question 15. A businessman was the target of a grand jury investigation into the alleged bribery of American and foreign officials in connection with an international construction project. The businessman had stated at a press conference that no bribes had been offered or taken and that no laws of any kind had been offered or taken and that no laws of any kind had been broken. The grand jury issued a subpoena requiring the businessman moved to quash the subpoena on the ground that his testimony could tend to incriminate him. The prosecutor responded with a grant of use immunity (under which the businessman's compelled statements before the grand jury could not be used against him in any state or federal prosecution.) The businessman responded that the grant of use immunity was not sufficient to protect his Fifth Amendment rights.

Should the businessman be compelled to testify?

- A. No, because the businessman remains subject to the risk of foreign prosecution.
- B. No, because use immunity does not prevent the government from prosecuting the businessman on the bribery scheme.
- C. Yes, because the businessman has denied any criminal liability and therefore his Fifth Amendment rights are not at stake.
- D. Yes, because the grant of use immunity is coextensive with the businessman's Fifth Amendment rights.

Question 16. A valid warrant was issued for a woman's arrest. The police learned that a person with the woman's name and physical description lived at that particular address. When police officers went to that address, the house appeared to be unoccupied: the windows and doors were boarded up with plywood, and the lawn had not been mowed for a long time. A neighbor confirmed that the house belonged to the woman but said that the woman had not been there for several months.

The officers knocked repeatedly on the front door and shouted, "Police!! Open Up!!" Receiving no response, they tore the plywood off the door, smashed through the

door with a sledgehammer, and entered the house. They found no one inside, but they did find an illegal sawed-off shotgun. Upon her return to the house a few weeks later, the woman was charged with unlawful possession of the shotgun.

The woman has moved to suppress the use of the shotgun as evidence at her trial. Should the court grant the motion?

- A. No, because the officers acted in good faith under the authority of a valid warrant.
- B. No, because the officers did not violate any legitimate expectation or privacy in the house since the woman had abandoned it.
- C. Yes, because the officers entered the house by means of excessive force.
- D. Yes, because the officers had no reason to believe that the woman was in the house.

Question 17. 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 the 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 ground that this statement was elicited in violation of his *Miranda* rights.

Should the motion be granted?

- A. No, because although the defendant effectively asserted his 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 a lawyer?” constituted custodial interrogation.

Question 18. A police officer had a hunch, not amounting to probable cause or reasonable suspicion, that a man was a drug dealer. One day while the officer was on highway patrol, her radar gun clocked the man's car at 68 mph in an area where the maximum posted speed limit was 65 mph. The officer's usual practice was not to stop a car unless it was going at least 5 mph over the posted speed limit, but contrary to her usual practice, she decided to stop the man's car in the hope that she might discover evidence of drug dealing. After she stopped the car and announced that she would be writing a speeding ticket, the officer ordered the man and his passenger to step out of the car. When the passenger stepped out, the officer saw that the passenger had been sitting on a clear bag of what the officer immediately recognized as marijuana. The officer arrested both the man and the passenger for possession of marijuana.

At their joint trial, the man and the passenger claim that their Fourth Amendment rights were violated because the officer improperly (1) stopped the car for speeding as a pretext for investigating a hunch rather than for the stated purpose of issuing a traffic ticket and (2) ordered the passenger to step out of the car even though there was no reason to believe that the passenger was a criminal or dangerous.

Are the man and the passenger correct?

- A. No, as to both the stop of the car and the officer's order that the passenger step out of the car.
- B. No, as to the stop of the car, but yes as to the officer's order that the passenger step out of the car.
- C. Yes as to the stop of the car, but no as to the officer's order that the passenger step out of the car.
- D. Yes, as to both the stop of the car and the officer's order that the passenger step out of the car.

Question 19. At a defendant's criminal trial, defense counsel decided not to put the defendant on the stand or to interview the defendant's alibi witness because counsel did not believe that either the defendant or the defendant's alibi witnesses would tell the truth. Counsel felt that it was her ethical duty to avoid assisting in the commission of perjury. The defendant's alibi witnesses were his mother and sister who were prepared to support the defendant and who would testify that he was home with them at 2:00am, the time at which the crime was committed.

At trial, the prosecution called the defendant's mother and sister to the stand. They both testified that the defendant was at home watching television with them on the night of the crime, but that they went to bed at 11:00pm and could not be positive that the defendant was in the house at 2:00am. The defendant was convicted and is now seeking a writ of habeas corpus on the grounds that his counsel gave inadequate assistance.

Will the writ issue?

- A. Yes, because counsel failed to interview the witnesses.

- B. No, because defense counsel is prohibited from assisting in the commission of perjury.
- C. No, because this decision is within counsel's trial strategy.
- D. No, because the failure to interview the witnesses or call them to testify did not result in any prejudice.

