
**Department of Homeland Security
Federal Law Enforcement Training Center
Glynco, Georgia**

F.L.E.T.C.

Legal Division

Practice Exams

(4th Amendment, Courtroom Evidence, Federal
Court Procedures, Officer Liability,
Self-Incrimination)



**Homeland
Security**

SH - 1000

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FLETC Legal Division Practice Exam Guide – February 2007

1. The purpose of the practice exams is not to give hints on the actual exam, but to help students learn how to apply legal principles in a factual situation.
2. This practice exam may not address all the EPOs you are responsible for, or all the materials you must know to master an EPO. The student is responsible for knowing and mastering the EPOs.
3. These questions may be harder or easier than the exam.
4. Students will find reviewing the answers - even the incorrect ones - will help them master the principles.

The Legal Division hopes this practice exam helps you.

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4th Amendment Practice Exam

1. Thompson is suspected of running a counterfeiting operation out of his garage. The garage is attached to the dwelling. Without a warrant, three officers step onto his curtilage, shine a flashlight into the garage, and take a quick look. They observe a number of what appear to be \$100 bills hanging from a clothesline. With this observation, they attempt to secure a warrant. Their request for a search warrant should be -
- a. Denied, because the officers intruded on a location where Thompson had a reasonable expectation of privacy without either a warrant or an exception to the 4th Amendment.
 - b. Denied, because the use of a flashlight violated Thompson's reasonable expectation of privacy.
 - c. Granted, because the garage does not have curtilage, in that it is not a dwelling.
 - d. Granted, because the garage itself was not within the curtilage of Thompson's dwelling.
-

- a. Denied, because the officers intruded on a location where Thompson had a reasonable expectation of privacy without either a warrant or an exception to the 4th Amendment.
CORRECT: The root of the question says that the officers were on Thompson's curtilage. The officers did not have a warrant to be there and there is no 4th Amendment exception. The information they obtained in violation of Thompson's REP cannot be lawfully used to obtain a warrant.
- b. Denied, because the use of a flashlight violated Thompson's reasonable expectation of privacy.
INCORRECT: Using a flashlight, by itself, does not violate a person's REP.
- c. Granted, because the garage does not have curtilage, in that it is not a dwelling.
INCORRECT: Curtilage is not limited to dwellings and includes areas surrounding a dwelling. (Review your student text.)
- d. Granted, because the garage itself was not within the curtilage of Thompson's dwelling.
INCORRECT: The garage was attached to the house so it was very likely on the curtilage. More importantly, the officers were unlawfully on the curtilage when they made their observations.

2. Agents develop reasonable suspicion that Wooster is operating a stolen credit card ring. Upon seeing Wooster driving in his car one afternoon, the agents follow him. When he arrives at a shopping mall, the agents approach him, identify themselves, and tell him to put his hands on his automobile. One of the agents frisks him and, in the upper left hand pocket, feels what is immediately apparent to him as a stack of credit cards bound by a rubber band. The agent removes the credit cards and, ultimately, determines that they are stolen. Wooster's motion to suppress the credit cards will be -

- a. Denied, because the agents had reasonable suspicion of criminal activity.
 - b. Denied, because the agents had probable cause to remove the cards from his pocket under the "plain touch" doctrine.
 - c. Granted, because the agents performed an illegal "frisk" of Wooster.
 - d. Granted, because a "frisk" may result only in the discovery of weapons on a suspect.
-

a. Denied, because the agents had reasonable suspicion of criminal activity.

INCORRECT: The officers only had reasonable suspicion criminal activity was afoot which would allow them to make a Terry stop and direct Wooster out of his car. The officers did not have reasonable suspicion that Wooster was presently armed and dangerous making the Terry frisk illegal. The crime of operating a stolen credit card ring is not the type of offense which would give R/S a person is presently armed and dangerous (like one would have with R/S someone committed a robbery or burglary.)

b. Denied, because the agents had probable cause to remove the cards from his pocket under the "plain touch" doctrine.

INCORRECT: The Terry frisk was illegal. (See a above.) The credit cards were discovered during an illegal frisk. If the officers had R/S Wooster was presently armed and dangerous, they could have frisked Wooster. Even then the plain touch doctrine would not apply because it was not immediately apparent that the credit cards were stolen (just that they were credit cards.)

c. Granted, because the agents performed an illegal "frisk" of Wooster.

CORRECT: The officers only had reasonable suspicion criminal activity was afoot which would allow them to make a Terry stop and direct Wooster out of his car. The officers did not have reasonable suspicion that Wooster was presently armed and dangerous making the Terry frisk illegal.

d. Granted, because a "frisk" may result only in the discovery of weapons on a suspect.

INCORRECT: A lawful Terry frisk is a pat down of the outer clothing to look for weapons or hard objects that may used as a weapon. In a lawful Terry frisk, not only may the officer retrieve weapons, he/she may also retrieve hard objects that might be a weapon and soft objects that are immediately apparent to be contraband. (Review plain touch in your student text.)

3. Johnson is arrested for drunk driving and failing to pay child support. He agrees to share information with the police to avoid prosecution. Having been personally involved in every aspect of an ongoing stolen paycheck operation, Johnson explained the intimate details to the police of what he saw and did with Fred, a co-criminal. Based on his statements alone, the officers seek a search warrant for the co-criminal's premises where Johnson stated he saw many of the stolen checks the day before. The application for a search warrant will be -

- a. Granted, because Johnson's statements amount to probable cause and the officers can meet the Aguilar standard.
 - b. Granted, because Johnson has never provided false information to the officers in the past.
 - c. Denied, because the officers did not corroborate Johnson's statements.
 - d. Denied, because there is no probable cause..
-

a. Granted, because Johnson's statements amount to probable cause and the officers can meet the Aguilar standard.

CORRECT: The information known to the officers show both that Johnson was reliable and had a basis of knowledge in what he told the officers. Because he is a co-criminal, the information he provided is presumed reliable.

b. Granted, because Johnson has never provided false information to the officers in the past.

INCORRECT: Even if true, this would go to Johnson's reliability. It would not, however, establish a basis of knowledge.

c. Denied, because the officers did not corroborate Johnson's statements.

INCORRECT: Because the Aguilar test was satisfied (reliability and basis of knowledge,) there was no requirement to corroborate the information.

d. Denied, because there is no probable cause..

INCORRECT: See answer a. The Aguilar test was met.

4. An officer is walking down a public sidewalk in the early evening hours, just after dark. Glancing in the direction of Sweeney's home, the officer notices that, while Sweeney has drawn the curtains in the front window, there is a gap through which the officer sees what he knows to be a large marijuana plant. The following morning, based solely upon this information, the officer seeks a search warrant for Sweeney's home. The request for a search warrant will be -

a. Granted, because the officer could have entered the home the previous evening under the "exigent circumstances" exception to the warrant requirement, and seeking a warrant is nothing more than a court order of the "exigent circumstances" exception.

b. Granted, because the officer did not violate Sweeney's reasonable expectation of privacy in making the observation on which the search warrant will be based.

c. Denied, because the officer's view into Sweeney's home amounted to an intrusion into a location where Sweeney had a reasonable expectation of privacy without either a warrant or an exception to the warrant requirement.

d. Denied, because the officer had no reason to look into Sweeney's home; the observation alone did not amount to probable cause; and the officer did not enter the home at the moment she made the observation.

a. Granted, because the officer could have entered the home the previous evening under the "exigent circumstances" exception to the warrant requirement, and seeking a warrant is nothing more than a court order of the "exigent circumstances" exception.

INCORRECT: The root sets forth nothing which would establish an exigent circumstance.

b. Granted, because the officer did not violate Sweeney's reasonable expectation of privacy in making the observation on which the search warrant will be based.

CORRECT: The officer was in a public place (where he had the right to be) and the open curtain exposed the inside of the house to the public. The homeowner had no REP in what he exposed to the street outside. Accordingly, what the officer saw in the window was lawfully obtained and can establish information that may be used in the warrant.

c. Denied, because the officer's view into Sweeney's home amounted to an intrusion into a location where Sweeney had a reasonable expectation of privacy without either a warrant or an exception to the warrant requirement.

INCORRECT: Leaving the curtain open and exposing the inside of the home to public view means the homeowner did not have REP in what he exposed to the public.

d. Denied, because the officer had no reason to look into Sweeney's home; the observation alone did not amount to probable cause; and the officer did not enter the home at the moment she made the observation.

INCORRECT: The officer does not have to have a reason to look in the window. Nothing prevents the officer - and a private citizen - from looking through the window while standing in a public place. What the officer saw did amount to PC. There is no requirement to immediately enter the house. In fact, even though the officer saw the plants and developed PC when he did so, he could not enter the house unless he had a warrant, consent, or an exigent circumstance.

5. Marsh checked a suitcase at the airline counter and got onto an airplane. Before the suitcase was placed on the airplane, it was sniffed by a drug detection dog. The dog indicated that drugs were located inside which established probable cause to search the suitcase. With this knowledge, two DEA agents entered the airplane, approached Marsh, identified themselves, and asked him if they could look in the suitcase he had checked at the counter. Marsh stated, "I'm not traveling with a suitcase." Because the plane wasn't scheduled to take off for an hour (and Marsh didn't think he would miss the plane), Marsh voluntarily agreed to accompany the agents to the suitcase, was shown the suitcase, and was asked again if they could open it. Again, Marsh denied ever seeing the suitcase. The agents opened the suitcase and discovered contraband inside. At trial, the contraband should be -

- a. Admitted, because the officers had probable cause to search the suitcase.
 - b. Admitted, because Marsh abandoned the suitcase.
 - c. Suppressed, because the officers violated Marsh's reasonable expectation of privacy.
 - d. Suppressed, because the officers did not get a valid consent.
-

a. Admitted, because the officers had probable cause to search the suitcase.

INCORRECT: Probable cause alone is never enough to conduct a search. Officers must, in addition, have a warrant, consent, or an exigent circumstance.

b. Admitted, because Marsh abandoned the suitcase.

CORRECT: By denying the suitcase was his, Marsh abandoned any REP he had in the suitcase and therefore, there was no 4th Amendment intrusion.

c. Suppressed, because the officers violated Marsh's reasonable expectation of privacy.

INCORRECT: A dog sniff of a suitcase in a public place is not a violation of REP. In addition, any REP Marsh had he abandoned when he denied the suitcase was his.

d. Suppressed, because the officers did not get a valid consent.

INCORRECT: Consent was not necessary. Marsh abandoned his REP.

6. Perry is a paid police informant and has provided reliable information to officers on seven out of seven occasions. On January 7, 2000, Perry personally witnessed four personal-use drug transactions take place in Joe Clark's apartment. On November 28, 2000, Perry tells the officer about these observations. The officer applies for a search warrant for drugs based solely on this information. The request for the search warrant should be -

- a. Denied, because the officer did not corroborated the information provided by Perry.
 - b. Denied, because the information provided by Perry is inadequate to establish probable cause.
 - c. Granted, because the officer has demonstrated probable cause.
 - d. Granted, because Perry meets the standards of Aguilar.
-

a. Denied, because the officer did not corroborated the information provided by Perry.

INCORRECT: Corroboration would do no good under the facts. The information is stale because almost eleven months has passed since the drugs were seen in Clark's apartment and therefore there is no PC there are drugs there NOW.

b. Denied, because the information provided by Perry is inadequate to establish probable cause.

CORRECT: The information is stale because almost eleven months has passed since the drugs were seen in Clark's apartment and therefore there is no PC there are drugs there NOW.

c. Granted, because the officer has demonstrated probable cause.

INCORRECT: There is no probable cause because the information is stale. Almost eleven months has passed since the drugs were seen in Clark's apartment and therefore there is no PC there are drugs there NOW.

d. Granted, because Perry meets the standards of Aguilar.

INCORRECT: The information is stale because almost eleven months has passed since the drugs were seen in Clark's apartment and therefore there is no PC there are drugs there NOW.

7. Police approach the home of Adams, whom they reasonably suspect is involved in a larceny. Adams is not there, but his wife is home. The officers explain they are looking for Adams and would like to talk to him about his clothing he was wearing the day before. Adams' wife states, "Those things are right here. I took them out of his duffel bag. Here they are" and hands them to the officer. The officers accepted the items. At trial, this evidence should be -

- a. Suppressed, as they were obtained illegally without either a warrant or an exception to the warrant requirement.
 - b. Suppressed, because the officers had no probable cause to seek the items.
 - c. Admitted, because the officers could have gotten a search warrant to obtain these items.
 - d. Admitted, as the items were procured through private action, and thus, were not a search under the 4th Amendment.
-

a. Suppressed, as they were obtained illegally without either a warrant or an exception to the warrant requirement.

INCORRECT: This was a private search and therefore, the 4th Amendment was not violated.

b. Suppressed, because the officers had no probable cause to seek the items.

INCORRECT: This was a private search and therefore, the 4th Amendment was not implicated.

c. Admitted, because the officers could have gotten a search warrant to obtain these items.

INCORRECT: PC, not RS, is required to obtain a search warrant.

d. Admitted, as the items were procured through private action, and thus, were not a search under the 4th Amendment.

CORRECT: This answer correctly states the applicable principle.

8. Two officers develop reasonable suspicion that Smith is about to rob a convenience store. The officers approach Smith, place him under arrest, and search him. The officer conducting the search feels what is immediately apparent to him to be crack cocaine. The officer then retrieved the substance. At trial, Smith makes a motion to suppress the crack cocaine found during the search. According to the law, this motion should be:

- a. Denied, based on the “plain touch” doctrine.
 - b. Denied, because the officers were justified in conducting a search on Smith.
 - c. Granted, because the officers acted illegally.
 - d. Granted, because an officer may lawfully retrieve only weapons during a frisk.
-

a. Denied, based on the “plain touch” doctrine.

INCORRECT: The officers arrested Smith when they only had R/S. PC is required to arrest and therefore the search of Smith was illegal.

b. Denied, because the officers were justified in conducting a search on Smith.

INCORRECT: The officers arrested Smith when they only had R/S. PC is required to arrest and therefore the search of Smith was illegal.

c. Granted, because the officers acted illegally.

CORRECT: The officers arrested Smith when they only had R/S. PC is required to arrest and therefore the search of Smith was illegal.

d. Granted, because an officer may lawfully retrieve only weapons during a frisk.

INCORRECT: During a terry frisk, officers may retrieve weapons, hard objects that could be a weapon, and anything that is immediately apparent to be contraband under the plain touch doctrine.

9. An officer receives a report from the dispatcher about an armed robbery in the area, along with a description of the vehicle and the three men believed to have committed the crime. Spotting a vehicle matching the description, with three male occupants inside, the officer stops the vehicle to investigate. She directs the three occupants from the vehicle, and examines the vehicle for weapons. Under the front passenger seat, the officer finds a sawed-off shotgun and some ski masks. All three men are then arrested. At trial, the men file a motion to suppress the evidence found in the vehicle. According to the law, this motion should be:

- a. Granted, because the officer did not frisk the occupants of the vehicle prior to frisking the actual vehicle.
 - b. Granted, because the officer did not have reasonable suspicion to frisk the interior of the vehicle.
 - c. Denied, because the officer had obtained valid consent to search the interior of the vehicle.
 - d. Denied, because the officer was justified in looking under the front passenger seat for weapons.
-

a. Granted, because the officer did not frisk the occupants of the vehicle prior to frisking the actual vehicle.
INCORRECT: There is no requirement to frisk the occupants before frisking the car.

b. Granted, because the officer did not have reasonable suspicion to frisk the interior of the vehicle.
INCORRECT: The report, the description, and the fact the vehicle and occupants generally matching the description is RS criminal activity is afoot. Because the crime under suspicion is one in which a weapon is often used, there is also RS the occupants are presently armed and dangerous. This permits a Terry frisk of the occupants and under the seat (as well as the passenger compartment and unlocked containers therein) for weapons.

c. Denied, because the officer had obtained valid consent to search the interior of the vehicle.
INCORRECT: There are no facts to suggest the occupants consented to the frisk of the car.

d. Denied, because the officer was justified in looking under the front passenger seat for weapons.
CORRECT: The report, the description, and the fact the vehicle and occupants generally matching the description is RS criminal activity is afoot. Because the crime under suspicion is one in which a weapon is often used, there is also RS the occupants are presently armed and dangerous. This permits a Terry frisk of the occupants and under the seat (as well as the passenger compartment and unlocked containers therein) for weapons.

10. Officer Jones is a highway patrolman. Based on reasonable suspicion that Smith shoplifted some cigarettes and is driving away from the convenience store he stole from, Jones gives chase and pulls Smith over. Jones directs Smith out of his car and after repeating the direction several times, Smith complies. Smith then is belligerent and argumentative, wanders about, keeps turning his side to Officer Jones and repeatedly reaches into the pocket that Jones can't see even after being told to keep still and keep his hands out of his pocket. Jones then places Smith into handcuffs, frisks him, places Smith into the rear of the police car, and frisks the passenger compartment and trunk for weapons. In the trunk Jones finds drugs in plain view that are offered against Smith at trial. Will the drugs be admissible at trial?

- a. Yes, because Smith's actions permitted a frisk of the trunk.
 - b. Yes, because Smith may search a mobile conveyance without PC or a warrant.
 - c. No, because ordering Smith out of the car and handcuffing him was a 4th Amendment violation making the search also illegal.
 - d. No, because Jones could not frisk the trunk under the facts provided.
-

a. Yes, because Smith's actions permitted a frisk of the trunk.

INCORRECT: Jones could frisk the passenger compartment for weapons because he had RS that Smith was presently armed and dangerous. To go into the trunk, however, Jones needed consent or PC. (The mobile conveyance exception would excuse having to obtain a warrant.)

b. Yes, because Smith may search a mobile conveyance without either PC or a warrant.

INCORRECT: Smith may search a mobile conveyance without a warrant, but PC is still required.

c. No, because ordering Smith out of the car and handcuffing him was a 4th Amendment violation making the search also illegal.

INCORRECT: An officer may direct a driver from his car during a Terry stop. Reasonable force, to include handcuffs, may be used under these circumstances because of Smith's non-compliance, walking about, and making furtive gestures after being told not to.

d. No, because Jones could not frisk the trunk under the facts provided.

CORRECT: A frisk of Jones for weapons is permissible because there is RS he is presently armed and dangerous based upon his belligerence, movements, non-compliance, and the way he kept reaching into his pockets and turning away. The vehicle can also be frisked but the trunk cannot. Also, Jones had only RS and there are no facts that give him PC to go into the trunk.

