

**CRIMINAL PROCEDURE  
FINAL EXAMINATION**

This is an essay examination. Listed below are three questions; the point value for each question is given at the beginning of the question. You have three hours to complete the examination.

In answering the questions you can use **any** inanimate resources, e.g., your casebook, class hand-outs, notes, outlines, commercial outlines and study aids, etc. You **cannot** obtain advice or assistance from another person.

Write as legibly as possible. **Use a separate bluebook (or separate bluebooks) for each question and label each bluebook to indicate which question is answered in it.**

Remember, the purpose is to test your ability to spot issues and apply the principles we discussed to them. Read the directions presented for answering each question and answer accordingly. Analyze a question in terms of **every issue** you think can pertain to the problem presented. If you believe an issue would not be relevant in resolving the problem, note that and briefly explain why this is your conclusion. Also, in your analysis, remember to address the arguments that can be made by **both** the defendant and the prosecutor.

As you read a question, if you find the facts ambiguous or if you need certain facts to support your answer, assume the facts you need to be able to answer and state that you are doing so (i.e., "I am assuming that . . . ." ) or ("It is not clear if . . . so I am assuming . . .").

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### QUESTION #1 (300 points):

On Saturday, Hobart Deputy Sheriff Larry Adobe found 79-year-old Jane LaFarge murdered in her home. She had been stabbed repeatedly, presumably with a butcher knife missing from her kitchen.

Two days later, James Cooke called Adobe; Cooke said he was bringing his son Jeffery to the Hobart Jail to “discuss the LaFarge homicide.” Adobe said, “glad to hear it. I’ve been wanting to talk to him – some folks say he killed her.”

The Cooks arrived at the jail at 1:30 p.m.; Jeffrey had just gotten off work from the 4:00 a.m. to noon shift at a local plant. James said to Adobe, “Jeffrey is going to tell you all about how he was with the people who killed her when it happened.” Adobe said they had to go to the Mason Police Station. James rode in the front of Adobe's patrol car; Jeffrey rode in the back. Adobe moved the interview because Jeffrey mentioned another murder -- of George Dole -- committed in Mason. Mason police were investigating the Dole murder, and Adobe wanted their officers present when Jeffrey was interviewed.

As they rode to the Mason Police Station, Adobe said, “Hey, Jeff, you still seeing that head doctor? I heard you went to him because you were out of control, knocking your wife around. Is that true?” Jeffrey said, “I don’t see the doctor no more. He helped me. I don’t take things out on women no more.” Jeffrey was 18 years old; he dropped out of school in the ninth grade and had an IQ of 85. An IQ of 85 is in the low normal range; Jeffrey is not retarded, he can read and write but his ability to deal with abstract concepts is limited. Jeffrey lives with his father and fears his disapproval; when Jeffrey was a child, James used to beat him for “being a misbehaving dummy.”

They arrived at the Mason Police Station at around 2:30 p.m. At 2:45, Officer Byfield, Adobe and Jeffery entered an interview room, where Jeffery gave a statement concerning the LaFarge murder. He said a caller threatened to harm his family if he did not follow instructions. He said he went to the LaFarbe home, as instructed, and met people wearing hoods; he said they killed Jane LaFarge. Jeffrey recounted all this in response to questions from Adobe. He seemed nervous; Adobe sought to put him at ease by explaining, “Jeff, I’ve been friends with your dad for years. I’m on your side. I just want to help you get this all cleared up so you can go home and we can get those killers.” Jeffrey said, “I know that Larry. That’s why I’m here talking to you. I appreciate your helping me.”