Question 20. A detective received information from an informant, who had given reliable information many times in the past, and in fact was the detective's most reliable informant, that a man was a narcotics dealer. Specifically, the informant said that, two months before, he had visited the man's apartment with a friend and that on that occasion he saw the man sell his friend some heroin. The detective knew that the informant, the man, 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 man's apartment. The search turned up a supply of heroin.

The man's motion to suppress introduction of the heroin into evidence will most likely be...

- A. Granted, because a search warrant cannot validly be issued solely on the basis of an informant's information.
- B. Granted, because the information supplied to the detective concerned an occurrence too remote in time to justify a finding of probable cause at the time of the search.
- C. Granted, because a search for mere evidence alone is improper and illegal.
- D. Denied, because the informant had proven himself to be reliable in the past, and the information he gave was specific and turned out to be correct.

Crim Pro Hetu Sp 2024 Final

Question #: 1

DURING THIS EXAM YOU ARE NOT TO HAVE ANY OTHER DOCUMENT, 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:

You are allowed to use scrap paper and/or the notes, highlights, etc. provided by examsoft. Any use of anything outside of what is provided by examsoft and provided bluebook will result in a failure of the final and class.

Do not identify yourself on the exam in any way other than by your Student ID. Do not write any information that might reveal who you are.

This is a closed book examination. You may not have anything in front of you other than your exam- taking computer.

This exam consists of three parts. The total time for this exam is three hours unless you have an accommodation. Those with an accommodation have their appropriate accommodation time.

ALL BLUEBOOKS AND EXAMS MUST BE TURNED IN YOUR IDS ON THEM AND THIS APPLIES TO EVERYONE, EVEN THOSE WHO DO NOT USE THEIR BLUEBOOKS.FAILURE TO DO SO, WILL RESULT IN AN F.

Part One consists of 20 definitions and true/false.

Part Two consists of 11 short fact patterns.

Part Three consists of 20 multiple-choice questions.

BE SURE TO ANSWER THE CALL OF THE QUESTION!!!!

Good Luck and enjoy your summer.

PART one: definitions and true/false 5 pts each

When presented with a true/false question write the correct answer, i.e. **TRUE**.

When presented with a definition, simply write the definition.

When presented with a “what are the factors” simply write the factors.

When presented with “fully explain” write the rule and then **FULLY EXPLAIN THE RULE**.

When presented with a rule and factor question. State the rule and the factors.

Question 1. What are the factors the court looks at in deciding bail based on the bail reform act of 1964 found in *US v. Salerno*

Question 2. Define Harmless error.

Question 3. Fully explain when a defendant has the right to counsel.

Question 4. What is the balancing test the court uses in determining a speedy trial right and what factors do they look at?

Question 5. Fully explain the Brady Rule in regards to disclosure.

Question 6. Write the Strickland Test.

Question 7. Explain what Witherspoon excludables are.

Question 8. What are the three constitutionally permissible ways for a trial judge to handle a combative defendant?

Question 9. Fully explain testimonial and non-testimonial statements.

Question 10. Define curtilage and list the four factors a court will look at in determining curtilage.

Question 11. Write the two-prong test for reasonable expectation of privacy established in *Katz v United States*?

Question 12. Fully explain when the *Leon* good faith exception would NOT be valid.

Question 13. What is the Rule of the Fruit of the Poisonous Tree Doctrine?

Question 14. What are the three exceptions to the Fruit of the Poisonous Tree Doctrine and explain each.

Question 15. What level of information or standard of evidence must the Government possess to conduct a protective pat frisk?

Question 16. Fully define evanescent evidence.

Question 17. In order for an impartial jury the 6th Amendment requires a jury verdict to be what?

Question 18. True or False: An attorney must relay an offer from government to his client even if the attorney knows the offer is no different than a guilty plea and will not be accepted?

Question 19. True or False: There is a constitutional right to self - representation.

Question 20. Fully explain in the right to defend what lies in the defendant's province and what lies in the attorney's province.

Question #: 2

Part II: Short Fact Patterns

This section consists of ten (11) 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: **ANSWER IN IRAC!! IF NOT ANSWERED IN IRAC, POINTS WILL BE DEDUCTED!**

Your answer must be a concise, proper analysis that includes: (1) Identify the issue (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; (4) your conclusion

QUESTION 1. (25 points) Detective Hanson has been investigating Ogie Ogelthorpe over a long period of time. Detective Hanson also had credible criminal informants Killer Carlson and Hanrahan inside Ogelthorpe's criminal network. Killer Carlson and Hanrahan informed Detective Hanson that Ogelthorpe's criminal network was prone to violence and that Ogelthorpe kept an arsenal of weapons in his home.