11. Two federal officers develop reasonable suspicion that Smith is about to rob the Federal Credit Union. The officers approach Smith, identify themselves as federal officers, and instruct him to place his hands on the wall. One of the officers conducts a frisk of Smith, and, upon touching Smith's right front pants pocket, discovers what is immediately apparent to him to be crack cocaine. The officer retrieves the cocaine and arrests Smith. At his trial for possession of narcotics, Smith files a motion to suppress all evidence obtained during the frisk. According to the law, this evidence will be:

- a. Admissible, because the officer discovered the cocaine through the "plain touch" doctrine.
 - b. Admissible, because a frisk for evidence, including narcotics, may always be conducted following a valid Terry stop.
 - c. Suppressed, because a Terry frisk may only be utilized to discover readily accessible weapons that a suspect may use against an officer during an investigatory stop.
 - d. Suppressed, because the officer could not lawfully conduct a frisk of Smith.
-

a. Admissible, because the officer discovered the cocaine through the "plain touch" doctrine.

CORRECT: Three elements must be present before the "plain touch" doctrine will permit evidence to be seized during a Terry frisk: First, the frisk itself must be lawful; second, the incriminating nature of the item must be immediately apparent to the officer; and third, the discovery is limited to the initial touching, without further manipulation. All three elements are present in this scenario.

b. Admissible, because a frisk for evidence, including narcotics, may always be conducted following a valid Terry stop.

INCORRECT: A frisk may not always be permissible following a Terry stop. In order to lawfully frisk a suspect, an officer must have reasonable suspicion to believe that the suspect is presently armed and dangerous. If this suspicion exists, the officer may do a protective pat-down of the suspect looking for any weapons that might be utilized against the officer during the investigatory stop. An officer may not, however, conduct a Terry frisk to discover evidence of a crime.

c. Suppressed, because a Terry frisk may only be utilized to discover readily accessible weapons that a suspect may use against an officer during an investigatory stop.

INCORRECT: While a law enforcement officer may not frisk a suspect looking for evidence of a crime, where immediately incriminating evidence is uncovered during a lawful Terry frisk, the law does not require that an officer turn a blind eye to it. In such circumstances, the officer may seize the incriminating evidence, even though the evidence is not a weapon.

d. Suppressed, because the officer could not lawfully conduct a frisk of Smith.

INCORRECT: The officers had reasonable suspicion that Smith was about to commit a robbery. Because of the nature of this offense, the officers had reasonable suspicion to believe that Smith was presently armed and dangerous. With this level of suspicion, the officers were entitled to conduct the frisk for weapons.

12. Brown is suspected of being involved in a conspiracy to traffic narcotics. Agents learn that Brown has a houseboat docked at a lake 147 miles from his home. While Brown has not been on the boat for more than two years, he has kept up the mooring fees and registration of the vessel. The agents reasonably suspect that evidence of the narcotics conspiracy will be found on the boat. Once the boat is located, three agents board the boat to conduct a search. While no evidence of narcotics trafficking is found, the agents do find evidence of an unrelated murder in the cabin. At his trial for murder, Brown makes a pretrial motion to suppress the evidence found on the boat. According to the law, this evidence will be:

a. Admissible, because the warrantless search of a mobile conveyance is an exception to the warrant requirement of the Fourth Amendment.

b. Admissible, because Brown has, through his actions, given up any reasonable expectation of privacy in the boat.

c. Inadmissible, because the mobile conveyance exception to the warrant requirement does not apply in this case.

d. Inadmissible, because the agents primary motive in searching the boat was to discover evidence of narcotics trafficking.

a. Admissible, because the warrantless search of a mobile conveyance is an exception to the warrant requirement of the Fourth Amendment.

INCORRECT: While the warrantless search of a mobile conveyance (i.e., a Carroll search) is an exception to the Fourth Amendment, the requirements for that type of search are not present in this case. A Carroll search requires probable cause, rather than reasonable suspicion. If probable cause does not exist, a Carroll search is impermissible.

b. Admissible, because Brown has, through his actions, given up any reasonable expectation of privacy in the boat.

INCORRECT: While Brown has not been on the boat for more than two years, it is clear that he has not abandoned the boat, nor his expectation of privacy in it. By keeping up the mooring and registration fees, Brown is retaining his privacy interest in the boat.

c. Inadmissible, because the mobile conveyance exception to the warrant requirement does not apply in this case.

CORRECT: The mobile conveyance exception to the warrant requirement does not apply in this case because probable cause is not present. The mobile conveyance exception requires both probable cause and ready mobility before a warrantless search can be conducted.

d. Inadmissible, because the agents primary motive in searching the boat was to discover evidence of narcotics trafficking.

INCORRECT: The agents' primary motive in searching the boat is irrelevant to the evidence that was ultimately discovered. Had the agents been lawfully on the boat, any evidence of another crime that was discovered could have been admissible under the "plain view" doctrine.

13. A federal agent is having dinner in a restaurant located in a federal park, when the manager, a personal friend of his, approaches him. The manager states that two young men have just left the restaurant without paying for their dinners (a federal misdemeanor for which the agent has arrest authority), and asks his friend to arrest them before they can escape. The agent quickly leaves the restaurant and, based upon a detailed physical description given by the manager, is able to arrest two suspects approximately two blocks from the restaurant. During the search incident to arrest, narcotics are found on one of the suspects, a man named Brown. Brown is charged with narcotics possessions. At his trial, he makes a motion to suppress the narcotics, claiming they were discovered during an illegal search of his person. According to the law, this evidence should be:

- a. Suppressed, because the agent did not have the legal authority to make the arrest for this crime.
 - b. Suppressed, because a misdemeanor arrest may never be made in a public place without first obtaining an arrest warrant.
 - c. Admitted, because, based on the statements from the manager of the restaurant, probable cause to make the arrest existed under Aguilar.
 - d. Admitted, because a misdemeanor arrest may always be made in a public place without first obtaining an arrest warrant.
-

a. Suppressed, because the agent did not have the legal authority to make the arrest for this crime.

CORRECT: Warrantless misdemeanor arrests may be made in a public place if the crime was committed in the presence of the arresting officer. If the crime was not committed in the presence of the arresting officer, an arrest warrant must be obtained.

b. Suppressed, because a misdemeanor arrest may never be made in a public place without first obtaining an arrest warrant.

INCORRECT: Warrantless misdemeanor arrests may be made in a public place if the crime was committed in the presence of the arresting officer. If the crime was not committed in the presence of the arresting officer, an arrest warrant must be obtained.

c. Admitted, because, based on the statements from the manager of the restaurant, probable cause to make the arrest existed under Aguilar.

INCORRECT: With a warrantless misdemeanor arrest in a public place, in addition to statutory authority and probable cause requirements, it is also necessary that the offense occur in the law enforcement officer's presence (i.e., within sight or other senses).

d. Admitted, because a misdemeanor arrest may always be made in a public place without first obtaining an arrest warrant.

INCORRECT: Warrantless misdemeanor arrests may be made in a public place if the crime was committed in the presence of the arresting officer. Additionally, statutory authority must exist for the arrest. While the agent in this case may have peace officer status, it is unclear from the question.

14. Federal agents are investigating Davis for wire and mail fraud. They arrange to interview Davis at his home about the allegations. During the course of the interview, the agents ask Davis if they could search his home office for various documents. When Davis stayed silent, one of the agents responds, "Listen, if you say no, we're going to apply for a search warrant, and, if we get it, we're going to come back and search then." Davis then tells the agents they can search his home office. During the course of the search, documents are discovered linking Davis to the wire and mail fraud allegations. At his trial on these charges, Davis makes a motion to suppress the evidence found during the search of his office, claiming that his consent was not voluntarily given. According to the law, this motion will be:

- a. Granted, because Davis' consent was not voluntarily given, but was mere submission to the authority of the law enforcement agents.
 - b. Granted, because the agents did not notify Davis that he had the right to refuse to grant consent for the search.
 - c. Denied, because the agent's statement regarding his intent to apply for a search warrant was permissible.
 - d. Denied, because when David stayed silent, probable cause arose to conduct the search either with or without a search warrant.
-

a. Granted, because Davis' consent was not voluntarily given, but was mere submission to the authority of the law enforcement agents.

INCORRECT: Submission by the individual to the authority of the law enforcement officer does not constitute consent. Consent is not voluntarily given in response to an officer's statement that the officer has come to search with a warrant when, in fact, there is none, or they will get a warrant if consent is withheld. However, it is permissible for officers truthfully to advise a person that they will apply for a warrant if consent is refused.

b. Granted, because the agents did not notify Davis that he had the right to refuse to grant consent for the search.

INCORRECT: Whether consent is freely and voluntarily given is decided by the facts as decided by the court, which will consider all of the surrounding circumstances. One of these circumstances is knowledge of the right to withhold consent, though such knowledge is not essential. An officer is not required to advise a person of their right to refuse consent.

c. Denied, because the agent's statement regarding his intent to apply for a search warrant was permissible.

CORRECT: Submission by the individual to the authority of the law enforcement officer does not constitute consent. Consent is not voluntarily given in response to an officer's statement that the officer has come to search with a warrant when, in fact, there is none, or they will get a warrant if consent is withheld. However, it is permissible for officers truthfully to advise a person that they will apply for a warrant if consent is refused.

d. Denied, because when David stayed silent, probable cause arose to conduct the search either with or without a search warrant.

INCORRECT: Davis' silence cannot be used to establish probable cause for the search. Additionally, even if it could, probable cause, standing alone, is never enough for a search. Instead, the agents would need to justify a warrantless search with an exception to the warrant requirement. Based on the facts presented, no such exception exists in this case.

15. A law enforcement officer has a hunch that Roberts is trafficking narcotics. After observing Roberts speed through a stop sign, the law enforcement officer decided to pull Roberts over for the traffic violation, so that he could try to discover evidence of narcotics in the vehicle. The officer turned on his overhead lights and performed a traffic stop. Once Roberts' car stopped, the officer approached the car and instructed Roberts to roll down his window. As Roberts did so, the officer was faced with the overwhelming odor of raw marijuana emanating from the car. The officer requested Robert's identification and registration, and Roberts complied. After checking the identification through dispatch, the officer wrote out a citation, had Roberts sign it, and returned the identification and registration documents to Roberts. Before Roberts could leave, however, the officer ordered him to step out of the vehicle. Roberts complied, and the officer began to search various areas within the car. In the trunk of the vehicle, under the spare wheel, the officer discovered what later turned out to be 10 kilos of marijuana. At his trial, Roberts filed a motion to suppress the evidence because of an illegal search of the vehicle. According to the law, this motion will be:

- a. Granted, because, while the officer could detain Roberts as long as reasonably necessary to check his identification and issue a warning or citation to him, once those purposes were accomplished, the officer was required to let Roberts go.
- b. Granted, because the officer's initial traffic was simply a pretext used to investigate for narcotics.
- c. Denied, because the officer had the ability to perform a Terry frisk for weapons that could have been located in the vehicle.
- d. Denied, because the marijuana was found during a valid search of the vehicle's trunk.

a. Granted, because, while the officer could detain Roberts as long as reasonably necessary to check his identification and issue a warning or citation to him, once those purposes were accomplished, the officer was required to let Roberts go.

INCORRECT: An officer may detain the driver of a vehicle as long as reasonably necessary to request the driver's license and registration; request the driver to step out of the vehicle; conduct computer inquiries to determine the validity of the license and registration; conduct computer searches to investigate the driver's criminal history and to determine if the driver has outstanding warrant; and issue a warning or citation. However, once the initial reason for the stop has been accomplished, the stop must end, unless something occurs during the traffic stop that generates reasonable suspicion to justify a further detention. The smell of raw marijuana in this case provided the justification for the additional detention of Roberts.

b. Granted, because the officer's initial traffic was simply a pretext used to investigate for narcotics.

INCORRECT: Pretextual traffic stops have been found to be permissible, so long as either reasonable suspicion or probable cause existed for the initial stop. In this case, the traffic infraction allowed the officer to stop Roberts, so the pretextual nature of the stop is irrelevant.

c. Denied, because the officer had the ability to perform a Terry frisk for weapons that could have been located in the vehicle.

INCORRECT: Even conceding that the officers could perform a Terry frisk in this scenario, such a frisk would not have permissibly included the trunk of the vehicle, in that any weapons located in that area would not be readily accessible to the suspect.

d. Denied, because the marijuana was found during a valid search of the vehicle's trunk.

CORRECT: The odor of raw marijuana emanating from the vehicle gave the officer probable cause to search the vehicle without a warrant pursuant to the Carroll doctrine. When performing a Carroll search, an officer may look anywhere within the vehicle where what he is seeking could be hidden, including the trunk.

16. Federal agents suspect that Martin is dealing in narcotics from his home, a felony offense, but have not been able to obtain enough evidence to justify issuance of a search or arrest warrant. They take up surveillance from various positions around the neighborhood, while an undercover officer approaches the residence in an attempt to buy narcotics. As the agents observe, the undercover officer approaches Martin, who is sitting on his front porch, and engages in a lengthy discussion. When an object is transferred between Martin and the undercover officer, the officer gives the signal that narcotics have been exchanged. The agents, dressed in raid jackets and marked vehicles, descend on the house to arrest Martin for narcotics distribution. As Martin sees the agents approach, he turns, runs directly into his home, and slams the door behind him. One of the agents breaks through the door, and is able to catch Martin as he is trying to run through the kitchen. Martin has a bag of what appears to be cocaine in his hand when he is arrested, and various other drugs are found on a table next to where the arrest occurred. Did the officers violate 18 U.S.C. § 3109 (the Federal "knock and announce" statute)?

- a. No, because an agent may always make a warrantless entry into a residence to make an arrest, so long as probable cause exists.
 - b. No,, because the agents entered the house to make the arrest under exigent circumstances.
 - c. Yes, because the agents did not announce their identity and purpose.
 - d. Yes, because the statute must always be complied with whenever an officer desires to enter a private residence.
-

a. No, because an agent may always make a warrantless entry into a residence to make an arrest, so long as probable cause exists.

INCORRECT: An agent may not make a warrantless entry into a residence to make an arrest for any offense; the offense must be a felony (Welsh v. Wisconsin).

b. No, because the agents entered the house to make the arrest under exigent circumstances.

CORRECT: Based on the signal provided by the undercover officer, the agents had probable cause to make the arrest. When Martin turned and ran into the residence, the officers were in "hot pursuit." They had probable cause to arrest, and a general and continuous knowledge (within reason) of the suspect's whereabouts.

c. Yes, because the agents did not announce their identity and purpose.

INCORRECT: Agents who are in "hot pursuit" need not comply with Title 18 U.S.C. § 3109.

d. Yes, because officers must always comply with the statute whenever an officer desires to enter a private residence.

INCORRECT: This statement is far too broad to be close to being correct. (1). The statute provides only that the officers cannot break to enter to execute a search or arrest warrant unless the officer first identifies his authority and purpose. An officer could then enter with consent of the occupant without complying with the statute. (2). Exigent circumstances will excuse compliance with the statute. See also the justification for answer b.

17. Two federal agents have been investigating Thomas and have reasonable suspicion to believe that he is selling false identification documents out of the trunk of his vehicle. Upon seeing him parked in a public parking lot, they approach him, identify themselves as federal agents, and ask him to place his hands on top of the vehicle. During the frisk that follows, one of the officers feels what he reasonably believes is a handgun. He retrieves the item and confirms that the object is a .22 caliber pistol. Knowing that Thomas was previously convicted of a felony (theft), the agent places him under arrest for being a felon-in-possession. A search of the vehicle incident to the arrest turns up a bag of false identification documents under the back seat of Thomas' vehicle. At his trial on weapons and false identification documents, Thomas makes a motion to suppress all of the evidence recovered by the agents. According to the law:

- a. The pistol will be admitted, but the false identification documents will be suppressed.
 - b. The pistol will be suppressed, but the false identification documents will be admitted.
 - c. All of the evidence will be admitted.
 - d. None of the evidence will be admitted.
-

a. The pistol will be admitted, but the false identification documents will be suppressed.

INCORRECT: The agents had reasonable suspicion to temporarily detain Thomas for investigation. However, they did not have the right to conduct a frisk on him, in that the offense being investigated is not generally associated with being "armed and dangerous." Because the frisk was impermissible (i.e., the agents did not have reasonable suspicion that Thomas was presently armed and dangerous), the pistol discovered during the frisk would be suppressed. The false identifications would be suppressed as the fruit of an illegal search (i.e., the fruit of an invalid search incident to arrest).

b. The pistol will be suppressed, but the false identification documents will be admitted.

INCORRECT: The agents had reasonable suspicion to temporarily detain Thomas for investigation. However, they did not have the right to conduct a frisk on him, in that the offense being investigated is not generally associated with being "armed and dangerous." Because the frisk was impermissible (i.e., the agents did not have reasonable suspicion that Thomas was presently armed and dangerous), the pistol discovered during the frisk would be suppressed. The false identifications would be suppressed as the fruit of an illegal search (i.e., the fruit of an invalid search incident to arrest).

c. All of the evidence will be admitted.

INCORRECT: All of the evidence would be suppressed. The pistol was the fruit of an unlawful search (frisk), while the false identifications documents were also discovered during an unlawful search (an invalid search incident to arrest).

d. None of the evidence will be admitted.

CORRECT: All of the evidence would be suppressed. The pistol was the fruit of an unlawful search (frisk), while the false identifications documents were also discovered during an unlawful search (an invalid search incident to arrest).

18. Federal agents have an arrest warrant for Moore for failure to appear. At approximately 12:00 a.m. one night, the agents approach Moore's home, reasonably believing that he is inside. As they open the unlocked door and enter, all of the agents clearly announce, "Federal agents!" Immediately inside the door, Moore is found sitting on a sofa in the living room. On coffee table in front of him, the agents see a white powdery substance (later determined to be cocaine), scales, small baggies, and other pieces of drug paraphernalia. Moore is arrested, and is charged with possession of cocaine and drug paraphernalia. Which of the following statements is correct?

- a. Title 18 U.S.C. § 3109 was NOT violated because it applies only to the execution of search warrants, not arrest warrants.
 - b. Title 18 U.S.C. § 3109 was NOT violated because entering through an unlocked door does not qualify as "break[ing] open any outer or inner door" of a house, as required by Title 18 U.S.C. § 3109.
 - c. The agents executed the warrant outside of the time limit prescribed by statute, specifically, between 6:00 a.m. and 10:00 p.m.
 - d. The agents were required to comply with Title 18 U.S.C. § 3109 (knock and announce) and failed to do so.
-

a. Title 18 U.S.C. § 3109 was NOT violated because it applies only to the execution of search warrants, not arrest warrants.