They took a break at 4:00 p.m. Adobe told Jeffrey, “we’re not through. We’ll take a break and get you something to drink. You stay here and think about all this.” Byfield went to get Jeffrey a Coke. When he came back, Adobe said, “We’ve been too easy on him. Let’s get a confession.” At 4:15 p.m. the second interview began. Adobe handed Jeffrey a *Miranda* warning and waiver form and said, “look that over, sign it if you want to waive your rights to silence and to a lawyer.” Byfield and Adobe waited; Jeffrey signed the waiver and handed it back. Adobe questioned Jeffrey more aggressively, accusing him of “murdering that sweet lady. How could you do that?” Jeffrey repeated his original story. He became very upset when Byfield said, “you’re lying. We know you’re lying because your father told us you said you murdered LaFarge. That’s why he brought you to see Adobe.” Jeffrey began to say that was not true but Adobe interrupted, saying,

We know you killed her. Your father told us. He wants you to admit what you did so we can get this resolved. If you tell me the truth, I can get you the help you need. You don't need punishment, you need treatment. It was mental illness that made you do this. If you work with us, we can get you the help you need, psychiatric treatment that will ensure you never do anything like this again. I want you to get well, not to go to jail. You can trust me – I'm a friend of you and of your family.

Jeffrey continued to repeat his original story, but he finally directed the officers to a local lake, where he said he had thrown the murder weapon, the knife. At 6:45 p.m., Jeffrey said, "I ain't talking no more." Adobe said to Byfield, "We have to quit – let's tell his father the little coward won't own up to what he did." Jeffrey said, "I didn't do nuthin'." Adobe told Jeffrey, "you can't leave. They want to talk to you about Dole."

At 7:45 p.m., Adobe and Byfield came back into the room and Byfield began to question Jeffrey about the Dole murder. Jeffrey denied any involvement. As Byfield pressed him, Jeffrey made statements indicating that he was present when Dole was murdered. After two hours of questioning, Jeffrey said, "maybe I need a lawyer." Byfield responded, "I know you killed Dole, just like you killed the old lady." Jeffrey said, "not just like I killed her." Then Jeffrey said, "I'm not talking to you anymore." At this point, Adobe said, "that's it, the interview is over."

Jeffrey was charged with the LaFarge murder and held in the Mason jail. Byfield wanted to find out more about the Dole murder, so he put Fred Grover, a homeless man who had done odd jobs for LaFarge, into Jeffrey's cell. Grover was serving thirty days for public intoxication. Before Grover moved into Jeffrey's cell, Byfield said, "Find out about the Dole murder, but don't ask him anything about the LaFarge killing. If he talks about her killing, you can listen." Grover agreed. After Grover had shared Jeffrey's cell for a couple of days, he said, "hey, I hear you killed that Dole guy. If you're a killer, maybe you can protect me from that biker guy who's out to get me." Jeffrey said, "I killed Dole, but I'm surprised you want anything from me, since I also killed your friend LaFarge."

Jeffrey has also been charged with killing Dole. He moves to suppress all the statements he made concerning both murders. You clerk for the judge who will rule on the motion to suppress the statements at issue in both cases. Write a memo analyzing the arguments the prosecution and defense can make with regard to the suppression of Jeffrey's various statements.

## QUESTION #2 (200 points):

You clerk for an attorney who has been retained by Winston Lee. Lee, who claims he was born in China, is an executive with a local tech company (Tech-X) that develops commercial products from Air Force technology. Using Air Force-developed technology for commercial purposes (known as “tech transfer”) is legitimate as long as the business complies with a regulatory scheme established by the federal government.

Lee has received two subpoenas from a local federal grand jury:

- One subpoena requires Lee “to appear before the federal grand jury at 10:00 a.m. on Monday, May 16 to answer questions about your company’s business practices, specifically, Tech-X’s compliance with the regulations governing tech transfer.”
- The other subpoena, a subpoena duces tecum, requires Lee to produce the following for the grand jury by 10:00 a.m. on May 16:
  - “a sample of your blood, taken by a technician at the Miami Valley Hospital;”
  - “samples of your handwriting, made by copying the attached document;”
  - “the key to your safety-deposit box;” and
  - “the laptop computer you used to falsify forms submitted to establish Tech-X’s compliance with applicable federal regulations governing lawful tech transfers.”