Detective Hanson received a reliable tip from one of his longtime informants that a large black suitcase with a distinctive red stripe contained a large supply of fentanyl and had been delivered to Ogelthorpe's home for distribution within his network of cronies. Detective Hanson obtained a valid search warrant to search Ogelthorpe's home and seize the distinctive suitcase and fentanyl. Detective Hanson and other police went to Ogelthorpe's home.

The police knocked on Ogelthorpe's door and called out, "Police. Open Up. We have a warrant." After a few seconds and no response, the police forced the door open and entered. Hearing loud noises coming from the basement, the police ran down and found Ogelthorpe and the Black suitcase with the distinctive red stripe. The police cuffed Ogelthorpe searched him and the suitcase. The search revealed a loaded glock on Ogelthorpe and the suitcase filled with fentanyl.

The police then fanned out through the house, looking in every room and closets. They found no one else, but found a two Sig Sauers, a 45 magnum, and

ammunition in a box on a shelf in a bedroom closet.

Ogelthorpe's lawyer files a motion to suppress the fentanyl, the glock, the sig Sauer, 45 magnum, and ammunition. What is the strongest constitutional argument{s} and how should the judge rule?

Question #: 3

QUESTION 2. (55 points) Chesney was operating an illegal gambling and drug distribution ring out of the back of his pizza store. Acting on an anonymous tip police raid Chesney's pizza store without a warrant, search the back, discovered 2 kilos of cocaine, \$100,000.00 in cash, and guns. Police immediately handcuff Chesney and question him. Chesney gives up his cocaine connection, Dominion. Dominion was not known to the police and this was the first they heard of him.

Police get a search warrant for Dominion's warehouse based on the information given to them by Chesney. Once the police arrive at Dominion's warehouse they see an individual, later identified as Shelton lying on the ground in the parking lot 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 Shelton, "what happened," "who shot you," and "where is your attacker." Shelton managed to tell the police that Moondog, had just beaten him up, that he also shot him multiple times and that he had just took off as the police were pulling up. Shelton's conversation with the police ended within 5 to 10 minutes when emergency medical services arrived to treat him. Shelton was transported to the hospital, where he died within the hour. The police began an immediate search for Moondog who was known to the police. Multiple gangs used Moondog as an enforcer. Within hours, police located him not far from the scene, arrested and charging Moondog with murder. Police searched Moondog and he had no weapons on him. They read Moondog Miranda and began questioning him about where the weapon was. Moondog immediately invoked his right to counsel and questioning stopped. Moondog was put in the back of the cruiser and on the ride back to the station Officers Lambert and Collins began talking and Collins stated to Lambert "I hope he didn't throw that gun in the park, there is a Church picnic there this weekend and it would be a shame if one of the kids found the gun and accidentally shot another kid." Upon hearing their conversation Moondog speaks up and tells the officers where he hid the gun in the park. Officer Lambert informs dispatch of the information and police head to the park and find the gun where Moondog said he hid it.

At Moondog's trial for the murder of Shelton, the District Attorney enters Shelton's statements through Officer Piper who questioned Shelton at the scene.

Later that night the police went back to Dominion's warehouse with the search warrant and searched Dominion's warehouse. The search revealed 100 kilos of cocaine, 50 kilos of heroin, and array of guns. Dominion was also at the warehouse and was arrested. The police read Dominion the Miranda warning and Dominion immediately invoke his right to counsel and police asked no further questions.

Chesney is charged with intent to distribute narcotics, unlicensed possession of firearms. Dominion is charged with intent to distribute narcotics and unlicensed possession of firearms. Moondog is charged with 2nd degree murder.

What motions to suppress should Attorney's for Chesney, Dominion, and Moondog file and how should the court rule?

Question #: 4

QUESTION 3. (20 points). Police received an anonymous tip reporting “narcotics activity” at a particular residence. Officer Roy saw Neely leaving that particular home. Without any reasonable suspicion that Neely had been engaged in criminal activity, Roy stopped him, asked him what he was doing at the house, requested his identification, and detained him while he relayed Neely’s information to dispatch. Dispatch came back that Neely had an outstanding arrest warrant for a traffic violation. Roy arrests Neely and found fentanyl during a search incident to arrest.

Neely is subsequently charged with possession of fentanyl.

Neely moves to dismiss the charge of possession of fentanyl. What is the strongest constitutional argument and how is the judge likely to rule on the motion and why?