INCORRECT: Title 18 U.S.C. § 3109 has been held to apply to all entries under color of law, either to search or to arrest, with or without a warrant. While the statute speaks exclusively of search warrants, case law has interpreted the statute to include entries for the execution of arrest warrants.

b. Title 18 U.S.C. § 3109 was NOT violated because entering through an unlocked door does not qualify as "break[ing] open any outer or inner door" of a house, as required by Title 18 U.S.C. § 3109.

INCORRECT: The courts have given a broad construction to this statute. For instance, the word "break" has been interpreted to include opening an unlocked door or using a passkey. In this instance, the entry clearly constituted a "breaking" by the agent, even though the door to the home was unlocked.

c. The agents executed the warrant outside of the time limit prescribed by statute, specifically, between 6:00 a.m. and 10:00 p.m.

INCORRECT: Unlike a federal search warrant, a federal arrest warrant may be executed by any authorized officer at any time within the jurisdiction of the United States, its possessions, and its territories. Pursuant to Rule 41(h) of the Federal Rules of Criminal Procedure, a federal search warrant must normally be served in the daytime, which is defined as the hours between 6:00 a.m. to 10:00 p.m.

d. The agents were required to comply with Title 18 U.S.C. § 3109 (knock and announce) and failed to do so.

CORRECT: The agents in this case failed to comply with Title 18 U.S.C. § 3109. Specifically, the agents failed to announce their authority and purpose. Merely stating "Federal agents" is insufficient. The agents must also state their purpose (e.g., "Federal agents with a search warrant"). Additionally, the agents in this case impermissibly used force to enter prior to being refused admittance. The term "refused admittance" means that an agent must wait a reasonable length of time before forcing entry, unless exigent circumstances exist.

19. Federal agents develop probable cause that Gibson's garage contains a large quantity of counterfeit social security checks. They also have reason to suspect that, earlier in the morning, their confidential informant told Gibson that they were about to apply for a search warrant, and that Gibson indicated he would destroy the evidence after he returns home from an out-of-town visit. The agents approach Gibson's home and are certain he has not yet arrived and no one is at home. After discussing their options, the agents force their way through the garage door and into the home. During the subsequent search, they seize hundreds of counterfeit social security checks. Approximately ninety minutes later, Gibson returns home and is placed under arrest. At his trial, he makes a motion to suppress the evidence discovered during the warrantless search of his home. According to the law, this evidence will be:

- a. Admitted, because the agents would have inevitably discovered the evidence once they applied for a search warrant.
 - b. Admitted, because the agents entered the home due to exigent circumstances (destruction of evidence).
 - c. Suppressed, because the agents did not have probable cause to arrest Gibson at the time of the search.
 - d. Suppressed, because the agents had time to apply for a telephonic warrant.
-

a. Admitted, because the agents would have inevitably discovered the evidence once they applied for a search warrant.

INCORRECT: The "inevitable discovery" doctrine means that the unreasonable search or seizure of evidence by one officer will not bar the use of that evidence when other officers, acting independently and without knowledge of the wrongful acts of the first officer, are searching lawfully for the evidence. Since no independent search was being conducted at the time of the illegal search in this case, the "inevitable discovery" doctrine does not apply.

b. Admitted, because the agents entered the home due to exigent circumstances (destruction of evidence).

INCORRECT: An exigent circumstances will justify a warrantless search when law enforcement officers reasonably believe that the removal or destruction of evidence is imminent, and there is not enough time to secure a search warrant. In this case, the removal or destruction of the evidence was not imminent, because the suspect was not home at the time.

c. Suppressed, because the agents did not have probable cause to arrest Gibson at the time of the search.

INCORRECT: The issue of probable cause to arrest Gibson is irrelevant to determining whether the warrantless search of the house in this scenario was reasonable under the Fourth Amendment.

d. Suppressed, because the agents had time to apply for a telephonic warrant.

CORRECT: Occasionally, law enforcement officers are confronted with a situation in which they do not have time to obtain a warrant in the traditional manner due to the impending destruction or removal of evidence. Rule 41(c)(2) of the Federal Rules of Criminal Procedure provides for a search warrant based on oral testimony, such as communicated by telephone or facsimile machine. This procedure may drastically reduce the time it takes to obtain a search warrant. Thus, if law enforcement officers have time to attempt to secure a telephonic search warrant before the removal or destruction becomes imminent, the officers should attempt to do so. Failure to attempt to secure a telephonic search warrant, if the opportunity was available, may be considered in an unfavorable manner by a reviewing court.

20. Federal agents obtain a valid premises search warrant to look for pornographic materials in Black's home. When the warrant is executed, the agents properly knock, announce their identity and purpose, and demand admittance. Black opens the door and the agents enter. Immediately, the agents notice that four other people are inside the house. One of the individuals is recognized as Black's live-in girlfriend, Courtney. The other three persons are unknown. Without hesitating, the agents order all five people to stand and face the wall, where a frisk is conducted for the safety of the officers. During the frisk of Courtney, one agent discovers what is immediately apparent to him to be crack cocaine. He reaches in, retrieves the item, and confirms that it is cocaine. Courtney is arrested. At her trial for narcotics possession, Courtney makes a motion to suppress the cocaine. According to the law, this motion will be:

- a. Granted, because, pursuant to the premises search warrant, the agents could not conduct a frisk of Courtney.
 - b. Granted, because, pursuant to the premises search warrant, the agents could only frisk Black, the owner of the property.
 - c. Denied, because the agents had a valid search warrant for the premises, and were allowed to search any occupants of the premises pursuant to that warrant.
 - d. Denied, because the agents had a valid search warrant for the premises, and were allowed to frisk any occupants of the premises pursuant to that warrant.
-

a. Granted, because, pursuant to the premises search warrant, the agents could not conduct a frisk of Courtney. **CORRECT:** A premises search warrant does not allow law enforcement officers to either frisk or search persons who may be present on the premises at the time the warrant is executed. Instead, to frisk any individual present during the execution of a premises search warrant, agents need reasonable suspicion to believe that the individual is presently armed and dangerous. There are no facts present to support the belief that the persons in this scenario were either armed or dangerous.

b. Granted, because, pursuant to the premises search warrant, the agents could only frisk Black, the owner of the property. **INCORRECT:** A premises search warrant does not allow law enforcement officers to either frisk or search persons who may be present on the premises at the time the warrant is executed.

c. Denied, because the agents had a valid search warrant for the premises, and were allowed to search any occupants of the premises pursuant to that warrant. **INCORRECT:** A premises search warrant does not allow law enforcement officers to either frisk or search persons who may be present on the premises at the time the warrant is executed.

d. Denied, because the agents had a valid search warrant for the premises, and were allowed to frisk any occupants of the premises pursuant to that warrant. **INCORRECT:** A premises search warrant does not allow law enforcement officers to either frisk or search persons who may be present on the premises at the time the warrant is executed. Instead, to frisk any individual present during the execution of a premises search warrant, agents need reasonable suspicion to believe that the individual is presently armed and dangerous. There are no facts present to support the belief that the persons in this scenario were either armed or dangerous.

21. King was pulled over by a law enforcement officer who has a valid warrant for King's arrest. After arresting King and placing him in handcuffs, the officer had him sit in the back of the officer's vehicle. The officer then returned to King's vehicle and began to search it. Under the front passenger seat, the officer found a bag containing cocaine. Under the back seat, the officer finds more evidence, including marijuana residue and rolling paper. The officer then opened the trunk of the vehicle and began to search it. Immediately, 6 bricks of marijuana were discovered. At his trial for marijuana possession, King makes a motion to suppress all of the evidence found in his vehicle. According to the law:

- a. The cocaine, marijuana residue, and rolling paper will be admitted, while the 6 bricks of marijuana will be suppressed.
 - b. The cocaine, marijuana residue, and rolling paper will be suppressed, while the 6 bricks of marijuana will be admitted.
 - c. All of the evidence is admissible.
 - d. None of the evidence is admissible.
-

a. The cocaine, marijuana residue, and rolling paper will be admitted, while the 6 bricks of marijuana will be suppressed.

INCORRECT: The cocaine, marijuana residue, and rolling paper are admissible because they were lawfully found during a valid search incident to arrest of the vehicle. The bricks of marijuana are also admissible, not because they were found during a valid search incident to arrest of the vehicle, but under the mobile conveyance exception. The discoveries in the passenger compartment established probable cause to search the trunk of the vehicle.

b. The cocaine, marijuana residue, and rolling paper will be suppressed, while the 6 bricks of marijuana will be admitted.

INCORRECT: The cocaine, marijuana residue, and rolling paper are admissible because they were lawfully discovered during a valid search incident to arrest of the vehicle.

c. All of the evidence is admissible.

CORRECT: The cocaine, marijuana residue, and rolling paper are admissible because they were lawfully found during a valid search incident to arrest of the vehicle. The bricks of marijuana are also admissible, not because they were found during a valid search incident to arrest of the vehicle, but under the mobile conveyance exception. The discoveries in the passenger compartment established probable cause to search the trunk of the vehicle.

d. None of the evidence is admissible.

INCORRECT: The cocaine, marijuana residue, and rolling paper are admissible because they were lawfully found during a valid search incident to arrest of the vehicle. The bricks of marijuana are also admissible, not because they were found during a valid search incident to arrest of the vehicle, but under the mobile conveyance exception. The discoveries in the passenger compartment established probable cause to search the trunk of the vehicle.

22. Law enforcement officers receive notice from their dispatcher that there has been a homicide at a local apartment building. Arriving at the designated apartment, the officers notice that the door to the apartment has what appear to be bullet holes in it, and that the lock on the door is broken. Without first obtaining a search warrant, the officers push open the door and enter the apartment. Inside, they find a deceased male and a female who is unconscious, but appears to have suffered a self-inflicted gunshot wound to the chest. Emergency personnel are called, and both bodies are removed from the scene of the crime. After securing the apartment, two of the officers begin to process the crime scene looking for evidence. In a trashcan near the kitchen, the officers find a crumpled note. Not sure if it's evidence or not, the officers read the note and discover it was written by the woman. The note indicates that she had killed the man (her husband) because of an illicit affair he was having, and that she was going to kill herself. The woman recovers and is charged with her husband's murder. At her trial, she makes a motion to suppress the note found in the trashcan. According to the law, this evidence will be:

- a. Admitted, because the officers entered the apartment and conducted the warrantless search pursuant to the emergency scene exception to the Fourth Amendment's warrant requirement.
- b. Admitted, because the note was found in plain view during the processing of the homicide scene.
- c. Suppressed, because the officers were not authorized to enter the apartment without first obtaining a search warrant.
- d. Suppressed, because the search by the officers was made without either a search warrant or an exception to the Fourth Amendment's warrant requirement.

a. Admitted, because the officers entered the apartment and conducted the warrantless search pursuant to the emergency scene exception to the Fourth Amendment's warrant requirement.

INCORRECT: While the initial entry into the apartment was justified under the "emergency scene" exception to the warrant requirement, once the exigency ended (i.e., once the bodies were removed from the scene) the officers' legal justification for being in the apartment terminated. To process this crime scene after that point, the officers needed to secure a search warrant.

b. Admitted, because the note was found in plain view during the processing of the homicide scene.

INCORRECT: The note was not found in plain view. First, at the time the note was discovered, the officers were not lawfully on the premises. Second, the incriminating nature of the note was not immediately apparent at the time it was seized by the officers.

c. Suppressed, because the officers were not authorized to enter the apartment without first obtaining a search warrant.

INCORRECT: The officers were entitled to enter the apartment because of the emergency nature of the dispatch call. In these instances, officers do not have time to obtain a search warrant to justify their entry. This type of "exigent" circumstance is one of the few established exceptions to the Fourth Amendment's warrant requirement.

d. Suppressed, because the search by the officers was made without either a search warrant or an exception to the Fourth Amendment's warrant requirement.

CORRECT: At the time the note was found, the officers were no longer lawfully on the premises. The exigency that justified their warrantless entry no longer existed, because the victim and suspect had been removed from the scene. To continue to search at this point, the officers needed to obtain a warrant.

23. Armed with an arrest warrant for Jones (for mail fraud and false statements), federal agents approach Jones' home. Surveillance has indicated that, in the previous 48 hours, no one other than Jones has entered or left the premises. The officers have no additional information that anyone other than Jones is located inside the two-story home. The agents knock on the door, announce their identity and purpose, and demand entry. When the agents hear footsteps running towards the rear of the residence, they use force to enter and make the arrest. Jones is arrested approximately ten feet from the back door of the residence. Two officers fan out to conduct a protective sweep of the home, and in the bathroom located on the second floor, discover marijuana shoved into the toilet tank. At his trial on possession charges, Jones files a motion to suppress the evidence found in the bathroom. According to the law, this motion will be:

- a. Granted, because the agents had only an arrest warrant, and not a search warrant, they were not authorized to enter Jones' home.
 - b. Granted, because the marijuana was found during a search that violated the Fourth Amendment.
 - c. Denied, because the agents discovered the marijuana during a lawful protective sweep of the residence.
 - d. Denied, because the arrest warrant authorized the agents to conduct a search of the entire home incident to Jones' arrest.
-

a. Granted, because the agents had only an arrest warrant, and not a search warrant, they were not authorized to enter Jones' home.

INCORRECT: An arrest warrant carries with it the authority to enter a suspect's home in order to effect the arrest, so long as the agents reasonably believed that the suspect was in the home at the time the warrant was executed.

b. Granted, because the marijuana was found during a search that violated the Fourth Amendment.

CORRECT: There were two problems associated with the discovery of the marijuana in the scenario. First, a protective sweep requires reasonable suspicion to believe that an individual is in the home that could pose a danger to the agents. No facts exist in this question to justify the protective sweep in this case. Second, during a protective sweep, an agent may only look in those locations where a person could be hidden. In this case, looking into the toilet tank exceeded the lawful scope of a protective sweep.

c. Denied, because the agents discovered the marijuana during a lawful protective sweep of the residence.

INCORRECT: There were two problems associated with the discovery of the marijuana in the scenario. First, a protective sweep requires reasonable suspicion to believe that an individual is in the home that could pose a danger to the agents. No facts exist in this question to justify the protective sweep in this case. Second, during a protective sweep, an agent may only look in those locations where a person could be hidden. In this case, looking into the toilet tank exceeded the lawful scope of a protective sweep.

d. Denied, because the arrest warrant authorized the agents to conduct a search of the entire home incident to Jones' arrest.

INCORRECT: While an arrest warrant does authorize agents to enter a residence to effect an arrest (at least where they reasonably believe the suspect is inside the residence), it does not authorize them to search any further than is necessary to locate the suspect. In this case, once Jones' was arrested, the immediate area of the arrest could be searched incident to the arrest. This does not include the upstairs bathroom.

24. Howard was arrested pursuant to a warrant on the street as he pulled up to his residence in his vehicle. Federal agents had staked out his residence, where they planned to arrest him for participating in an earlier methamphetamine transaction. After Howard was removed from the vehicle and handcuffed, the agents immediately searched the interior of the vehicle for weapons or evidence. During this search, the agents seized from the front passenger seat a green backpack, which they opened, revealing a gun and another closed container with methamphetamine inside. At his trial, Howard makes a motion to suppress the gun and methamphetamine found in his vehicle. According to the law, this motion will be:

- a. Granted, because the search of the green backpack exceeded the scope of a valid search incident to arrest.
 - b. Granted, because the search was invalid in that there was no “real danger” to the officers since Howard was already removed from the vehicle and handcuffed at the time of the search.
 - c. Denied, because the backpack was searched during a valid inventory search of the vehicle.
 - d. Denied, because the search of the backpack was within the scope of a valid search incident to arrest.
-

a. Granted, because the search of the green backpack exceeded the scope of a valid search incident to arrest. **INCORRECT:** The Supreme Court held in *New York v. Belton* that “when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile . . . [and] any containers found within the passenger compartment . . .” For this reason, the search of the backpack was within the scope of a valid search incident to an arrest in a vehicle.

b. Granted, because the search was invalid in that there was no “real danger” to the officers since Howard was already removed from the vehicle and handcuffed at the time of the search. **INCORRECT:** To be valid, a search incident to arrest must involve a valid arrest and a contemporaneous search. *Belton*’s bright line rule, while based on a safety rationale, does not require a case-by-case examination of whether safety was actually an issue. Since *Belton* usually applies to searches made after the suspect has been arrested, the suspect normally will have been handcuffed and removed from the vehicle. In *Belton* itself, the four suspects had been removed from the vehicle, patted down and separated from one another. Further, the search of the passenger compartment of Howard’s car was essentially contemporaneous with his arrest. The seizure of the backpack from the front seat and the examination of its contents were therefore permissible under *Belton*.

c. Denied, because the backpack was searched during a valid inventory search of the vehicle. **INCORRECT:** Inventory searches are permissible where a vehicle has been lawfully impounded and the search is conducted pursuant to a standardized inventory policy. However, in *Florida v. Wells*, the Supreme Court noted that an inventory search “... must not be a ruse for a general rummaging in order to discover incriminating evidence. The policy or practice governing inventory searches should be designed to produce an inventory.” In this case, the search was specifically made to discover weapons or evidence, not to produce an inventory. Additionally, there is no evidence that an inventory search was being conducted pursuant to a standardized policy.

d. Denied, because the search of the backpack was within the scope of a valid search incident to arrest. **CORRECT:** The Supreme Court held in *New York v. Belton* that “when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile . . . [and] any containers found within the passenger compartment . . .” For this reason, the search of the backpack was within the scope of a valid search incident to an arrest in a vehicle.

25. Morgan, a convicted felon, lived in a trailer owned by his girlfriend, Jones. Jones, anxious to defend herself against a charge, made by another woman, that she kept drugs at her home, invited two police officers to search the trailer. When the officers came in, Morgan was sitting in the living room. The officers explained to him that Jones had given consent for the search, and they then proceeded to make their search. In the bedroom shared by Jones and Morgan, the officers found a small bag with what appeared to be marijuana residue inside. Jones denied that the bag belonged to her, and told the officers that some of the items in the bedroom belonged to the defendant. On an upper shelf in the bedroom closet, in a jumble of boxes, tins, and bags belonging partly to Jones and partly to Morgan, the officers located a generic, unmarked tin box. In that box, they found what they believed to be a bomb made of dynamite, wires, and .9 mm. shells. During this time, Morgan remained in the living room and offered no objection to the search. Through questioning Jones, it was determined that the tin box belonged to Morgan, not her. Morgan was arrested and charged with being a felon in possession of explosives. At his trial, he made a motion to suppress the evidence found in the tin box. According to the law, the evidence will be:

- a. Admitted, because Jones had apparent authority to consent to the search of the tin box.
 - b. Admitted, because Jones can consent to the search of any item within her residence, regardless of who the item actually belonged to.
 - c. Suppressed, because Jones did not have actual authority to consent to the search of the tin box.
 - d. Suppressed, because the officers exceeded the scope of the consent given them by Jones when they searched the tin box.
-

a. Admitted, because Jones had apparent authority to consent to the search of the tin box.