The subpoenas both state that the federal grand jury is “conducting an investigation into possible criminal activity on the part of Tech-X and its executives, said criminal activity consisting of falsifying forms submitted to establish compliance with federal regulations governing lawful tech transfers in violation of 18 U.S. Code § 1045.”

Lee has told the attorney you clerk for that:

- His real name is Nghor Sok; he is Cambodian. He entered this country illegally, using the alias Winston Lee. Sok was a member of the Khmer Rouge, a group responsible for the genocide in Cambodia during the 1970’s. The U.S. does not let former Khmer Rouge enter this country. If the federal government finds out Lee/Sok lied about his identity on his immigration forms, he will be prosecuted for falsifying documents submitted to the government and, if convicted, will serve ten years in a federal prison.
- His safety deposit box contain his Cambodian birth certificate as Nghor Sok.
- He has a Tech-X laptop computer and admits using it to falsify forms submitted to establish Tech-X’s compliance with the tech transfer regulations.. He has also used the laptop to correspond with former Khmer Rough members to track efforts to apprehend and prosecute them; the laptop has copies of those emails on it.

Write a memo for the attorney analyzing how she should handle the subpoenas: Must Sok comply with both subpoenas? What, if any, arguments can he make as to why he does not have to comply with any or all of the subpoena requests? How successful are these arguments likely to be?

**QUESTION #3 (250 points):**

Detective Owens of the Tennessee State Police obtained a search warrant for Fred Barnett's home, a single-storey residence on a thirty-acre plot of land at 14280 Hidden Trail Street in Covington, Tennessee, and for a twelve-foot travel trailer and a Quonset metal-framed structure on the thirty-acres. To establish probable cause, Owens submitted an affidavit to the magistrate which said the following:

- He is an experienced narcotics investigator who had participated in more than 300 cases involving controlled substances.
- Two months before, Owens and DEA Agent Peters had conducted an investigation which led to the seizure of 22 pounds of methamphetamine from a laboratory in Hillsboro, Tennessee.
- Confidential informants used in that investigation identified Barnett as an associate of the gang that operated the Hillsboro lab. Owens checked phone records and found that Barnett called members of that gang.
- Two weeks earlier, officers found 30 empty pseudoephedrine bottles on the northwest corner of Barnett's land. Pseudoephedrine is a precursor chemical used in the production of methamphetamine.
- A week earlier, DEA agents saw Barnett buying ten pounds of MSM, a cutting agent for methamphetamine.
- Ten days earlier, officers confirmed that Barnett owns the land at 14280 Hidden Trail Street.
- Two days earlier, Owens and Peters entered a clearing on the southwest corner of Barnett's property without a warrant.
- In the clearing they saw a sixteen-foot travel trailer and a Quonset hut (a metal-framed structure covered with a vinyl covering).
- Owens looked through a window in the travel trailer; inside, he saw a large plastic trash container, a can of acetone, plastic gloves and paper towels. He knew from his experience that these items were used in the manufacture of methamphetamine. He also saw two sleeping bags, a camp stove, an assortment of canned goods, pots and plastic dinnerware.
- Owens walked into the unlocked Quonset hut and saw a long stick with a red stain on one end. He knew from experience that red phosphorus was an ingredient used to make methamphetamine.
- Owens saw four eight-inch glass lids next to the travel trailer. These lids were similar to lids he had seized from the Hillsboro laboratory.
- Owens and Peters took a video camera with them and videotaped what they saw on Barnett's land, in the trailer and in the Quonset hut.

The magistrate issued the warrant, Owens and Peters, assisted by other officers, executed the warrant at Barnett's home; they searched his house and the rest of his property, including the travel trailer and the Quonset hut. They found methamphetamine and other evidence that was used to indict Barnett on federal drug charges.

Barnett has moved to suppress all of the evidence resulting from the execution of the search warrant and from the warrantless entry onto his property. You clerk for the judge who will decide the motion. She wants a memo analyzing the arguments that can be made for and against suppression. Draft that memo.