Question #: 5

QUESTION 4. (15 points) Detective Colombo goes to Bob's home to question him about the disappearance of his wife. After a couple of questions Bob invokes his right to counsel and Detective Colombo stops questioning Bob and leaves. Something isn't sitting quite right with Detective Colombo. Ten days later Detective Colombo gets an arrest warrant and arrests Bob. Bob is brought into interrogations, he is read his Miranda rights and is asked if he understands those rights to which Bob replies, "Yes." Bob's conscience gets the best of him and makes a full confession to the murder of his wife.

Bob's attorney files a motion to suppress the confession. What is the strongest Constitutional argument and how is the judge likely to rule?

Question #: 6

Question 5. (15 points) 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?

Question #: 7

QUESTION 6. (15 points) Tony Montoya 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 Tony Montoya 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 Tony Montoya 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 the Government may not compel testimony from an unwilling witness who invokes his Fifth Amendment privilege against self-incrimination, by conferring on the witness immunity.

How should the U.S. District Court rule on your motion and why?

Question #: 8

QUESTION 7. (15 points) Defendant pleaded guilty in a trial court to an indictment charging him with capital murder. At his plea colloquy, Defendant, feeling bad about what he had done, told the judge that he had committed a string of burglaries, that he had no significant prior criminal record, and that at the time of his criminal spree he was under extreme stress caused by being married and his inability to support his family. In preparing for the sentencing hearing, Defendant's defense counsel spoke with him about his background but did not seek out any character witnesses or any of Defendant's immediate family, nor did he request a psychiatric examination. Defense counsel failed to do a number of things, including requesting a presentence report because he was worried it might include Defendant's criminal history, thereby undermining his claim of no significant prior criminal record. At the sentencing hearing the judge told Defendant that he had "a great deal of respect for people who are willing to step forward and admit their responsibility." However, the judge found numerous aggravating circumstances and no mitigating circumstances and sentenced Defendant to death on each of the murder counts.

If the defendant were to appeal his conviction to the state's appeals court, what is his strongest constitutional argument(s)?

Question #: 9

Question 8. (10 points) 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?

Question #: 10

QUESTION 9. (15 Points) A man kidnapped a victim in State A and transported the victim across the state border into State B. These actions violated the kidnapping laws of both states, which are identical. A jury convicted the man in State A court, but the trial judge gave what prosecutors in State B deemed an unduly lenient sentence. The state prosecutor in State B commenced a kidnapping case against the man for violating State B's kidnapping statute. The man's lawyer has filed a motion in State B to dismiss the charge based on double jeopardy protection against a second prosecution for the man's single act of kidnapping.

How should the court rule and why?

Question #: 11

QUESTION 10. (25 points) Defendant pleaded guilty in a trial court to an indictment charging him with capital murder. At his plea colloquy, Defendant, feeling bad about what he had done, told the judge that he had committed a string of burglaries, that he had no significant prior criminal record, and that at the time of his criminal spree he was under extreme stress caused by being married and his inability to support his family. In preparing for the sentencing hearing, Defendant's defense counsel spoke with him about his background but did not seek out any character witnesses or any of Defendant's immediate family, nor did he request a psychiatric examination. Defense counsel failed to do a number of things, including requesting a presentence report because he was worried it might include Defendant's criminal history, thereby undermining his claim of no significant prior criminal record. At the sentencing hearing the judge told Defendant that he had "a great deal of respect for people who are willing to step forward and admit their responsibility." However, the judge found numerous aggravating circumstances and no mitigating circumstances and sentenced Defendant to death on each of the murder counts.

If the defendant were to appeal his conviction to the state's appeals court, what is his strongest constitutional argument(s)?

Question #: 12

Question 11. (20 points) Boston Police Officers arrived at the home of Dolores Sapp based on information that a person was hiding out in her home and who was wanted in connection with the bombing of a Downtown building. When the officers knocked on her door demanding to be let in, Sapp refused, telling the officers that her Attorney had advised her to not let the police in unless they had a search warrant. Three hours later the police returned to Sapp's home and forced their way in through an unlocked door. Sapp asked if they had a warrant, to which one of the officers held out a piece of paper. Sapp snatched the paper and placed in her bosom. A struggle ensued between the police and Sapp as the police attempted to retrieve the "alleged" warrant from her. She was eventually restrained, and the police began searching her home. The officers discovered stolen televisions in the basement of her home, for which she was eventually arrested. At trial, the police were unable to produce the warrant, nor were they able to explain its disappearance.

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

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

Question #: 13

A defendant was lawfully arrested without a warrant for bank robbery. He was not given Miranda warnings, but was immediately taken to a police station where he and five other men were placed in a lineup to be viewed by the bank teller. Each man was required to say the words spoken by the bank robber: "Give me all your money. I've got a gun." After all the men in the lineup spoke those words, the teller identified the defendant as the robber. The defendant subsequently moved to suppress the testimony of the teller, claiming the lineup violated his privilege against self-incrimination. At a suppression hearing, the teller testified that she had not gotten a good look at the robber's face, because the robber had been wearing a hat pulled down over most of his face, but that she was certain the defendant was the robber because she had recognized his voice at the lineup. Should the defendant's motion be granted?