CORRECT: As the owner of the trailer, Jones freely gave consent to the search of the trailer, including the bedroom. The tin box was not identified in any way as belonging to Morgan, nor did Morgan attempt to limit Jones' consent to her own personal property. It was reasonable, then, for the officers to think that the tin box was within the consent that Jones had given. It was also reasonable for the officers to think that Jones had authority not only over the premises, but also over all of their contents not obviously belonging to someone else.

b. Admitted, because Jones can consent to the search of any item within her residence, regardless of who the item actually belonged to.

INCORRECT: For purposes of searches of closed containers, mere possession of the container by a third party does not necessarily give rise to a reasonable belief that the third party has authority to consent to a search of its contents. The key to consent is actual or apparent authority over the item to be searched. In deciding whether an individual has "apparent" authority over an item, courts consider various factors, including the nature of the container (e.g., was it a briefcase or a generic box?); whether there were external markings on the container, such as the defendant's name or the third party's name; and any precautions taken by the owner to ensure privacy, such as the use of locks or the government's knowledge of the defendant's orders not to open the container. With respect to locking mechanisms, courts also consider whether the defendant provided the third party with a combination or key to the lock.

c. Suppressed, because Jones did not have actual authority to consent to the search of the tin box.

INCORRECT: The probable cause and warrant requirements of the Fourth Amendment are not applicable where a party consents to a search, where a third party with common control over the searched premises consents, or where an individual with apparent authority to consent does so. As noted above, Jones had "apparent" authority to consent to the search, so "actual" authority is unnecessary.

d. Suppressed, because the officers exceeded the scope of the consent given them by Jones when they searched the tin box.

INCORRECT: Generally, consent to search a space includes consent to search containers within that space where a reasonable officer would construe the consent to extend to the container. As the owner of the trailer, Jones freely gave consent to the search of the trailer, including the bedroom. The tin box was not identified in any way as belonging to Morgan, nor did Morgan attempt to limit Jones' consent to her own personal property. It was reasonable, then, for the officers to think that the tin box was within the consent that Jones had given. It was also reasonable for the officers to think that Jones had authority not only over the premises, but also over all of their contents not obviously belonging to someone else.

26. After being issued a traffic citation, Morris decided to contest the ticket in court. On the day of his hearing, he approached the courthouse door and discovered that a magnetometer had been installed, with two security guards on either side of the device. As Morris got to the doorway, he was instructed by one of the guards that GSA regulations provided that anyone entering the courthouse would need to have their belongings searched and would need to step through the magnetometer. The purpose of these searches was to look for explosives or dangerous weapons. Morris refused to place his briefcase on the conveyor belt, stating that, because he had done nothing wrong, he did not feel it was proper to force him to endure this type of treatment. When notified that he would not be permitted to carry the briefcase into the courthouse without allowing the inspection, Morris grudgingly consented. When the briefcase was opened, one of the guards discovered a small bag containing marijuana in a side pocket. Was there a Fourth Amendment violation?

- a. Yes, because the guards had no probable cause to believe that Morris had any explosives or dangerous weapons in his briefcase.
 - b. Yes, because the guards did not obtain a search warrant prior to searching Morris' briefcase for any explosives or dangerous weapons.
 - c. No, because the fact Morris was appearing at the courthouse gave the security guards reasonable suspicion to frisk his belongings prior to allowing him to enter.
 - d. No, because the search was validly conducted pursuant to GSA regulations and in compliance with the Fourth Amendment.
-

a. Yes, because the guards had no probable cause to believe that Morris had any explosives or dangerous weapons in his briefcase.

INCORRECT: Ordinarily, of course, a person should not have his person or property subjected to a search in the absence of a warrant or probable cause to believe that a crime is being committed. However, regulations that authorize warrantless inspections of persons and property entering federal courthouses comply with the Fourth Amendment. These searches are considered reasonable under the Fourth Amendment due to the balance that must be struck between the government's interest in safeguarding courthouses and the minimal intrusion that takes place during the inspection process.

b. Yes, because the guards did not obtain a search warrant prior to searching Morris' briefcase for any explosives or dangerous weapons.

INCORRECT: The key to any Fourth Amendment search, including an "administrative inspection," is reasonableness. To require that an officer obtain a warrant to examine the packages of each of the potentially hundreds of persons entering a federal facility or determine as to each person the existence of probable cause would, as a practical matter, seriously impair the power of government to protect itself against individuals who would commit destructive acts in or around courthouses.

c. No, because the fact Morris was appearing at the courthouse gave the security guards reasonable suspicion to frisk his belongings prior to allowing him to enter.

INCORRECT: Morris' appearance at the courthouse did not, in and of itself, give rise to reasonable suspicion to conduct a frisk of his belongings. Even assuming his appearance at a courthouse was sufficient justification to detain Morris, there is no evidence to support a reasonable suspicion he was presently armed and dangerous, the standard required for a Terry frisk.

d. No, because the search was validly conducted pursuant to GSA regulations and in compliance with the Fourth Amendment.

CORRECT: "Administrative inspections," though warrantless, are permissible under the 4th Amendment. A limited warrantless search of people (and their belongings) wishing to enter sensitive facilities is permitted if the search is part of a general practice (i.e., a regulation authorizing the inspection exists) and not for the purpose of securing evidence for criminal investigations. Both of those requirements are met in this case.

27. Based on their investigation, federal agents obtained a search warrant to search Smith's residence. The search warrant did not specifically list any vehicles to be searched, but rather authorized the search of the entire premises for methamphetamine. On the day the search was conducted, Smith's vehicle was parked in the driveway of his residence. During the course of the search, agents discovered numerous items of evidence, including a briefcase containing a vast quantity of methamphetamine. The agents then decided to search the vehicle, although they weren't sure any evidence was inside it. Inside the trunk of the vehicle, several kilos of cocaine were found. At his trial for drug trafficking, Smith made a motion to suppress the cocaine found in the vehicle's trunk. Did the agents violate the Fourth Amendment?

- a. No, because it was found during the lawful execution of a premises search warrant.
- b. No, because the vehicle was searched pursuant to the "mobile conveyance" exception to the warrant requirement.
- c. Yes, because the agents exceeded the lawful scope of the premises search warrant by searching the vehicle that was not listed in the warrant.
- d. Yes, because the agents did not have probable cause to believe that evidence of drug trafficking was located in the vehicle.

a. No, because it was found during the execution of a valid premises search warrant.

CORRECT: A search warrant authorizing a search of a certain premises includes any vehicles owned or controlled by the owner of the premises searched and located within its curtilage if the objects of the search might be located in those vehicles. In essence, the vehicle is treated as if it were part of the premises covered by the warrant. It should be remembered, however, that if the owner of the premises has a vehicle that is parked off the curtilage, it cannot be searched pursuant to the premises search warrant.

b. No, because the vehicle was searched pursuant to the "mobile conveyance" exception to the warrant requirement.

INCORRECT: The "mobile conveyance" exception to the Fourth Amendment's warrant requirement authorizes the search of a mobile conveyance if probable cause exists to believe it is carrying items subject to seizure (contraband, means and instrumentalities, etc.). In this case, the agents did not have probable cause, so the "mobile conveyance" exception was inapplicable.

c. Yes, because the agents exceeded the lawful scope of the premises search warrant by searching the vehicle that was not listed in the warrant.

INCORRECT: A search warrant authorizing a search of a certain premises includes any vehicles owned or controlled by the owner of the premises searched and located within its curtilage if the objects of the search might be located in those vehicles. In essence, the vehicle is treated as if it were part of the premises covered by the warrant. It should be remembered, however, that if the owner of the premises has a vehicle that is parked off the curtilage, it cannot be searched pursuant to the premises search warrant.

d. Yes, because the agents did not have probable cause to believe that evidence of drug trafficking was located in the vehicle.

INCORRECT: The agents did not need probable cause to believe that evidence of drug trafficking was located in the vehicle. A premises search warrant authorizes the search of any vehicles owned or controlled by the owner of the premises searched, and located within its curtilage, if the objects of the search might be located in those vehicles. In essence, the vehicle is treated as if it were part of the premises covered by the warrant.

28 Federal agents obtained an arrest warrant for Smith for bank fraud. Agents determine that Smith is single, lives alone, and is the only one at his residence. Agents lawfully enter Smith's house. They find Smith standing in the first floor entryway. Agent Brown does a protective sweep of the entryway coat closet and sees a shotgun as he opens the closet door. He seizes the shotgun knowing that Smith is a previously convicted felon and possession of a firearm by him is a federal offense. Agent Rogers does a protective sweep of the back, second floor bedroom and sees and seizes a stack of child pornographic magazines lying on the bed for all to see. Concerning the admissibility of the evidence seized:

- a. Both the shotgun and the magazines are admissible.
 - b. Neither the shotgun nor the magazines are admissible.
 - c. The magazines are admissible. The shotgun is not.
 - d. The shotgun is admissible; the magazines are not.
-

- a. Both the shotgun and the magazines are admissible.

INCORRECT: The search incident to arrest permits looking into the entry way closet because it was in an area immediately adjacent to the place of arrest and could conceal a person. The shotgun was lawfully seized in plain view. (Lawful presence, immediately apparent it was evidence of a crime, and lawful right to access.) The scope of the search incident to arrest was exceeded upstairs. Because there was no reason to suspect anyone was at home, the sweep into the second floor was impermissible. The agent was not lawfully present in the bedroom making the plain view doctrine inapplicable.

- b. Neither the shotgun nor the magazines are admissible.

INCORRECT: See justification a.

- c. The magazines are admissible. The shotgun is not.

INCORRECT: See justification a.

- d. The shotgun is admissible; the magazines are not.

CORRECT: See justification a.

29. Federal agents are conducting a surveillance of Johnson's house based on information that the house is being used to process and package cocaine. Agents standing on the public sidewalk look into Johnson's open living room window that is only 5 feet away. On the table in front of the window, agents see scales and bundles of what they immediately recognize as packaged cocaine. Agents knock on the door, Johnson answers, and the agents push their way in - without consent - and seize the cocaine. Concerning the admissibility of the evidence seized:

- a. The cocaine is admissible because it was seen in plain view from a public place.
 - b. The cocaine is admissible because it was seized in plain view once agents entered the house.
 - c. The cocaine is inadmissible because the plain view doctrine does not apply to the seizure of the cocaine under the facts presented.
 - d. The cocaine is inadmissible because the "discovery" of the drugs was not inadvertent - the agents knew it was there before they entered the house.
-

a. The cocaine is admissible because it was seen in plain view from a public place.

INCORRECT: Though the agents were lawfully present when they saw the cocaine, and immediately recognized it as contraband, they had to have a lawful right to access the drugs to lawfully seize it. The information they obtained from the surveillance, however, could have been lawfully used to obtain a search warrant.

b. The cocaine is admissible because it was seized in plain view once agents entered the house.

INCORRECT: See justification a. Since the agents were not lawfully present when they seized the cocaine, the plain view doctrine does not apply.

c. The cocaine is inadmissible because the plain view doctrine does not apply to the seizure of the cocaine under the facts presented.

CORRECT: See justification a.

d. The cocaine is inadmissible because the "discovery" of the drugs was not inadvertent - the agents knew it was there before they entered the house.

INCORRECT: Inadvertence is no longer a prerequisite to a lawful plain view seizure. For example, assume that agents had probable cause to search for two contraband items (A and B), but obtained a search warrant for only item A. While lawfully present executing the search warrant for A, they see item B in plain view, and immediately recognize it as contraband. Item B could lawfully be seized under the plain view doctrine. The fact that they had PC (but no warrant) to search for B before entering does not destroy the applicability of the plain view doctrine.

30. Federal agents have been trying for weeks to catch Williams, who they have a hunch is manufacturing false identification cards. Frustrated with their lack of progress and the fact that Williams "is getting away with a crime," agents walk up the sidewalk to Williams front door, knock, and identify themselves as agents. Pursuant to the agents' request to come in and talk, Williams admits the agents into the house, where they gather in the living room. One of the agents looks down on the floor and beside his foot is what he immediately recognizes as a marijuana cigarette. The agent retrieves the marijuana, signals the other agents to leave, and all the agents depart without arresting Williams. Concerning the admissibility of the cigarette the agent seized:

- a. It is admissible because it was seized pursuant to the plain view doctrine.
 - b. It is admissible because the agents had consent to search the house.
 - c. It is inadmissible because the agents were in the house to discuss false identification documents, not a drug offense.
 - d. It is inadmissible because the agents did not arrest Williams when they found the cigarette.
-

a. It is admissible because it was seized pursuant to the plain view doctrine.

CORRECT: The agents were granted consent to enter the house. They were lawfully present in the living room when an agent saw the cigarette on the floor. The requirements of the plain view doctrine were met: lawful presence, immediately apparent the item was evidence of a crime or contraband, and a lawful right to access the evidence.

b. It is admissible because the agents had consent to search the house.

INCORRECT: See justification a. The agents did not search the house. In addition, the agents did not have consent to search it.

c. It is inadmissible because the agents were in the house to discuss false identification documents, not a drug offense.

INCORRECT: See justification a. What is important is that the agents were lawfully present when one saw what was immediately recognized as a marijuana cigarette. It doesn't matter that the reason they asked to come in was for a matter different than the type of criminal evidence one saw in plain view.

d. It is inadmissible because the agents did not arrest Williams when they found the cigarette.

INCORRECT: There is no requirement that officers arrest a defendant once probable cause develops.

31. Park Police officers see Ralston driving his car at an excessive speed on a park highway. Ralston is stopped for speeding and, during the investigation, the officers develop probable cause Ralston is driving while intoxicated. Ralston is arrested for that offense and his vehicle is towed to a secure, Park Police impoundment area. Pursuant to Park Police standardized policy to inventory all impounded vehicles within 24 hours, the officers inventory Ralston's car the next day. In the trunk they find a suitcase. They open the suitcase and discover a stash of counterfeit US currency. Concerning the admissibility of the currency in a court of law:

- a. It is admissible because Ralston had been arrested, and this search incident to arrest permitted searching the suitcase.
 - b. It is admissible because the agents lawfully opened the suitcase.
 - c. It is inadmissible because the opening of the suitcase was not contemporaneous with the arrest.
 - d. It is inadmissible because the suitcase had nothing to do with the offense for which Ralston was arrested.
-

a. It is admissible because Ralston had been arrested, and this search incident to arrest permitted searching the suitcase.

INCORRECT: The suitcase was opened pursuant to an inventory, not a search incident to arrest. A search incident to arrest under these facts would not allow the officers to go into the trunk. In addition, a search incident to arrest must be substantially contemporaneous with the arrest.

b. It is admissible because the agents lawfully opened the suitcase.

CORRECT: This was a lawful inventory because there was a standardized policy. The officers did not exceed the scope of an inventory because the suitcase is a place where a person ordinarily stores personal property. Had the officers found the currency by cutting open a spare tire, for example, they would have exceeded the scope of the inventory because one does not ordinarily store personal property there.

c. It is inadmissible because the opening of the suitcase was not contemporaneous with the arrest.

INCORRECT: Did you confuse a search incident to arrest with an inventory? An SIA must be substantially contemporaneous with the arrest. Not so with an inventory, so long as it is conducted in accordance with a standardized agency policy.

d. It is inadmissible because the suitcase had nothing to do with the offense for which Ralston was arrested.

INCORRECT: The purpose of an inventory is not to conduct a criminal search for evidence. Inventories are permitted to protect the LEO and others from dangerous objects that may be present, to protect the owner's property, and to protect LEOs from false claims about damaged or missing property when the owner retrieves the property.

32. There is probable cause to arrest Jones for felony assault, but a warrant has not yet been issued. Officers call Jones at his home, verify that Jones is home, knock at the front door, announce their identity and purpose, and demand entry. While waiting for a reply, officers on the public street see what they immediately recognize to be a marijuana plant in the living room window. The officers receive no reply, so they force open the door and arrest Jones inside the house. During the protective sweep, they seize the plant they saw in the window. Concerning the admissibility of the marijuana plant at Jones's trial for possession of marijuana:

- a. It is admissible because it was in open view from a public area and subject to seizure under the plain view doctrine.
 - b. It is admissible because the officers had probable cause to arrest, and they lawfully entered the house under hot pursuit.
 - c. It is not admissible because the protective sweep was unlawful.
 - d. It is not admissible because a protective sweep is limited to looking for people.
-

a. It is admissible because it was in open view from a public area and subject to seizure under the plain view doctrine.

INCORRECT: There was no arrest warrant and no authority (consent or hot pursuit) to enter Jones' house. This makes the protective sweep unlawful, and the fruits of the sweep will be suppressed. Though the officers saw the plant in open view from a public place, the facts provide no lawful right of access to the plant.

b. It is admissible because the officers had probable cause to arrest, and they lawfully entered the house under hot pursuit.

INCORRECT: The facts here do not support hot pursuit; Jones wasn't being pursued from a public place to a private one. The officers only knew that Jones was at home. This makes the protective sweep unlawful, and the fruits of the sweep will be suppressed.

c. It is not admissible because the protective sweep was unlawful.

CORRECT: See justification a. Because the entry was unlawful, the protective sweep was also unlawful. The officers were not lawfully present, making the plain view doctrine inapplicable.

d. It is not admissible because a protective sweep is limited to looking for people.

INCORRECT: See justification a. In addition, while a protective sweep is to look for people, anything discovered in plain view during a lawful protective sweep, which is immediately apparent to be the evidence of a crime, may be seized. Plain view will not apply here because the officers were not lawfully present.

Courtroom Evidence Practice Exam

1. Which of the following correctly describes what a jury may do if evidence is suppressed?
- A. The jury may fully consider evidence that is suppressed.
 - B. The jury may not consider evidence that is suppressed.
 - C. The jury may consider evidence that is suppressed, but cannot give it the same, full consideration as other evidence.
 - D. The jury may not consider evidence that is suppressed, but the lawyers may refer to it as “evidence in the case.”

Correct Answer: B. A suppression hearing is held in the presence of the judge. The jury is not present. If the evidence is suppressed, that means that the evidence is not admissible and the jury will not know about that evidence. Since the evidence is not admitted, the lawyers cannot refer to it in the case.

2. What occurs after there is an objection to evidence at a trial?
- A. Because there is an objection, the evidence will not be admitted.
 - B. Because there is an objection, the evidence will be admitted.
 - C. If the judge sustains the objection, the evidence will be admitted.
 - D. If the judge overrules the objection, the evidence will be admitted.

Correct Answer D. When there is an objection to evidence, the judge must rule on the objection. When an objection is sustained (the judge agrees to the objection), the evidence will not be admitted. If the judge sustains the objection (agrees to the objection,) the evidence is not admitted. A jury cannot consider evidence when the judge sustains an objection.

3. The U.S. Government is prosecuting a murderer who killed some doctors. During the trial, the AUSA plans to offer a weapon, found at the scene and registered to the defendant. In order to get the weapon admitted into evidence, the AUSA must:

- A. Offer the testimony of a witness that the weapon was recovered at the scene.
- B. Offer a picture of the weapon to save time.
- C. Not offer the murder weapon unless the defendant takes the stand and admits that it is his weapon.
- D. Not offer the murder weapon since the only way to get the rifle admitted is through the testimony of an expert witness.

Correct Answer: A. A the party offering an item into evidence is required to lay a foundation for it. A proper foundation consists of evidence, usually in the form of testimony, that the item is what the party offering it claims it to be. In this case, a foundation is laid through the testimony of a witness who can testify from personal knowledge that the exhibit being offered in court is the one they saw, seized, or collected. Answer B is not correct, because, while the photo might be admitted, it won't get the weapon admitted. Answer C is incorrect because it is not a requirement that the defendant take the stand and admit it is his weapon. In fact the defendant has the right not to take the stand and testify. Answer D is incorrect because it is not a requirement that an expert testify in order to lay a foundation for this evidence.

4. Evidence was seized during the execution of a search warrant. If a chain of custody is properly prepared for the item, does that eliminate the need to lay a foundation?

- A. Yes, a proper chain of custody satisfies all admissibility requirements.
- B. Yes, provided that the person who seized the evidence is the first person on the chain of custody form.
- C. No, a foundation is still required.
- D. No, the seizure of the evidence must be attested to by a corroborating witness.

Correct Answer: C. For physical evidence to be admissible in court, there must be a showing that it is authentic, that is, some evidence the item is what its proponent claims it to be. In court, the process of authenticating the evidence is called "laying the foundation." A foundation is laid by the AUSA based on facts collected by officers and agents. A foundation can be laid in two ways. The first way is to have a witness testify as to their personal knowledge. In the case of seized evidence, this will usually be the officer who first seized the evidence. The other method of authentication is through self-authentication for public records and reports or business records. Even when a proper foundation is laid, it is still necessary to be able to fend off claims of alterations to the evidence or mishandling. That is the purpose of the chain of custody. Answer C is the correct answer because even if the chain of custody is correct, a foundation must still be laid in court. Answer A is incorrect because a chain of custody does not satisfy authentication requirements. Answer B is incorrect because even though the first person on the chain of custody is usually the person who seized the evidence (and would lay the foundation in court), the foundation must still actually be laid in court with that witness testifying. Answer D is incorrect because there is no rule that the seizure of evidence must be attested to by a corroborating witness.

5. Despite his checkered past, Cynthia decided to marry Mark. On their honeymoon to Las Vegas, she saw him brazenly steal a vending machine with \$1,000 of postage stamps inside. Although he never talked to his wife about the crime, Mark's new family obligations led him to talk to his psychotherapist about the crime during therapy and confess it to his priest as well. After being caught, he told the whole story to the lawyer appointed to represent him at his initial appearance. Not liking that lawyer's advice, Mark fired her and hired another lawyer. On the morning of his federal trial, he sees his wife, his psychotherapist, his priest and his first lawyer entering the prosecution witness waiting room. Which witness is he least likely to be able to prevent from testifying by solely by applying the law of privileges?

- A. His wife.
- B. His psychotherapist.
- C. His priest.
- D. His first lawyer.

Correct Answer: A. (His wife.) Cynthia can refuse to testify against her husband. If Cynthia waives that privilege, she will be allowed to testify about what she saw (but not about what Mark may have told her.) Mark can prevent testimony about his admissions to his psychotherapist and his priest since he is the holder of these privileges. He can also prevent his first lawyer from testifying about their confidential communications, even though he later fired that lawyer.

6. A 22-year-old son is visiting his mother and father. While sorting his laundry, his mother finds a suspicious vial of pills in his pants pocket. She takes them to the police. They do a field test that proves positive for cocaine, initiate a chain of custody document, and send it to the lab. The laboratory confirms the pills are tabletized cocaine. On the day of trial of the son for drug possession, which problem would be the hardest for the prosecutor to overcome?

- A. The mother's assertion of the parent-child privilege.
- B. The father's asserting of the spousal privilege to prevent the wife and mother from testifying to the circumstances surrounding her discovery of the cocaine.
- C. The mother's failure to appear at trial.
- D. The failure to produce documents relating to the original field test of the cocaine.

Correct Answer: C. The parent-child privilege is not recognized in federal court. The spousal privilege is not applicable on these facts. The loss of documentation concerning the original field test is problematic, but not fatal so long as chain of custody and laboratory confirmation of the cocaine can be established. But if the mother is not available to testify, a proper foundation for introduction of the drugs as being found in the son's clothing cannot be laid, and the case is likely to be dismissed.

7. George Gabs has been serving as a government informant for DEA on a federal cocaine trafficking case in California. George Gabs' information has been so reliable that DEA agents have successfully made a trafficking cocaine case against a network of fifteen defendants. During pretrial hearings, Defense counsel informs the judge that one of the pending defense motions before the court is to require the government to reveal the informant's identity so that defense counsel can adequately prepare a defense for trial. Who holds the privilege?

- A. As a government employee, the agent holds the privilege.
- B. The informant holds the privilege.
- C. The defense attorney holds the privilege.
- D. The AUSA holds the privilege on behalf of the U. S. Government.

Correct Answer: D. The government-informant privilege is different in two respects: (a) what is privileged is not the communication, but the identity of the informant and information that would reveal the informant's identity, and (b) the holder of the privilege is not the person who made the communication, but to whom the communication was made (the government). The government holds this privilege and the AUSA, on behalf of the government, is the one who decides whether or not to waive it. A judge may require the AUSA to reveal the informant's identify if that would be helpful and relevant to the defense's case. If the judge decides that the informant's identity should be revealed, the AUSA must either do so or dismiss the case. Since the agent is not the holder of the privilege, answer A is incorrect. Since the informant is not the holder of the privilege, answer B is incorrect. Since the defense attorney is not the holder of the privilege, answer C is incorrect.

8. Officer Jones is on-duty when a citizen walks up and says, "Officer, a friend told me there are some people trying to break into a building down the street." May the officer lawfully use the information she received from the citizen?

- A. No, because what the friend said is hearsay.
- B. No, because the reports of citizens on the street are unreliable.
- C. Yes, she may consider the information because the hearsay rule applies only at trials.
- D. Yes, she may consider the information because even though it is hearsay, there is an exception that applies.

Correct Answer C. With the exception of privileges (like the attorney-client privilege, for example) the rules of evidence apply only to trials. When an officer receives information on the street, he is not in trial and the hearsay rule does not apply.

9. The prosecution in a robbery case is trying to prove that the defendant is the person who robbed the victim. Which one of the following is an example of circumstantial evidence to prove this point?

- A. The victim testifies, “The defendant stuck a gun in my face and demanded money.”
- B. A witness testifies, “I saw the defendant point a gun at the victim.”
- C. A police officer testifies, “I asked the defendant if he robbed the victim and the defendant said yes.”
- D. A witness testifies that the defendant’s gun was found near the scene of the robbery soon after the robbery occurred.

Correct Answer: D. Answers A through C are all direct evidence. In other words, they tend to prove the matter in question directly without the use of an inference or deduction. Answer D is circumstantial evidence. It does not prove the robbery directly, but may do so indirectly through an inference that if the defendant’s gun was found near the robbery scene soon after the robbery, the defendant might have been the robber.

10. Joe Madman entered the First National Bank of Florida to commit an armed robbery. He was dressed in all black and wearing a red bandanna which covered the lower portion of his facial area during the robbery. He rushed up to the bank teller and demanded, “Give me all your money. Put it in my bag now or I’ll blow your head off!” The teller could see he had a black Glock pointed at her head. The teller recognized his distinct voice immediately. Not only was he a regular customer, but he also sang in the church choir with her. After Joe Madman was apprehended, he was tried for armed robbery. At trial will the bank teller be able to testify she recognized the defendant’s voice?

- A. Yes, because she is familiar with it. Her lay witness testimony is acceptable.
- B. No, because she is not allowed to give her opinion since she is not an expert.
- C. Yes, but only if Madman testifies at trial.
- D. No, because identifications can not be based upon voice recognition.

Correct Answer: A. A lay witness can give an opinion when: (a) the opinion is rationally based on the witness’ perception and personal knowledge, (b) the opinion is helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue, and (c) the opinion is not one that is based on scientific, technical, or other specialized knowledge. Some examples of a proper lay witness opinion include: identification of handwriting, and voices, provided that the witness is sufficiently familiar with them. A lay witness could also testify as to a person’s emotional conditions.

11. Susie is on trial for forging prescriptions for oxycontin, a controlled substance. The nurse that works as office manager for the doctor, whose prescription pad was stolen by Susie, is one of the prosecution's main witnesses. In order to prove that it is Susie's handwriting which appears on the forged prescriptions, the prosecutor calls her brother, Tom, who is to testify that he is familiar with Susie's handwriting, and the writing on the prescription is definitely his sister's. Is this testimony admissible?

- A. Yes, because, the witness has sufficient familiarity with his sister's handwriting.
- B. No, because, the witness must be qualified as an expert.
- C. Yes, because, anyone may testify as to handwriting.
- D. No, because the witness is the defendant's brother and he may be biased.

Correct Answer: A. A lay witness may give an opinion only when (a) the opinion is rationally based on the witness' perception and personal knowledge, (b) the opinion is helpful to a clear understanding of the witness' testimony or the determination of a fact is issue, and (c) the opinion is not one that is based on scientific, technical, or other specialized knowledge. Identification of handwriting, if the witness has sufficient familiarity with that handwriting, is a good example of proper lay witness opinion. Here, it is not necessary that the witness be qualified as an expert, so answer B is incorrect. Answer C is incorrect because the witness who testifies as to the handwriting must be familiar with it. Answer D is incorrect because even though a witness can still testify, the witness' bias can be explored on cross-examination.

12. Tom Jones and Bob Smith kidnapped a young eight year old girl who was walking to school. After being arrested, Bob Smith told the investigators that the kidnapping was Tom's idea. At trial Bob changes his story and claims that the eight year old girl begged them for a ride, and that he didn't pay attention to how Tom treated the child. The prosecution may lawfully:

- A. Attack Bob's credibility with his prior inconsistent statements to the investigators.
- B. Attack Bob's credibility since he was not in a position to observe the events.
- C. Not attack Bob's credibility since he is testifying under oath during the trial.
- D. Not attack Bob's credibility since he is obviously confused about the events.

Correct Answer: A. A witness can be impeached by his prior inconsistent statements. B is incorrect because Bob has already given statements that showed he observed the events. C is incorrect because Bob can be impeached by prior inconsistent statements. D is incorrect because Bob can be impeached based upon his previous statements. A witness can also be impeached on the fact he is confused about the events to which he is testifying.

13. Fred Smith is the defendant in a trial for shoplifting. 6 years ago, Fred received a felony conviction for theft. Is this conviction admissible against Fred during the case in chief (the case on the merits)?

- A. Yes, because whether Fred testifies or not, the conviction is admissible to show that Fred is a thief.
- B. If Fred testifies, the prior conviction is admissible to impeach Fred.
- C. No, because convictions are admissible to impeach any witness except a defendant.
- D. Even if Fred testifies, the prior conviction is inadmissible because it is not relevant.

Correct Answer: B. One cannot use uncharged misconduct to show “the defendant did it before so he did it again.” This rule makes A an incorrect answer. If a witness - to include a defendant- testifies, they may be impeached to lessen their credibility (believability) in the eyes of the jury. One form of impeachment is a felony conviction that is 10 years old or less or any conviction for perjury or crimes of falsity. The type of offense for which a defendant was convicted does NOT have to be similar to the type of offense that is being tried; remember that “propensity” is not a basis for admissibility. Prior convictions are admissible to impeach because the fact that a person has been convicted of a felony, or making false statements, is a matter the jury may consider in deciding whether to believe the witness. For these reasons, B is the correct answer. C is incorrect because any witness who testifies, to include the defendant, can be impeached with a prior conviction that meets the criteria mentioned above. D is incorrect because evidence that may attack a witness’ credibility is relevant. Remember that arrests without a conviction, and juvenile adjudications, are not “convictions” for purposes of impeachment.

14. Timmy Smith, a prominent local businessman, is on trial for kidnapping and raping two young girls from his neighborhood who were only ten years old. Timmy Smith owns a pest control business and has faithfully donated over one million dollars to the local church he has attended for the past five years. During his trial, the preacher of his church testifies that he has known the defendant for over ten years, and that he is not the type of man that would ever harm a child. What about the preacher’s testimony might be a basis for impeachment?

- A. The defendant has donated to the church.
- B. The preacher and the defendant are friends.
- C. The defendant is on trial for stealing.
- D. Both A and B.

Correct Answer: D. A witness may be biased for or against another witness or an issue in trial because the witness with a bias may tend to color or slant their testimony. Bias can arise when witnesses are members of similar groups such as attending the same church. Also, in this example, the defendant has contributed financially to the preacher’s church. The preacher’s credibility could be attacked based upon his bias towards the defendant.

15. You and your partner investigated Sam Criminal for 2 years. Your partner compiled a lengthy investigative report. You did not make a report. You testify for the government at Sam Criminal's trial. During direct-examination you are asked the name of Sam Criminal's wife. At that moment, you can't remember her name. However, you do remember that the name of Sam Criminal's wife is in your partner's investigative report, and that the AUSA brought that report to the trial. Can your partner's investigative report be used to refresh your memory?

- A. No, because the information in the report is about Sam Criminal's wife, not the person on trial.
- B. No, because it was prepared by your partner, and not you.
- C. Yes, but only if your partner took an oath that the report is true.
- D. Yes, because anything can be used to refresh your recollection.

Correct Answer: D. Anything can be used to refresh recollection, regardless of whether it was prepared by the witness or not. A is incorrect because a witness may refresh their recollection regarding any subject on which they are questioned at trial. B is incorrect because it is acceptable to use your partner's report to refresh your memory even if you did not prepare the report. C is incorrect because anything can be used to refresh a witness' recollection. If a document is used it does not have to have been made under oath.

16. Anna Smith is the mother of a child victim who was kidnapped and murdered five blocks from the family's residence. During the trial of her child's killer, Ms. Smith is asked to give the approximate date and time she first noticed her child missing. She can not remember, but the investigator has a copy of her phone records showing when the mother of the victim first called the police. Can the phone records be used to refresh Ms. Smith's memory?

- A. No, the phone records were not made under oath.
- B. No, a witness can only use notes or documents he or she prepared to refresh memory
- C. Yes, because the jury will have the phone records in evidence anyway.
- D. Yes, because a witness can use any document to refresh memory, regardless of whether or not the witness prepared it.

Correct Answer: D. If a witness forgets a fact while testifying, their memory can be "refreshed." The rule is that "anything can be used to refresh a witness' memory." Sketches, photos, physical objects, reports, notes, and even "unofficial items" such as documents prepared by other LEOs or non-LEOs can be used. Documents or statements used to refresh memory do not have to be under oath. When a witness' memory is refreshed, the witness can then testify from memory. Answer A is wrong, because there is no requirement that the documents be made under oath. Answer B is wrong, because anything can be used to refresh a witness' memory including the notes or documents of others. Answer C is wrong, because the report or record used to refresh memory is neither read nor given to the jury as the witness will be testifying from their refreshed memory. The phone records will not be submitted as evidence, but rather will be used by the witness to refresh memory.

Students should note that while a document used to refresh memory will not be given to the jury, it will be shown to the defense counsel. The defense counsel can use other information in the document during cross-examination.

17. In order to use your notes during testimony to refresh your recollection, which is true regarding when the jury sees your notes?

- A. The jury must have received your notes at the start of the trial before you can use them.
- B. The jury must be given a copy of your notes immediately following your testimony.
- C. The jury must be given a copy of your notes before the conclusion of the evidence.
- D. It is irrelevant whether the jury ever sees a copy of your notes.

Correct Answer: D. Using notes to refresh recollection has nothing to do with whether the jury ever sees the notes. A copy of the notes may be offered into evidence for some other reason, but they will not be provided to the jury when they are only used to refresh witness recollection.

18. You arrest Sam for fraud. After Sam waives his Miranda rights, Sam tells you, “Yes, I scammed that little old lady for all her life savings.” At trial and during the government’s case in chief, you are asked to tell the jury what Sam told you during the interview. The defense objects claiming the statement is hearsay. Is the statement admissible?

- A. No, because the statement is hearsay.
- B. No, because the government is required to call the defendant to testify in the matter.
- C. Yes, because the statement is not hearsay.
- D. Yes, because the statement is hearsay but subject to an exception.

Correct Answer: C. Statements and admissions of the defendant that are offered by the prosecution are excluded from the definition of hearsay. So, if a defendant makes an out of court statement that is offered in court, that statement is admissible and no exception is necessary. Statements and admissions of a defendant are not hearsay because the government is unable to call the defendant to the stand to have the maker of the statement testify. (On the other hand, if the defense offers the statement of the defendant, it is hearsay – because the defense can call the defendant to the stand.) Answer A is incorrect because, as stated above, the defendant’s statement is not hearsay. We hope you said B is incorrect; the government can NEVER call the defendant to the stand during a trial. D is incorrect because the defendant’s statement is not, by definition, hearsay and therefore an exception is not necessary.

19. You are a uniformed officer on patrol and are called to a violent, domestic disturbance. When you arrive at the scene, you see a man and woman arguing. Suddenly, the woman appears to lunge at the man, stab the man with a shiny object, and then flees. As soon as the woman made the stabbing motion, the man jumps back and exclaims, "I can't believe she cut me!" You learn that the man and woman are not married. When the ambulance arrives, an EMT asks, "How did you get this cut?" The man replies, "I got stabbed with a knife." A knife is never found. After the woman is indicted, you learn that, unfortunately, the man is killed in an auto accident and obviously will not be able to testify at the trial. At the woman's trial for assault with a dangerous weapon, the prosecution offers the statement the victim made when stabbed and the statement to the EMT. Are these statements admissible?