- A. No, because being required to speak at the lineup, while compelled, was not testimonial or communicative.
- B. No, because testimony of a witness based on firsthand observation is not subject to exclusion as the fruit of the poisonous tree.
- C. Yes, because the defendant was compelled to speak at the lineup, and this compelled speech led to the witness's identification testimony.
- D. Yes, because the defendant was never informed that he could refuse to make a statement and that any statement could be used as evidence against him.

Question #: 14

Police, who had probable cause to arrest a man for a series of armed robberies, obtained a warrant to arrest him. At 6am they surreptitiously entered the man's house and, with guns drawn, went to the man's bedroom, where they awakened him. Startled the man asked "What's going on?" and an officer replied, "we've got you now." Another officer immediately asked the man if he had committed a particular robbery, and the man said that he had. The police informed him that he was under arrest and ordered him to get dressed. Charged with robbery, the man has moved to suppress the use of his statement as evidence. What is the man's best argument for granting the motion?

- A. The statement was hearsay.
- B. The police did not give him the required Miranda warnings.
- C. He was not informed that he was under arrest until after he made the statement.
- D. The police did not have a search warrant authorizing entry into the house.

Question #: 15

A. Hernandez sold heroin to Little Papi. Papi was later stopped by the police for speeding. The Police searched Papi's car and found heroin concealed under the rear seat. Hernandez is charged with illegally selling heroin. Hernandez's motion to prevent the introduction of the heroin into evidence will most likely be

- A. Granted, because the heroin was not in plain view.
- B. Granted, because the scope of the search was excessive.
- C. Denied, because Hernandez has no standing to object to the search.
- D. Denied, because the search was proper as incident to a valid full custodial arrest.

Question #: 16

The defendant belonged to a fraternity at the U. Members of the fraternity who paid a rent of 500 hundred dollars per semester were entitled to a double-occupancy bedroom in the fraternity house. Although house residents shared kitchen and dining room facilities, the bedrooms were not communal and were normally kept locked by their occupants. With the knowledge of its members, the fraternity kept duplicates of all keys so that copies could be made in the event a resident lost his key. A football player who was a member of the fraternity suspected, based on the stream of visitors to the defendant's room at all hours of the day and night that defendant was selling the club drug molly. One weekend, when he knew the defendant had gone home to visit his parents, the football player called the police and told them of his suspicions and the facts that had given rise to them. In response to his call, two officers immediately came to the fraternity house to interview the football player. During the course of the interview the football player stated he was the defendant's roommate, and offered to let them in the defendant's room. In fact, he was not the defendant's roommate. The football player used one of the duplicate keys to open the defendant's bedroom door. Upon entering, the officers saw a "drug scale" and pills in the idle of the coffee table. The defendant was subsequently prosecuted for possession of molly. Prior to trial, the defendant made an appropriate motion to suppress the use of the scale and pills found on the coffee table as evidence. The motion should be

- A. Denied, because the football player had apparent authority to permit the entry in to the room.
- B. Denied, because the police had probable cause to believe that they would find the club drug molly in the room.
- C. Allowed, because the police did not have a warrant to search the room and the football player did not have authority to let them search it.
- D. Allowed, because the police did not have probable cause to believe that they would find drugs in the room.

Question #: 17

A police officer stopped a driver who had run a red light. Upon approaching the car, the officer noticed a strong odor of alcohol and immediately asked whether the driver had been drinking alcohol. The driver admitted having had several alcoholic drinks that evening. The Driver, charged with driving while under the influence, moved to suppress the officer's testimony regarding the driver's statement about his drinking. The driver argued that the officer had elicited the statement without providing the requisite Miranda warnings. The prosecutor has responded that the statement should be allowed in the prosecution's case-in-chief or, at a minimum, should be allowed as impeachment in the event the driver testifies and denies drinking. How should the court rule regarding the driver's statement admitting his drinking alcohol?

- A. Allowed, because although the driver was in custody, the officer's spontaneous utterance upon smelling alcohol did not rise to the level of interrogation
- B. Allowed, because the driver was not in custody for Miranda purposes when the admission was made.
- C. Suppressed both in the prosecution's case-in-chief and as impeachment evidence, even if the driver testifies.
- D. Suppressed in the prosecution's case-in-chief, but it may be used as impeachment evidence if the driver testifies.