- A. Both statements are admissible because reliable witnesses can testify they were in fact made.
- B. Both statements are admissible because, though hearsay, there are exceptions that apply.
- C. Neither statement is admissible because they are both hearsay and no exceptions apply.
- D. The statement when being stabbed is admissible, but the statement to the EMT is not because the EMT is not a physician.

Correct Answer B. The hearsay rule states that if (1) a statement is made out of court and that statement is (2) offered in court and (3) the statement is offered for the truth of the matter asserted, then the statement is hearsay. Hearsay is inadmissible in court unless there is an exception. Here, the prosecutor wants the jury to hear the two statements that the victim made, and furthermore, wants the jury to believe the statements are true (that the victim was cut, and that he was cut with a knife.) Both of the statements are hearsay. The excited utterance exception applies to the statement about being cut. The law recognizes that statements made under emotional stress are unlikely to be fabricated. The excited utterance exception applies when: (a) the person making the statement experienced a startling event, (b) the statement was made while the person was under the stress or excitement caused by the event, and (c) the statement was about the startling event. The medical treatment exception applies to the statement made to the EMT. That exception applies when a person is speaking to health care providers about why they are sick or injured. The law recognizes that during such circumstances a person is unlikely to fabricate. The elements of this exception are: (a) a statement is made for the purposes of medical diagnosis or treatment, (b) the statement concerns medical history, past or present symptoms, pain, sensations, or the cause of the medical problem, and (c) the statement is pertinent to the diagnosis or treatment. If the person making the statement believes that the person they are speaking to is someone who is going to help them medically, the statement can qualify under this exception. The statement need not be made to a physician, but just someone from whom the speaker expects to receive medical treatment or diagnosis, including nurses, EMTs, or physicians. A is incorrect because it doesn't matter that a reliable witness can testify to the statement; the statement is still hearsay. C is incorrect because though the statements are hearsay, exceptions apply to both statements. D is incorrect because, as previously discussed, both statements though hearsay, have exceptions. Students should remember that there are many other hearsay exceptions that are outside FLETC training, and your AUSA will know of them. The officer's job is to document the facts and circumstances surrounding the making of any statements so if the prosecutor needs to use a hearsay exception, he or she will have the facts to do so.

Officer Liability Practice Exam

1. Nelson was arrested for drunk driving and taken to the police station. While there, he got into a verbal dispute with Franks, a police officer on duty. When Nelson referred to Franks as a “Nazi,” Officer Franks, suddenly punched Nelson one time and broke Nelson’s nose. Nelson was handcuffed during this entire encounter. A second officer, Connelly, was present when this happened but failed to stop Officer Franks from punching Nelson. Nelson sued Connelly, alleging that Connelly had failed to intervene to protect him from Franks’ attack. According to the law, should Connelly be held liable for his failure to take action in this instance?

- a. Yes, because a law enforcement officer always has a duty to intervene when he sees another officer violating a person’s constitutional rights.
- b. Yes, because the actions of Franks are automatically imputed to Connelly, another law enforcement officer, who was present and observed the constitutional violation.
- c. No, because a law enforcement officer may only be held liable where he personally violated a person’s constitutional rights.
- d. No, because Connelly did not have any realistic opportunity to intervene and prevent Franks’ attack on Nelson.

Answer to question 1:

- a. Yes, because a law enforcement officer has a duty to intervene when he sees another officer violating a person’s constitutional rights.

INCORRECT: A law enforcement officer has an affirmative duty to intercede on the behalf of a citizen whose constitutional rights are being violated in his presence by other officers. This includes situations in which excessive force is being alleged. However, in order to hold a law enforcement officer liable under this theory, the officer must have had a realistic opportunity to intervene in the encounter. Here, the blow was struck so rapidly that Connelly had no realistic opportunity to intervene. In other words, this was not an episode of sufficient duration to support a conclusion that Connelly, who stood by without trying to assist Nelson, was a tacit collaborator with Franks.

- b. Yes, because the actions of Franks are automatically imputed to Connelly, another law enforcement officer, who was present and observed the constitutional violation.

INCORRECT: While a law enforcement officer may be held liable for failing to intervene to stop another officer from violating a person’s constitutional rights in his presence, there must be a realistic opportunity to intervene. Here, there was no such opportunity. Connelly cannot be held liable merely because of his presence and knowledge.

- c. No, because a law enforcement officer may only be held liable where he personally violated a person’s constitutional rights.

INCORRECT: It is not necessary that a police officer actually participate in the use of excessive force in order to be held civilly liable. Rather, an officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer’s use of excessive force can be held liable for his nonfeasance. An officer given a badge of authority may not ignore the duty imposed by his office and fail to stop other officers who mistreat a third person in his presence or otherwise within his knowledge.

- d. No, because Connelly did not have any realistic opportunity to intervene and prevent Franks’ attack on Nelson.

CORRECT: While a law enforcement officer may be held liable for failing to intervene to stop another officer from violating a person’s constitutional rights in his presence, there must be a realistic opportunity to intervene. Here, the blow was struck so rapidly that Connelly had no realistic opportunity to intervene.

2. While on patrol, Officer Morris saw a female screaming for help near an alleyway. When he approached her, he noticed her face was red, and that she had blood on her cheek. When asked what had happened, she told Morris she had been beaten by her boyfriend, Hearn. She also stated the assault had just occurred, and gave Morris a full description of Hearn and a bar where Hearn liked to hang out. Officer Morris went to the bar, found Hearn, and arrested him for assault. Ultimately, charges were dropped when the girlfriend failed to show up to testify at the preliminary hearing. Hearn then sued Officer Morris for false arrest, claiming that (a) there was no probable cause for his arrest; and (b) the fact that charges were dropped was proof that the arrest should not have been made. According to the law, can Morris be held liable for false arrest?

- a. Yes, because Morris did not have probable cause to arrest Hearn for the assault on his girlfriend.
- b. Yes, because the fact Hearn was never convicted of the assault was conclusive proof that Hearn should not have been arrested for it.
- c. No, because the information provided by the girlfriend was sufficient to establish probable cause for the arrest of Hearn.
- d. No, because Hearn did not object to the arrest at the time it occurred.

Answer to question 2:

a. Yes, because Morris did not have probable cause to arrest Hearn for the assault on his girlfriend.

INCORRECT: Probable cause may be established in a variety of ways, including information provided by victims of the crime. As a general rule, when police officers obtain information from a victim establishing the elements of a crime, the information is almost always sufficient to provide probable cause for an arrest in the absence of evidence that the information, or the person providing it, is not credible. Here, the information from the girlfriend, combined with Morris' own direct observations of her injuries, was sufficient to establish probable cause for Hearn's arrest.

b. Yes, because the fact Hearn was never convicted of the assault was conclusive proof that Hearn should not have been arrested for it.

INCORRECT: Because the standard for arrest is probable cause, not proof beyond a reasonable doubt, evidence that may prove insufficient to establish guilt at trial may still be sufficient to support an arrest. Thus, whether a suspect is actually found guilty or innocent of the crime for which he was arrested has no bearing on the validity of the arrest. Neither does the fact that charges in a case are not ultimately pursued.

c. No, because the information provided by the girlfriend was sufficient to establish probable cause for the arrest of Hearn.

CORRECT: Probable cause existed to arrest Hearn, based upon the victim's statements and Officer Morris' observations of her physical injuries. When the facts known to the officer at the time of arrest are sufficient to convince a reasonable officer that he had probable cause to arrest, the arrest is valid. This is true whether or not the arrested individual is ultimately convicted.

d. No, because Hearn did not object to the arrest at the time it occurred.

INCORRECT: Hearn's failure to object or resist the arrest is irrelevant for determining whether probable cause existed.

3. Which of the following statements regarding a failure to intervene is **TRUE**?
- a. A law enforcement officer has an affirmative duty to intervene and protect citizens from crimes committed by third parties.
 - b. A law enforcement officer must actually participate in an excessive use of force in order to be sued under *Bivens*.
 - c. A law enforcement officer must have a realistic opportunity to stop the harm in order to be held liable under *Bivens* for failure to intervene.
 - d. A law enforcement officer cannot be held liable for failure to intervene where the illegal act is being committed by a superior officer.

Answer to question 3:

- a. A law enforcement officer has an affirmative duty to intervene and protect citizens from crimes committed by third parties.
INCORRECT: A law enforcement officer generally has no affirmative duty to intervene and protect citizens from crimes committed by third parties. As one court has noted: This rule recognizes the simple reality that law enforcement officers cannot prevent every criminal act that is committed. Imposing liability on a municipality for failing to accomplish this impossible task would overload an already stretched legal system.
- b. A law enforcement officer must actually participate in an excessive use of force in order to be sued under *Bivens*.
INCORRECT: It is not necessary that a police officer actually participate in the use of excessive force in order to be held civilly liable. Rather, an officer who is present at the scene, and who fails to take reasonable steps to protect the victim of another officer's use of excessive force, can be held liable for his nonfeasance.
- c. A law enforcement officer must have a realistic opportunity to stop the harm in order to be held liable under *Bivens* for failure to intervene.
CORRECT: While a law enforcement officer may be held liable for failing to intervene to stop another officer from violating a person's constitutional rights in his presence, there must be a realistic opportunity to intervene and prevent the harm.
- d. A law enforcement officer cannot be held liable for failure to intervene where the illegal act is being committed by a superior officer.
INCORRECT: The rule regarding an officer's failure to intervene applies to all officers, regardless of rank, and includes those situations where the excessive force is actually being employed by a superior.

4. In a *Bivens* action, a plaintiff must allege which of the following elements:
- a. A federal law enforcement officer violated a Constitutional right while acting as a private citizen.
 - b. A federal law enforcement officer violated a Constitutional right while acting under color of law.
 - c. A state law enforcement officer violated a Constitutional right while acting as a private citizen.
 - d. A state law enforcement officer violated a Constitutional right while acting under color of law.

Answer to question 4:

a. A federal law enforcement officer violated a Constitutional right while acting as a private citizen.

INCORRECT: A *Bivens* action is only appropriate if a Constitutional violation was committed by a person acting under color of federal law. Not every action undertaken by a person who happens to be a police officer is attributable to the state. So, a law enforcement officer's purely private conduct, no matter how wrongful that conduct might be, is excluded. As a general rule, a law enforcement officer is acting under color of law when his conduct occurs in the course of performing an actual or apparent duty of his office, or in a situation where the officer's conduct is such that he could not have behaved in that way but for the authority of his office.

b. A federal law enforcement officer violated a Constitutional right while acting under color of law.

CORRECT: In a *Bivens* action, the plaintiff must allege two elements: (1) A violation of a Constitutional right, (2) by a person acting under color of federal law. Where no Constitutional violation has occurred, and/or the officer being sued was not acting under color of federal law, a *Bivens* action is not possible. In limited situations, a private citizen acting in concert with law enforcement officers can be considering acting under "color of law."

c. A state law enforcement officer violated a Constitutional right while acting as a private citizen.

INCORRECT: A state law enforcement officer cannot be sued in a *Bivens* action for violating a person's Constitutional or federal legal rights, but may be sued under Title 42 U.S.C. Section 1983. Section 1983 applies to *state* actors acting under color of *state* law. Further, not every action undertaken by a person who happens to be a police officer is attributable to the state. So, a law enforcement officer's purely private conduct, no matter how wrongful that conduct might be, is excluded.

d. A state law enforcement officer violated a Constitutional right while acting under color of law.

INCORRECT: A state law enforcement officer cannot be sued in a *Bivens* action for violating a person's Constitutional or federal legal rights. However, the officer may be sued under Title 42 U.S.C. Section 1983. Section 1983 applies to *state* actors acting under color of *state* law. A *Bivens* action would not be available to a plaintiff in the above situation.

5. During a search of Carson's home pursuant to a warrant to look for stolen credit cards, Thompson, a police officer, found five small, white rocks that resembled crack cocaine. He seized the items and took them back to the station. A preliminary field test indicated the items were not, in fact, cocaine. Nevertheless, Thompson sent the items for testing at the laboratory. Convinced that Carson was a drug dealer, and that the laboratory would confirm his suspicions about the rocks, Thompson decided to go ahead and obtain an arrest warrant. In the affidavit he submitted to the judge, Thompson stated: "A field test of the rocks in question indicated they each had properties consistent with cocaine. Based on Carson's possession of a controlled substance, I request an arrest warrant be issued." There was no other information presented to justify issuing the arrest warrant. Based on this, the judge issued the warrant and Carson was arrested. When the laboratory report confirmed the substance was a vitamin supplement, not cocaine, all charges were dropped and Carson was released. Carson sued Thompson, alleging that he had intentionally lied to the judge to obtain the arrest warrant. According to the law, can Thompson be held liable for his actions?

- a. Yes, because he knowingly and intentionally made a false statement in obtaining the arrest warrant.
- b. Yes, because any time a false statement is found in an affidavit, an officer can be held liable.
- c. No, because the false information presented in the affidavit was not essential to establishing probable cause to support issuance of the warrant.
- d. No, because Thompson's motivation in requesting the warrant was honorable, rather than malicious.

Answer to question 5:

a. Yes, because he knowingly and intentionally made a false statement in obtaining the arrest warrant.

CORRECT: The Fourth Amendment requires a truthful factual showing in an affidavit used to establish probable cause. Thus, a complaint that an officer knowingly filed a false affidavit to secure an arrest warrant can be the basis for a lawsuit. In order to succeed on such a claim, the plaintiff must show (1) a false statement knowingly and intentionally, or with reckless disregard for the truth, was included in the affidavit; and (2) the false statement was material, or necessary, to the finding of probable cause. Here, the statement regarding the field test was clearly false. Further, this statement was essential to the finding of probable cause, because there was no other information present to the judge. Thus, Thompson can be held liable.

b. Yes, because any time a false statement is found in an affidavit, an officer can be held liable.

INCORRECT: The Supreme Court does not require that all statements in an affidavit be completely accurate. Instead, the Court simply requires that the statements be reasonably believed or appropriately accepted by the affiant as true. Misstatements resulting from negligence or good faith mistakes will not open up an officer to liability under Franks v. Delaware. Additionally, in order for a misstatement to result in liability, it must be material to the finding of probable cause. Disputed issues are not material if, after crossing out any allegedly false information, the "corrected affidavit" would establish probable cause.

c. No, because the false information presented in the affidavit was not essential to establishing probable cause to support issuance of the warrant.

INCORRECT: Here, the statement regarding the field test was clearly false. Additionally, this statement was essential to the finding of probable cause, because there was no other information presented to the judge on the issue. Information is essential to a finding of probable cause when, if it were disregarded, the remainder of the affidavit would not support a probable cause determination. That is the case here.

d. No, because Thompson's motivation in requesting the warrant was honorable, rather than malicious.

INCORRECT: Thompson's motivation for misleading the judge is irrelevant to the inquiry here. Just as "evil" intentions do not make a Fourth Amendment violation out of a reasonable act, an officer's "good" intentions do not make a Fourth Amendment violation constitutional.

6. Which of the following statements regarding “qualified immunity” is **TRUE**?

- a. An officer is entitled to “qualified immunity” in a situation where the Constitutional right violated was not clearly established at the time of the incident.
- b. An officer is not entitled to “qualified immunity” if he is shown to have violated a plaintiff’s Constitutional rights.
- c. An officer is not entitled to “qualified immunity” even in situations where no Constitutional violation has occurred.
- d. Where an officer acted in good faith, he is automatically entitled to “qualified immunity.”

Answer to question 6:

a. An officer is entitled to “qualified immunity” in a situation where the Constitutional right violated was not clearly established at the time of the incident.

CORRECT: Law enforcement officers are entitled to qualified immunity where their actions do not violate a clearly established statutory or constitutional right that a reasonable person would have known existed. Stated differently, where law enforcement officers reasonably, albeit mistakenly, violate a person’s constitutional rights, those officials - like other officials who act in ways they reasonably believe to be lawful - should not be held personally liable.

b. An officer is not entitled to “qualified immunity” if he is shown to have violated a plaintiff’s Constitutional rights.

INCORRECT: Whether a Constitutional right has been violated is only one part of the “qualified immunity” analysis. If, under the plaintiff’s version of the facts, a constitutional violation occurred, the court must then decide whether the right was “clearly established” at the time of the violation. Even in situations where a Constitutional violation has occurred, an officer is entitled to “qualified immunity” if the right violated was not clearly established at the time of the incident.

c. An officer is not entitled to “qualified immunity” even in situations where no Constitutional violation has occurred.

INCORRECT: In deciding whether to grant officer qualified immunity, courts use a two-part analysis. The first part of the analysis requires a court to determine whether, under the plaintiff’s version of the facts, a constitutional violation occurred. If no violation has occurred, that ends the inquiry, and the officer is entitled to “qualified immunity.” As noted by the Supreme Court in Saucier v. Katz: “If no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity.”

d. Where an officer acted in good faith, he is automatically entitled to “qualified immunity.”

INCORRECT: “Qualified immunity” is not a “good faith” defense. Stated differently, the subjective state of mind of the officer involved in the incident is irrelevant. Instead, his or her actions must be assessed objectively, using an objective reasonableness standard.

7. Which of the following statements regarding a false arrest claim is **TRUE**?
- a. A plaintiff's claim of false arrest is based upon the Fifth Amendment right to due process of law.
 - b. The existence of probable cause is a complete defense to a claim of false arrest.
 - c. Where a plaintiff is acquitted of the charge(s) for which he was arrested, a false arrest claim is conclusively proven and the officer is automatically liable.
 - d. An officer is entitled to qualified immunity on a false arrest claim **only** where probable cause for the arrest actually existed.