Question #: 18

A defendant was charged with and tried for murder. At trial, the defendant testified that he had acted in self-defense. The trial court instructed the jury that the defendant had the burden of proving by a preponderance of the evidence that he had acted in self-defense. The defendant objected, arguing that this instruction violated the constitutional requirement that the prosecution prove the offense beyond a reasonable doubt. Did the trial court's instruction violate the defendant's federal constitutional rights?

- A. No, because due process does not preclude requiring a defendant to prove self-defense by a preponderance of the evidence.
- B. No, because due process does not regulate the burdens of proof in criminal cases.
- C. Yes, because due process precludes placing any evidentiary burden on a criminal defendant.
- D. Yes, because due process precludes requiring a criminal defendant to bear the burden on an issue that would make an act unlawful.

Question #: 19

Without a warrant, police officers searched the garbage cans in the alley behind a man's house and discovered chemicals used to make methamphetamine, as well as cooking utensils and containers with the man's fingerprints on them. The alley is a public thoroughfare maintained by the city, and the garbage was picked up once a week by a private sanitation company. Most homeowner's store their garbage cans in the alley in this neighborhood. The items found inside the garbage can were in black plastic bags that had been tied closed and further secured with duct tape. The man was charged in federal court with the manufacture of methamphetamine. Did the search of the garbage cans violate the Fourth Amendment?

- A. Yes, because there is a reasonable expectation of privacy in one's secured garbage containers.
- B. No, because the man had no reasonable expectation of privacy in garbage left in the alley.
- C. Yes, because the alley was within the curtilage of the man's home and entry without a warrant was unconstitutional.
- D. No, because the probative value of the evidence outweighs the man's modest privacy claims in his garbage.

Question #: 20

A man was in jail after being arrested for burglary. When the police attempted to interrogate him, the man invoked his Miranda rights and refused to answer any questions. The man was subsequently tried, convicted, and sentenced to a prison term for the burglary. Three years later, while serving his prison sentence for the burglary, a police detective from a nearby town questioned him about an unsolved homicide. The detective did not know that the man had invoked Miranda at an earlier time. The man waived his Miranda rights and made several incriminating statements to the detective. When he was later charged with the homicide, the man moved to suppress these statements, claiming that his earlier refusal to waive his Miranda rights should have been honored. Should the court suppress the statements?

- A. No, because the detective was unaware that the man had originally invoked his Miranda rights.
- B. No, because the man's prior invocation of his Miranda rights did not preclude the later interrogation.
- C. Yes, because the man had earlier invoked his Miranda rights, and the police were not permitted to resume interrogating him, even after a time lapse of years.
- D. Yes, because the man was incarcerated, and his earlier invocation of his Miranda rights shielded him from further interrogating until he was released.

Question #: 21

A defendant was charged with attempted murder. At the preliminary hearing, the presiding judge heard the testimony of four prosecution witnesses and found that the prosecution had failed to establish probable cause. Accordingly, the judge dismissed the charge. The prosecutor then called the same four witnesses before a grand jury. The grand jury indicted the same defendant for attempted murder. The defendant has moved to quash the indictment on the ground of double jeopardy. How should the court proceed?

- A. Grant the motion, because the dismissal of the first charge on the merits, whether incorrect or correct, bars any further prosecution.
- B. Grant the motion, unless the prosecution has evidence that was not presented in the first case.
- C. Deny the motion, because the defendant has not yet been in jeopardy of conviction on the attempted murder charge.
- D. Deny the motion, because the protection of the double jeopardy clause does not come into play until there has been a conviction or acquittal.

Question #: 22

A bank robber handed a teller a handwritten note demanding money. Shortly thereafter, the defendant was arrested for the robbery. At the police station, the defendant was required, over his protest, to write out the words on the note and have his fingerprints taken. He was then, for the first time, allowed to telephone a lawyer, who thereafter represented him. The prosecution, after introducing the robber's note to the teller, also offers in evidence the defendant's writing of the words on the note at the request of the police. On appropriate action, the court should rule this?

- A. Inadmissible, because he was not advised that his handwriting sample could be admitted into evidence against him.
- B. Inadmissible, because he was not advised of his right to refuse to give a handwriting sample.
- C. Inadmissible, because he had not been informed he had a right to have counsel present.
- D. Admissible.

Question #: 23

Officer Liddell stops Ortiz, an operator of a vehicle, for driving with an expired registration sticker. In this jurisdiction driving with an expired sticker is a misdemeanor, and that under local police department procedures, a driver for such an offense is virtually never arrested, but is instead given a summons to be answered at a later date. Officer Liddell orders Ortiz out of the car and does a pat down; he finds no weapons on Ortiz. He then searches the front seat and finds a baggie in between the console and seat. The baggie is determined to contain heroin. Ortiz is charged with possession of heroin. Ortiz moves to dismiss charge of possession of heroin. The suit should...

- A. Dismissed, because the officer didn't find anything on Ortiz during the pat down
- B. Dismissed, because the search of his person and car were done without a warrant, both a violation of his 4th amendment rights and there are no exceptions
- C. Allowed to continue, because Officer Liddell had probable cause to search both Ortiz's person and car
- D. Allowed to continue, because this was a lawful search incident to arrest

Question #: 24

State troopers lawfully stopped a driver on 495 for exceeding the speed limit by 4 miles per hour. One trooper approached the car to warn the driver to drive within the speed limit. The other trooper remained in the patrol car and ran a computer check of the license number of the driver's car. The computer check indicated that there was an outstanding warrant for the driver's arrest for unpaid traffic tickets. The troopers then arrested the driver. After handcuffing her and putting her in the cruiser, the troopers searched the car, and discovered 10 glassine bags of heroin in a paper bag on the back seat of the car. Later it was learned that the driver had paid the outstanding traffic tickets 10 days earlier and the warrant had been quashed, but the clerk of the court failed to update the system. Procedure in the state details that the vehicle must be towed back to the lot and an inventory search would be conducted there. The driver of the car was charged with unlawful possession of heroin. Her attorney filed a motion to suppress the use as evidence of the heroin found in the car. Should the motion be granted?

- A. No, because the troopers could reasonably rely on the computer report and the search was incident to arrest.
- B. No, because troopers may lawfully search the passenger compartment of a car incident to a valid traffic stop.
- C. Yes, because the troopers did an inventory search on 495.
- D. Yes, because the paper bag was not in the immediate control of the driver.

Question #: 25

Slippery Pete was charged with armed robbery. Slippery Pete only had an eight-grade education and no legal knowledge. At a pretrial hearing, Slippery Pete told the judge that he was unhappy with the public defender who had been appointed to him and he wanted the judge to appoint another lawyer to represent him. The judge refused to appoint another lawyer, telling Slippery Pete, with no further explanation, that his only other choice was to represent himself. Slippery Pete said he would represent himself at trial then, as "anything was better than having this lawyer." Slippery Pete did not raise the subject again, and he represented himself at trial. After overwhelming evidence of Slippery Pete's guilt, the jury convicted him. On appeal, Slippery Pete has requested a new trial on the ground that he was deprived of his right to counsel. Should the appellate court grant the request?

- A. No, because Slippery Pete voluntarily waived his right to counsel.
- B. No, because the trial court's error was harmless error in light of the overwhelming evidence.
- C. Yes, because Slippery Pete was not capable of effectively representing himself.
- D. Yes, because the record does not establish a valid waiver of the right to counsel

Question #: 26

A criminal was indicted in a state court in January 2015 for a robbery and murder that occurred in December 2012. He retained counsel, who filed a motion to dismiss on the ground that the criminal had been prejudiced by a 25-month delay in obtaining an indictment. Thereafter, the criminal, with his counsel, appeared in court for arraignment and stated that he wished to plead guilty. The presiding judge asked the criminal whether he understood the nature of the charges, possible defenses, and maximum allowable sentences. The criminal replied that he did, and the judge reviewed all of those matters with him. He then asked the criminal whether he understood that he did not have to plead guilty. When the criminal responded that he knew that, the judge accepted the plea and sentenced the criminal to 25 years. Six months later, the criminal filed a motion to set aside his guilty plea on each of the following grounds. Which of these grounds provides a constitutional basis for relief?

- A. The judge did not rule on his motion to dismiss before accepting the guilty plea.
- B. The judge did not determine that the criminal had robbed and killed the victim.
- C. The judge did not determine whether the criminal understood that he had a right to a jury trial
- D. The judge did not determine whether the prosecutor's file contained any undisclosed exculpatory evidence.

Question #: 27

A businessman was the target of a grand jury investigation into the alleged bribery of American and foreign officials in connection with an international construction project. The businessman had stated at a press conference that no bribes had been offered or taken and that no laws of any kind had been offered or taken and that no laws of any kind had been broken. The grand jury issued a subpoena requiring the businessman moved to quash the subpoena on the ground that his testimony could tend to incriminate him. The prosecutor responded with a grant of use immunity (under which the businessman's compelled statements before the grand jury could not be used against him in any state or federal prosecution.) The businessman responded that the grant of use immunity was not sufficient to protect his Fifth Amendment rights. Should the businessman be compelled to testify?

- A. No, because the businessman remains subject to the risk of foreign prosecution.
- B. No, because use immunity does not prevent the government from prosecuting the businessman on the bribery scheme.
- C. Yes, because the businessman has denied any criminal liability and therefore his Fifth Amendment rights are not at stake.
- D. Yes, because the grant of use immunity is coextensive with the businessman's Fifth Amendment rights.