Answer to question 7:

- a. A plaintiff's claim of false arrest is based upon the Fifth Amendment right to due process of law.
INCORRECT: A plaintiff's claim of false arrest is based upon the Fourth Amendment's right to be free from unreasonable seizures. More specifically, a person has a Fourth Amendment right to be arrested only upon a showing of probable cause. Where this right is violated, a lawsuit for false arrest is possible.
- b. The existence of probable cause is a complete defense to a claim of false arrest.
CORRECT: A law enforcement officer is entitled to qualified immunity on a false arrest claim where probable cause existed for the arrest. Probable cause to arrest constitutes justification and is a complete defense to an action for false arrest. Stated differently, in order for a wrongful arrest claim to succeed under either *Bivens* or Section 1983, a plaintiff must prove the police lacked probable cause for the arrest.
- c. Where a plaintiff is acquitted of the charge(s) for which he was arrested, a false arrest claim is conclusively proven and the officer is automatically liable.
INCORRECT: Whether a suspect is actually found guilty or innocent of the crime for which he was arrested has no bearing on the validity of the arrest. Because a conviction requires a higher standard of proof than an arrest, it is possible that evidence that is insufficient to establish guilt may still meet the lower standard of probable cause for an arrest. Thus, an arrest based upon probable cause is not invalidated if the suspect is later acquitted of the charges, nor is it in cases where charges are not ultimately pursued.
- d. An officer is entitled to qualified immunity on a false arrest claim **only** where probable cause for the arrest actually existed.
INCORRECT: It is not necessary that "actual" probable cause exist in order for an arrest to be objectively reasonable. Instead, the issue for immunity purposes is not probable cause in fact, but "arguable" probable cause. To say that probable cause is "arguable" means that it is possible for officers of reasonable competence to fairly disagree over whether probable cause exists. In other words, where reasonable officers in the same circumstances and possessing the same knowledge as the defendant's could have believed that probable cause existed to arrest, "arguable" probable cause is present.

8. Two City police officers beat a handcuffed prisoner until he identified his drug supplier. After the prisoner was convicted of drug possession, he sued the two officers for injuries suffered during his beating. The lawsuit is legally recognized under:

- a. the Federal Tort Claims Act
- b. the Good Samaritan Act
- c. Bivens
- d. 42 U.S.C. 1983

Answer to question 8:

- a. the Federal Tort Claims Act

INCORRECT: The FTCA is a law which allows the United States to be sued for the actions of federal employees committed within the scope of their employment. It does not apply to state or local police officers.

- b. the Good Samaritan Act

INCORRECT: The federal Good Samaritan Act defines additional circumstances under which a federal officer might be determined to be in the scope of their employment. It does not apply to state or local police officers.

- c. Bivens

INCORRECT: This would be correct if the two officers were federal agents, but Bivens does not authorize lawsuits against state or local officers.

- d. 42 U.S.C. 1983

CORRECT: This statute authorizes civil lawsuits against state and local officials who violate federally protected rights.

9. Two federal agents were serving a search warrant at a home for stolen property. Instead of wasting time going through the large home looking for the property, they agreed to simply beat the suspect until he told them where the stolen property was. The United States Attorney General directed that both agents be prosecuted under:

a. 18 U.S.C. 241

b. The Federal Tort Claims Act

c. Bivens

d. 42 U.S.C. 1983

Answer to question 9:

a. 18 U.S.C. 241

CORRECT: This is the federal criminal conspiracy against rights statute. When two or more agents conspire to deprive a citizen of constitutional rights, this is the appropriate statute to bring a criminal prosecution.

b. The Federal Tort Claims Act

INCORRECT: This is the federal statute authorizing civil claims against the government for negligence and for intentional torts committed by law enforcement personnel while in the scope of their duty. This statute is not a proper basis for criminal prosecution.

c. Bivens

INCORRECT: This would be correct if the question asked what the agents could be sued under, but Bivens does not authorize criminal prosecution. It is an analogy to 42 U.S.C. 1983 for civil lawsuits.

d. 42 U.S.C. 1983

INCORRECT: This statute authorizes civil lawsuits against state and local officials who violate federally protected rights. It does not create a criminal charge.

10. Dick Smith was a respected federal agent who was authorized to drive a government vehicle 24 hours a day because of his duties. On the way home from work one day, he spotted a flock of geese that had been digging up his fancy landscaping. Attempting to scare the geese away from his lawn, he accelerated and flashed his lights and siren. In his excitement, he sideswiped his neighbor's mailbox and knocked it off the post. The neighbor can bring a successful lawsuit under which of the following:

- a. Against Smith personally under Bivens
- b. Against the U.S. Government under the FTCA
- c. Against the U.S. Government under 42 U.S.C. 1983
- d. Against Smith personally for negligence

Answer to question 10:

- a. Against Smith personally under Bivens

INCORRECT: Bivens allows a lawsuit against individual federal officers for constitutional torts (a violation of 4th, 5th, or 8th Amendment rights). Although Smith was clearly negligent, the neighbor does not have a constitutional right to be free from negligence. Therefore, negligence can never be the basis for a proper Bivens claim.

- b. Against the U.S. Government under the FTCA

INCORRECT: The U.S. Government is liable under the FTCA for negligence if the federal employee was acting within the scope of employment. There is no federal job that allows agents to chase geese with a federal vehicle simply for digging up an the agent's lawn. Therefore, Smith was not in the scope of employment, and the U.S. Government will not be a proper defendant.

- c. Against the U.S. Government under 42 U.S.C. 1983

INCORRECT: This statute authorizes civil lawsuits against state and local officials who violate federally protected rights. Smith is a federal agent, and cannot be sued under this statute.

- d. Against Smith personally for negligence

CORRECT: Since Smith was negligent, and not acting within the scope of his employment, the neighbor can always file suit against Smith in his individual capacity in state court.

11. Federal Officer Jones was driving her government car on the way to interview a witness to a crime under investigation. Because she was being inattentive in her driving, she accidentally bumped into the car in front of her causing both damage to the car and minor injuries to the driver. The driver of the other car decides to sue for the property damage and personal injury. How will this case be tried, who will the defendant be, and if the plaintiff wins, who will pay the judgment?

- a. Jones will be the defendant in Federal court, and if the plaintiff wins, Jones will pay the judgment.
- b. Jones will be the defendant in Federal Court, but if the plaintiff wins, the United States will pay the judgment.
- c. The United States will be the defendant in State court, and if the plaintiff wins, the United States will pay the judgment.
- d. The United States will be the defendant in Federal court, and if the plaintiff wins, the United States will pay the judgment.

Answer to question 11:

a. Jones will be the defendant in Federal court, and if the plaintiff wins, Jones will pay the judgment.

INCORRECT: See answer D.

b. Jones will be the defendant in Federal Court, but if the plaintiff wins, the United States will pay the judgment.

INCORRECT: See answer D.

c. The United States will be the defendant in State court, and if the plaintiff wins, the United States will pay the judgment.

INCORRECT: See answer D.

d. The United States will be the defendant in Federal court, and if the plaintiff wins, the United States will pay the judgment.

CORRECT: With these facts, Jones was acting within the scope of her employment and her act was negligent. This brings the lawsuit under the protection of the Federal Tort Claims Act. The United States will be substituted as the defendant, and if the plaintiff wins, the United States will pay the judgment. The Federal Tort Claims Act, which operates as a partial waiver of sovereign immunity, also provides that the case will be tried in Federal District Court, without a jury (judge alone), and there is a two year statute of limitations. If the plaintiff initially brought the lawsuit in State Court, the case would be “removed” to Federal court.

12. Agent Rogers was assisting in the execution of an arrest warrant on Johnson. As Rogers approached Johnson, Johnson ran. Rogers chased Johnson and tackled him. Johnson got up and continued to be noncompliant, so Rogers used OC pepper spray to get Johnson under control so the arrest could be safely completed. Johnson wants to bring a lawsuit for the injuries he suffered during the arrest. How will this lawsuit proceed?

- a. Under the Federal Tort Claims Act.
- b. As a tort suit against Rogers personally because the Federal Tort Claims Act only protects Federal employees for their negligent, and not intentional, acts committed in the scope of their employment.
- c. As a tort suit against Rogers personally because Rogers was not in the scope of his employment at the time of his actions.
- d. As a criminal case against Rogers personally.

Answer to question 12:

- a. Under the Federal Tort Claims Act.

CORRECT: The FTCA is available to protect a Federal investigative or law enforcement officer for both negligent *and* intentional acts committed in the scope of the officer's employment. An investigative or law enforcement officer is defined as one who has the authority to arrest, execute searches, or seize evidence. The Federal Tort Claims Act protects Federal employees who are *not* Federal investigative or law enforcement officer *only* for their negligent, and not their intentional, acts.

- b. As a tort suit against Rogers personally because the Federal Tort Claims Act only protects Federal employees for their negligent, and not intentional, acts committed in the scope of their employment.

INCORRECT: Were Rogers not a Federal investigative or law enforcement officer, this answer would be correct. Look at distractor A above.

- c. As a tort suit against Rogers personally because Rogers was not in the scope of his employment at the time of his actions.

INCORRECT: Rogers was in the scope of his employment.

- d. As a criminal case against Rogers personally

INCORRECT: By definition, a lawsuit is not a criminal case.

Self-Incrimination Practice Exam

1. Federal agents suspect Ziggy is involved in using the mails to defraud insurance companies. Without probable cause, the agents arrest him for mail fraud and immediately take him to the federal building. Inside an office, the agents advise Ziggy of his Miranda rights. Ziggy waives his Miranda rights. The agents interrogate Ziggy and he fully confesses to the crime. The agents formally charge Ziggy with mail fraud and take him for an initial appearance. Under the U.S. Constitution, can the government lawfully use Ziggy's confession to prosecute him for the crime?

- a. Yes, because Ziggy waived his Miranda rights and confessed to the crime.
- b. Yes, because Ziggy waived his Miranda rights and the U.S. mails were used in the fraud scheme.
- c. No, because Ziggy was arrested and the agents failed to notify the Public Defender's Office.
- d. No, because Ziggy was illegally arrested and the confession was the fruit of the unlawful arrest.

ANALYSIS:

a. Yes because Ziggy waived his Miranda rights and confessed to the crime.

INCORRECT: Despite obtaining a full confession after a waiver of Miranda rights, the confession was the fruit of an unlawful arrest made without probable cause. An unconstitutional seizure under the Fourth Amendment can result in the suppression of a defendant's statement. If a defendant is arrested without probable cause and the confession is the fruit of the illegal arrest, it is not admissible at trial. Even though the confession after proper Miranda warnings may be "voluntary," the close causal connection between the illegal seizure and the confession will require its suppression.

b. Yes because Ziggy waived his Miranda rights and the U.S. mails were used in the fraud scheme.

INCORRECT: Despite the Miranda rights waiver, the confession was the "fruit" of an unlawful arrest made without probable cause. It does not matter what type of crime occurred.

c. No because Ziggy was arrested and the agents failed to notify the Public Defender's Office.

INCORRECT: There is no requirement that law enforcement officers notify the Public Defender's Office when a person is arrested.

d. No because Ziggy was illegally arrested and the confession was the fruit of the unlawful arrest.

CORRECT: The defendant's confession was the "fruit" of an illegal arrest made without probable cause. However, if a confession can be purged of the "taint" of an illegal arrest, it can be admissible against a defendant. Several factors are considered in determining whether a "taint" has been purged: the temporal proximity of the arrest and the confession; the presence of intervening circumstances; and the purpose and flagrancy of the official misconduct. Here, no intervening events broke the connection between Ziggy's unlawful arrest and his confession and therefore the Constitution requires its suppression.

2. Federal Agent Andy Sippowitz and his partner are investigating Smith for trafficking in fraudulent documents. After developing probable cause to arrest Smith, the agents see Smith walking through a public parking lot. The agents approach Smith, place him under arrest and take him to their field office. Once inside the office, Agent Sippowitz reads Smith the Miranda warnings. Smith says that he fully understands his Miranda rights and that he waives his rights. Agent Sippowitz begins asking Smith questions about his involvement in the fraudulent documents scheme. Smith tells the agents that they should go back to training school because they don't know how to investigate a case and that they have the "wrong guy." Agent Sippowitz then tells Smith that he can go the "easy way" or the "hard way." When Smith continues to deny his involvement in the crime, Agent Sippowitz locks the door to the interrogation room and begins slapping Smith in the face. Smith then confesses to his involvement in the fraudulent document scheme. Did the agents violate Smith's constitutional rights when they obtained his confession?

- a. Yes, because agents cannot interrogate a person to obtain a confession after a suspect has been arrested.
- b. Yes, because the agents violated the suspect's right to due process in obtaining the confession.
- c. No, because the suspect validly waived his Miranda rights and confessed after he was arrested.
- d. No, because the suspect initially lied to the agents and the agents had to obtain a truthful confession.

ANALYSIS:

a. Yes, because agents cannot interrogate a person to obtain a confession after a suspect has been arrested. **INCORRECT:** Law enforcement officers can interrogate a person and obtain a confession after a suspect has been arrested. However, prior to custodial interrogation, the agents must first advise the suspect of his/her Miranda rights and obtain a knowing, voluntary and intelligent waiver of those rights before interrogating the suspect and obtaining a confession.

b. Yes, because the agents violated the suspect's right to due process in obtaining the confession. **CORRECT:** The agents violated the suspect's right to due process when they obtained his confession by use of a beating. As such, the confession was not voluntary. A defendant's statement must be freely and voluntarily given to be admissible at a criminal trial. In this case, the suspect's will was overborne by the circumstances surrounding the giving of the confession. Although the suspect validly waived his Miranda rights, the method used by the agents to obtain the confession during the interrogation violated the suspect's right to due process under the U.S. Constitution.

c. No, because the suspect validly waived his Miranda rights and confessed after he was arrested. **INCORRECT:** Although the suspect validly waived his Miranda rights, the method used by the agents to obtain the confession during the interrogation violated the suspect's right to due process under the U.S. Constitution.

d. No, because the suspect initially lied to the agents and the agents had to obtain a truthful confession. **INCORRECT:** Although the suspect may be lying during the course of an interrogation, law enforcement officers cannot use interrogation methods that violate the Due Process clause of the U.S. Constitution to obtain a confession.

3. Oswald was dishonorably discharged from the armed forces. Oswald bought a firearm, a semi-automatic handgun, from a local drug dealer for \$100.00. Agents apprehended Oswald with the weapon and placed him under arrest. The agents then took him to their field office to interview him about the crime. After advising Oswald of his Miranda rights, the agents asked him if he wished to waive his rights and speak with them. In response, Oswald asked, “If I talk to you, will it help me out later?” The agents told Oswald that if he spoke with them, they would “make his cooperation known to the United States Attorney.” Oswald then waived his rights and questioning began. During questioning, the agents falsely told Oswald that they had interviewed a witness who saw the drug dealer selling the firearm to him. Upon hearing this, Oswald confessed to purchasing the firearm from the drug dealer. Which of the following statements is true?

- a. Oswald’s statement was voluntarily even though the agents falsely told Oswald that they had interviewed a witness who had implicated him in the crime.
- b. Oswald’s statement was coerced because the agents falsely told Oswald that they had interviewed a witness who had implicated him in the crime.
- c. Oswald’s waiver of rights was coerced because the agents told Smith they would make his cooperation known to the United States Attorney if he spoke with them.
- d. Oswald’s statements were lawfully obtained because once a suspect is properly advised of his Miranda rights, any subsequent statement complies with Constitutional safeguards.

ANALYSIS:

a. Oswald’s statement was voluntarily given even though the agents falsely told Oswald they had interviewed a witness who had implicated him in the crime.

CORRECT: Deception by law enforcement officers during an interrogation to get the truth does not automatically amount to coercion. Indeed, law enforcement officers commonly engage in such ruses as suggesting to a suspect that an accomplice has just confessed or that the officers have physical evidence against the suspect. The key inquiry is whether a defendant's will was overborne by the circumstances surrounding the giving of the confession. Here, the deception used did not cause the statement to be involuntary. Of note, it should be remembered that the voluntariness of a confession is distinct from the voluntariness of a waiver of Miranda rights. The Supreme Court has noted that any evidence that the defendant was threatened, tricked, or cajoled into a waiver will show that the defendant did not voluntarily waive his privilege.

b. Oswald’s statement was coerced because the agents falsely told Oswald they had interviewed a witness who had implicated him in the crime.

INCORRECT: See justification (a), above.

c. Oswald's waiver of rights was coerced because the agents told Oswald they would make his cooperation known to the United States Attorney if he spoke with them.

INCORRECT: A defendant's waiver of Miranda rights must be made voluntarily, knowingly and intelligently. This inquiry has two distinct dimensions: First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than by intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. An agent's truthful statement or promise to a defendant that the prosecutor would be told of the defendant's cooperation will not result in an involuntary waiver of Miranda rights.

d. Oswald's statements were lawfully obtained because once a law enforcement officer properly advises a suspect of his Miranda rights, any subsequent confession complies with U.S. Constitutional safeguards.

INCORRECT: Even if a suspect validly waives his/her Miranda rights, a statement can be suppressed under the Fifth Amendment if it is involuntary. A defendant's statement must be freely and voluntarily given to be admissible at a criminal trial. This due process concept is called "voluntariness." It must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight; nor by the exertion of any improper influence. In other words, the person must not have been compelled to incriminate himself.

4. Davis is suspected of making threatening telephone calls to a Federal judge. With the judge's consent, the agents record one of the threatening telephone calls. A Federal grand jury is convened to investigate. Thereafter, a grand jury subpoena is issued to Davis directing him to provide a voice exemplar (sample). Two agents arrive at Davis' house and serve the subpoena upon him. Pursuant to the subpoena, Davis reports to the federal courthouse. Davis tells the agents that he wishes to invoke his Fifth Amendment privilege against self-incrimination regarding the taking of his voice exemplar (sample). The agents ignore his statement, provide him with a transcript to read, and obtain his voice exemplar (sample). The voice identification unit at the crime lab compares the voice exemplar (sample) from Davis with the tape recorded threatening telephone call. The crime lab expert concludes, to a reasonable degree of scientific certainty, that Davis is the person who made the threatening telephone call to the judge. Which of the following statements is true?

- a. Requiring Davis to provide his voice sample pursuant to the subpoena violated his Fifth Amendment privilege against self-incrimination.
- b. Requiring Davis to provide his voice sample pursuant to the subpoena violated his Fifth Amendment due process rights.
- c. Requiring Davis to provide his voice sample pursuant to the subpoena violated his Fifth Amendment right to counsel under Miranda.
- d. Requiring Davis to provide his voice sample pursuant to the subpoena did not violate his Fifth Amendment privilege against self-incrimination.

ANALYSIS:

a. Requiring Davis to provide his voice sample pursuant to the subpoena violated his Fifth Amendment privilege against self-incrimination.

INCORRECT: The Fifth Amendment privilege against self-incrimination applies only when the accused is compelled to make a "testimonial" communication that is incriminating. The privilege does not apply to "non-testimonial" evidence. Testimonial evidence is communicative in nature and comes from an individual's thought processes, while non-testimonial evidence is that which tends to identify a person, such as fingerprints, handwriting samples, and voice samples. Voice exemplars (samples) identify physical characteristics and are therefore not protected by the Fifth Amendment privilege against self-incrimination because they are considered to be "non-testimonial" evidence.

b. Requiring Davis to provide his voice sample pursuant to the subpoena violated his Fifth Amendment due process rights.