Question #: 28

A valid warrant as issued for a woman's arrest. The police learned that a person with the woman's name and physical description lived at that particular address. When police officers went to that address, the house appeared to be unoccupied: the windows and doors were boarded up with plywood, and the lawn had not been mowed for a long time. A neighbor confirmed that the house belonged to the woman but said that the woman had not been there for several months. The officers knocked repeatedly on the front door and shouted, "Police!! Open Up!!" Receiving no response, they tore the plywood off the door, smashed through the door with a sledgehammer, and entered the house. They found no one inside, but they did find an illegal sawed-off shotgun. Upon her return to the house a few weeks later, the woman was charged with unlawful possession of the shotgun. The woman has moved to suppress the use of the shotgun as evidence at her trial. Should the court grant the motion?

- A. No, because the officers acted in good faith under the authority of a valid warrant.
- B. No, because the officers did not violate any legitimate expectation or privacy in the house since the woman had abandoned it.
- C. Yes, because the officers entered the house by means of excessive force.
- D. Yes, because the officers had no reason to believe that the woman was in the house.

Question #: 29

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 the 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 ground that this statement was elicited in violation of his Miranda rights. Should the motion be granted?

- A. No, because although the defendant effectively asserted his right to counsel, the "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 "Why would you want a lawyer?" constituted custodial interrogation.

Question #: 30

A police officer had a hunch, not amounting to probable cause or reasonable suspicion, that a man was a drug dealer. One day while the officer was on highway patrol, her radar gun clocked the man's car at 68 mph in an area where the maximum posted speed limit was 65 mph. The officer's usual practice was not to stop a car unless it was going at least 5 mph over the posted speed limit, but contrary to her usual practice, she decided to stop the man's car in the hope that she might discover evidence of drug dealing. After she stopped the car and announced that she would be writing a speeding ticket, the officer ordered the man and his passenger to step out of the car. When the passenger stepped out, the officer saw that the passenger had been sitting on a clear bag of what the officer immediately recognized as marijuana. The officer arrested both the man and the passenger for possession of marijuana. At their joint trial, the man and the passenger claim that their Fourth Amendment rights were violated because the officer improperly (1) stopped the car for speeding as a pretext for investigating a hunch rather than for the stated purpose of issuing a traffic ticket and (2) ordered the passenger to step out of the car even though there was no reason to believe that the passenger was a criminal or dangerous. Are the man and the passenger correct?

- A. No, as to both the stop of the car and the officer's order that the passenger step out of the car.
- B. No, as to the stop of the car, but yes as to the officer's order that the passenger step out of the car.
- C. Yes as to the stop of the car, but no as to the officer's order that the passenger step out of the car.
- D. Yes, as to both the stop of the car and the officer's order that the passenger step out of the car.

Question #: 31

At a defendant's criminal trial, defense counsel decided not to put the defendant on the stand or to interview the defendant's alibi witness because counsel did not believe that either the defendant or the defendant's alibi witnesses would tell the truth. Counsel felt that it was her ethical duty to avoid assisting in the commission of perjury. The defendant's alibi witnesses were his mother and sister who were prepared to support the defendant and who would testify that he was home with them at 2:00am, the time at which the crime was committed. At trial, the prosecution called the defendant's mother and sister to the stand. They both testified that the defendant was at home watching television with them on the night of the crime, but that they went to bed at 11:00pm and could not be positive that the defendant was in the house at 2:00am. The defendant was convicted and is now seeking a writ of habeas corpus on the grounds that his counsel gave inadequate assistance. Will the writ issue?

- A. Yes, because counsel failed to interview the witnesses.
- B. No, because defense counsel is prohibited from assisting in the commission of perjury.
- C. No, because this decision is within counsel's trial strategy.
- D. No, because the failure to interview the witnesses or call them to testify did not result in any prejudice.

Question #: 32

A detective received information from an informant, who had given reliable information many times in the past, and in fact was the detective's most reliable informant, that a man was a narcotics dealer. Specifically, the informant said that, two months before, he had visited the man's apartment with a friend and that on that occasion he saw the man sell his friend some heroin. The detective knew that the informant, the man, 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 man's apartment. The search turned up a supply of heroin. The man's motion to suppress introduction of the heroin into evidence will most likely be?

- A. Granted, because a search warrant cannot validly be issued solely on the basis of an informant's information.
- B. Granted, because the information supplied to the detective concerned an occurrence too remote in time to justify a finding of probable cause at the time of the search.
- C. Granted, because a search for mere evidence alone is improper and illegal.
- D. Denied, because the informant had proven himself to be reliable in the past, and the information he gave was specific and turned out to be correct.