INCORRECT: Requiring a suspect to produce non-testimonial evidence pursuant to a grand jury subpoena under these circumstances does not violate Fifth Amendment due process guarantees.

c. Requiring Davis to provide his voice sample pursuant to the subpoena violated his Fifth Amendment right to counsel under Miranda.

INCORRECT: The Supreme Court has repeatedly emphasized that Miranda warnings are due only when a suspect is interrogated by the police while the suspect is “in custody.” Here, Davis was not in custody at the time the voice sample was taken. Even if he were in custody, the taking of his voice sample was non-testimonial in nature, and there is no Fifth Amendment protection for such identifying characteristics.

d. Requiring Davis to provide his voice sample pursuant to the subpoena did not violate his Fifth Amendment privilege against self-incrimination.

CORRECT: The Fifth Amendment privilege against self-incrimination applies only when the accused is compelled to make a testimonial communication that is incriminating. The privilege does not apply to non-testimonial evidence. Voice exemplars (samples) are non-testimonial evidence beyond the scope of the privilege against self-incrimination. Thus, a suspect may be required to provide a voice sample, even when this sample will ultimately be used to “incriminate” the suspect.

5. Agents develop probable cause that Hinton is embezzling government property. The agents decide to arrest Hinton. They discuss a strategy to obtain a confession from him. Thereafter, they meet Hinton at his apartment and obtain Hinton's consent to come inside. They do not tell him that he is under arrest, nor do they tell him he is their prime suspect. Instead, they tell him they are conducting an investigation into an embezzlement of government property, and they ask him if there is a place they could speak privately. Hinton takes the agents to a nearby room. Once there, the agents inform Hinton that he isn't under arrest and he is not required to speak to them. The agents then question him regarding his knowledge of the missing government property, but do not read him his Miranda rights before doing so. Twice during the interview, Hinton left to use the bathroom, unaccompanied by the agents. Hinton confessed, was arrested, and was charged with embezzling government property. Did the agents violate Hinton's rights when they obtained his confession?

a. Yes, because at the time the questioning was conducted, the agents had focused on Hinton as a prime suspect.

b. Yes, because the agents had probable cause to arrest Hinton at the time of the interview and they intended to arrest him following its conclusion.

c. No, because until a suspect is formally arrested, Miranda warnings are not required.

d. No, because the agents weren't required to give Miranda warnings to Hinton in this situation.

ANALYSIS:

a. Yes, because at the time the questioning was conducted, the agents had focused in on Hinton as a suspect.

INCORRECT: A person is not in custody (arrest or the functional equivalent of arrest) for Miranda purposes simply because that person is the focus of a criminal investigation and is being questioned by authorities. Stansbury v. California. It is well settled that an officer's subjective and undisclosed view concerning whether the person being interrogated is a suspect is irrelevant to an assessment of whether the person is in custody.

Yes, because the agents had probable cause to arrest Hinton at the time of the interview and intended to arrest him following its conclusion.

INCORRECT: The only relevant inquiry regarding custody is how a reasonable person in the suspect's position would have understood his/her situation. Berkemer v. McCarty An officer's subjective and undisclosed view concerning whether the person being interrogated is a suspect is irrelevant to an assessment of whether the person is in custody. An officer's obligation to administer Miranda warnings attaches only where there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. Stansbury v. California. Since the agents' intent was unknown to Hinton at the time of the interview, their intent could have no effect on how Hinton understood his position at the time of the questioning.

c. No, because until a suspect is formally arrested, Miranda warnings are not required.

INCORRECT: Miranda warnings are required before interrogating a suspect who is either under arrest or the functional equivalent of arrest. Thus, there are times when a suspect must be read Miranda warnings, even though no formal arrest has been effected. For example, if a person is under restraint to a degree that amounts to the functional equivalent of arrest, then Miranda warnings must be given and a valid waiver of those warnings must be obtained before an interrogation can lawfully be conducted. For example, Miranda warnings were required when, at approximately 4 a.m., four police officers arrived at a suspect's home, entered his bedroom and began questioning the suspect. The warnings were required because the suspect was being interrogated and was in the functional equivalent of arrest.

d. No, because the agents weren't required to give Miranda warnings to Hinton in this situation.

CORRECT: An officer's obligation to administer Miranda warnings attaches only where there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. Stansbury v. California. A person being interrogated by law enforcement officers after being taken into custody must first be provided Miranda warnings and a valid waiver must be obtained before a lawful interrogation can be conducted. If the individual is not in "custody," the warnings need not be given. To determine whether "custody" is present, courts use a totality of circumstances approach to determine how a reasonable person in the suspect's position would have understood the situation. Here, the totality of the circumstances show that Hinton was not in "custody." Hinton had complete freedom of movement during the interview. He was never handcuffed or otherwise physically restrained. He was told that he was not under arrest, as well as that he did not have to speak with the agents if he did not wish to.

6. A hiker notified Federal officers that marijuana was growing in a field next to Interstate 95. The officers went on foot to investigate. When they arrived, they noticed Jones standing in the middle of the field placing an unknown item into his backpack. The officers yelled at Jones to stop what he was doing and to come over to where they were standing. After identifying themselves as law enforcement officers, the officers told Jones he was not under arrest. They told Jones he was being temporarily detained while they investigated the marijuana field. At that point, one of the officers asked Jones what he had placed inside the backpack. Jones admitted that it was marijuana from the field. The officers arrested Jones and marijuana was found inside the backpack. Did the officers violate Jones' constitutional rights when they obtained his admission?

- a. Yes, because interrogation was taking place after Jones was in custody, thus requiring Miranda warnings.
- b. Yes, because the officers suspected that Jones had marijuana in his backpack.
- c. No, because the officers were not required to give Miranda warnings to Jones in this situation.
- d. No, because until Jones was formally told he was under arrest, Miranda warnings were not required.

ANALYSIS:

a. Yes, because interrogation was taking place after Jones was in custody, thus requiring Miranda warnings.

INCORRECT: Miranda warnings are required before questioning a suspect who is either under arrest or the functional equivalent of arrest. Here, the officers were conducting a Terry stop, and Jones was not free to leave. However, in Berkemer v. McCarty, the Supreme Court held that Miranda warnings are generally not required when a person is questioned during a routine stop pursuant to Terry, because such stops are not "custodial" for purposes of Miranda. In this case, because the statement made by Jones regarding what was in the backpack was made during a valid Terry stop, the officers were not required to read him his Miranda warnings before asking him that question.

b. Yes, because the officers suspected that Jones had marijuana in his backpack.

INCORRECT: A person is not placed in the functional equivalent of custody for Miranda purposes simply because that person is the focus of a criminal investigation and is being questioned by authorities. Berkemer v. McCarty; Stansbury v. California

c. No, because the officers were not required to give Miranda warnings to Jones in this situation.

CORRECT: As noted above, Miranda warnings are generally not required during Terry stops. This is so for two reasons: First, by their nature, Terry stops are presumptively temporary and brief. This is quite different from a custodial interrogation that Miranda was designed to address. Second, the typical Terry stop is public, at least to some degree. In short, the atmosphere surrounding an ordinary Terry stop is substantially less "police dominated" than that surrounding the kinds of interrogation at issue in Miranda itself. For these reasons, Miranda warnings are not required in this situation.

d. No, because until Jones was formally told he was under arrest, Miranda warnings were not required.

INCORRECT: Miranda warnings are required before questioning a suspect who is either under arrest or the functional equivalent of arrest. Thus, there are times when a suspect must be read Miranda warnings, even though no formal arrest has been affected. For example, Miranda warnings were required when, at approximately 4 a.m., four police officers arrived at a suspect's home, entered his bedroom and began questioning the suspect. The warnings were required because the suspect was being interrogated and was in the functional equivalent of arrest.

7. Thomas was arrested for narcotics trafficking. Following his arrest, two Federal agents brought Thomas into an interrogation room, introduced themselves, and read him the Miranda warnings. When they asked him if he understood his rights, Thomas stated “yes.” When they asked him if he would be willing to waive his rights and answer their questions regarding the narcotics charges, Thomas stated, “Go ahead and ask what you want, but I’m not putting anything in writing.” Thomas also waived his right to consult with or have a lawyer present. Thomas refused to sign a written waiver form the agents had available. During the interrogations, the agents began to suspect Thomas was involved in the homicide of an undercover Federal agent that had occurred a few weeks earlier. Disregarding the narcotics crimes, the agents began to question him about the unrelated homicide, and Thomas orally confessed to the homicide. Did the agents violate Thomas’ constitutional rights when they obtained his confession?

a. Yes, because by refusing to put anything in writing, Thomas effectively invoked his right to silence, thus making any subsequent oral statements he made inadmissible.

b. Yes, because Thomas’ waiver was not made in writing, it was not valid, thus making any subsequent statements regarding the murder of the Federal agent inadmissible.

c. No, because Thomas only had Miranda rights regarding the narcotics trafficking charge for which he was arrested and not the homicide charge for which he had not yet been formally arrested.

d. No, because Thomas validly waived his right to remain silent and his right to an attorney, the questions regarding the murder of the Federal agent could be used against him, even though the questioning initially concerned narcotics.

ANALYSIS:

a. Yes, because by refusing to put anything in writing, Thomas effectively invoked his right to silence, thus making any subsequent oral statements he made inadmissible.

INCORRECT: Thomas waived his right to counsel and also agreed to speak with the agents even though he did not agree to put anything in writing. With this waiver, the agents could lawfully question Thomas and the oral statements Thomas made are admissible.

b. Yes, because Thomas’ waiver was not made in writing, it was not valid, thus making any subsequent statements regarding the murder of the Federal agent inadmissible.

INCORRECT: The mere refusal to sign a written waiver does not automatically render inadmissible all further statements made by the defendant. An express written statement of waiver of the right to remain silent or of the right to counsel is usually strong proof of the validity of that waiver, but is not inevitably either necessary or sufficient to establish waiver. The question is not one of form, but rather whether the defendant in fact knowingly, intelligently, and voluntarily waived the rights delineated in the Miranda case.

c. No, because Thomas only had Miranda rights regarding the narcotics trafficking charge for which he was arrested and not the homicide charge for which he had not yet been formally arrested.

INCORRECT: Custodial interrogation means questioning initiated by law enforcement officers after a person has been taken into custody. The safeguards prescribed by Miranda become applicable as soon as a suspect's freedom is curtailed to a degree associated with formal arrest. Under Miranda, it does not matter what crime the person has been arrested for – custody is custody. When a person is in custody, Miranda specifically requires that the police inform a criminal suspect that he has the right to remain silent and that anything he says may be used against him. As long as that warning has been given, a suspect's awareness of all the possible subjects of questioning in advance of interrogation is not relevant to determining whether the suspect voluntarily, knowingly, and intelligently waived his Fifth Amendment privilege.

d. No, because Thomas validly waived his right to remain silent and his right to an attorney, the questions regarding the murder of the Federal agent could be used against him, even though the questioning initially concerned narcotics.

CORRECT: In this case, Thomas received a valid rights advisement. He then voluntarily, knowingly, and intelligently chose to waive his Miranda rights with regard to making oral statements to the agents. For the above reasons, the statements made by Thomas can be used against him in the murder of the Federal agent.

8. Clark was arrested for the murder of a federal employee. He was read his Miranda rights, stated that he understood those rights, and then waived them. During the questioning that followed, Clark was asked by the interviewing officer about a number of pieces of evidence that pointed to him as the murderer. When the officer told Clark that his story didn't make sense, Clark replied, "Maybe I should talk to a lawyer." The officer continued his questioning of Clark, without clarifying whether or not Clark was invoking his right to counsel. Clark then confessed to the murder. Based on this confession, he was indicted for the murder. Did the agents violate Clark's constitutional rights?

- a. Yes, because Clark's statement was an invocation of his right to counsel under Miranda.
- b. Yes, because the officer failed to clarify whether Clark was requesting counsel or not.
- c. No, because Clark's statement was not an invocation of his right to counsel under Miranda.
- d. No, because Clark did not have a right to counsel during the questioning because he had not yet been charged with the crime.

ANALYSIS:

a. Yes, because Clark's statement was an invocation of his right to counsel under Miranda. **INCORRECT:** If a suspect requests counsel at any time during an interview, he is not subject to further questioning until a lawyer has been made available or the suspect himself reinitiates conversation with the officers. However, the suspect must unambiguously request counsel. He must state his desire to have counsel present with sufficient clarity that a reasonable police officer in the circumstances would understand the statement to be a request for counsel. If the statement fails to meet this requisite level of clarity, a police officer is not required to stop questioning the suspect. In this case, Clark's statement was not an unequivocal request for counsel, so the officer was not required to stop the interview.

b. Yes, because the officer failed to clarify whether Clark was requesting counsel or not. **INCORRECT:** In this case, Clark's request for counsel was ambiguous. The Supreme Court has noted that, when a suspect makes an ambiguous or equivocal statement it is good police practice for the interviewing officers to clarify whether or not the suspect actually wants an attorney. However, there is no rule requiring officers to ask clarifying questions. Clarifying questions help protect the rights of the suspect by ensuring that he gets counsel if he wants one, and will minimize the chance of a confession being suppressed due to subsequent judicial second-guessing as to the meaning of the suspect's statement regarding counsel. If the suspect's statement is not an unambiguous or unequivocal request for counsel, the officers have no obligation to stop questioning him.

c. No, because Clark's statement was not an invocation of his right to counsel under Miranda. **CORRECT:** A suspect must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney. If the statement fails to meet the requisite level of clarity, officers are not required to stop questioning the suspect. In this case, Clark's statement was not an unequivocal request for counsel, so the officer was not required to stop the interview.

d. No, because Clark did not have a right to counsel during the questioning because he had not yet been charged with the crime.

INCORRECT: The Supreme Court held in Miranda v. Arizona that a suspect who is subject to custodial interrogation has the right to consult with counsel and to have counsel present during custodial interrogation. Police must advise the suspect of his Miranda rights and obtain a valid waiver before custodial interrogation. Here, Clark did have a right to counsel under Miranda because he was in custody and was subjected to interrogation.

9. Marcus was arrested at a motel for wire fraud. Officers sought to question him and read him his Miranda warnings. When he indicated he wanted to speak to a lawyer, the interview was terminated and Marcus was booked into the jail. Shortly thereafter, Marcus contacted one of the jailers and said that he needed to talk to somebody “about a murder.” Marcus was removed from his cell and taken to an interview room. Two officers arrived, and asked Marcus if he had something he wished to discuss with them. Marcus replied that he had information about a murder that had taken place a few days earlier. The officers then again advised Marcus of his Miranda rights. Marcus indicated he understood these rights and waived them. However, Marcus refused to sign a written waiver. After Agents began questioning Marcus about the murder, Marcus admitted to being an accomplice to the murder. Did the officers violate Marcus’ constitutional rights when they obtained his confession?

- a. Yes, because the officers violated his Miranda rights by interrogating him after he had invoked his right to counsel.
- b. Yes, because both a written Miranda warnings and a written waiver are required when a suspect is being interrogated about a serious crime like murder.
- c. No, because the officers did not violate his Miranda rights by questioning him after he had invoked his right to counsel.
- d. No, because the officers were questioning Marcus about a different crime than the one for which he had previously invoked his right to counsel.

ANALYSIS:

a. Yes, because the officers violated his Miranda rights by interrogating him after he had invoked his right to counsel.

INCORRECT: In Edwards v. Arizona, the Supreme Court said that once an accused, having expressed his desire to deal with the police only through counsel, cannot be subject to further interrogation by the authorities until counsel has been made available to him unless the accused himself initiates further communication, exchanges, or conversations with the police. A defendant’s statements are properly obtained when a defendant asserts his right to counsel, subsequently initiates further conversation and then validly waives his Miranda rights. Oregon v. Bradshaw. In this case, Marcus initiated the conversations with the officers about his case. Once they read him his Miranda rights and obtained a valid waiver of those rights, they were free to question him without the presence of an attorney.

b. Yes, because both a written Miranda warnings and a written waiver are required when a suspect is being interrogated about a serious crime like murder.

INCORRECT: A suspect can waive the Miranda rights orally, but refuse to sign the form. North Carolina v. Butler. The degree of crime does not dictate what form, oral or written, the waiver must take. An oral waiver of the Miranda rights can be sufficient, even in a murder case.

c. No, because the officers did not violate his Miranda rights by questioning him after he had invoked his right to counsel.

CORRECT: In Edwards v. Arizona, the Supreme Court said that once an accused, having expressed his desire to deal with the police only through counsel, cannot be subject to further interrogation by the authorities until counsel has been made available to him unless the accused himself initiates further communication, exchanges, or conversations with the police. In this case, Marcus initiated the conversations with the officers. Once they read him his Miranda rights and obtained a valid waiver of those rights, they were free to question him without the presence of an attorney.

d. No, because the officers were questioning Marcus about a different crime than the one for which he had previously invoked his right to counsel.

INCORRECT: In Arizona v. Roberson, the Supreme Court extended the Edwards rule to apply to situations where the police want to interrogate the suspect about an offense that is unrelated to the subject of their initial interrogation. Thus, once a suspect in custody invokes his right to counsel, no further police interrogation regarding any crime may occur unless the accused himself initiates further communications, exchanges, or conversations with the police.

10. Carter was arrested for selling heroin to an undercover officer. At the police station, two officers took him into the processing area. One officer took out a booking sheet and began asking him questions including his full name, address, height, weight, date of birth and social security number. Carter answered all of the questions. When this was completed, another officer took the information and conducted a “wants and warrants” check through the National Crime Information Center (NCIC). The check showed that Carter was wanted for Obstruction of Justice under Title 18 U.S.C. 1503. Did the officers violate Carter’s constitutional rights in obtaining the information?

- a. Yes, because Carter was in custody and was interrogated without first being advised of, and without validly waiving, his Miranda rights.
- b. Yes, because the information was used to run the wants and warrants records check that showed he was wanted for another crime.
- c. No, because Carter was not under arrest for the crime of Obstruction of Justice.
- d. No, because Miranda warnings are not required prior to asking questions to obtain routine booking information.

ANALYSIS:

a. Yes, because Carter was in custody and was interrogated without first being advised of, and without validly waiving, his Miranda rights.

INCORRECT: Despite Carter being under arrest, the “routine booking question” exception to Miranda allows questions to secure biographical data necessary to complete booking or pretrial services. The questions are for record-keeping purposes only and are reasonably related to police administrative concerns.

b. Yes, because the information was used to run the “wants and warrants” records check that showed he was wanted for another crime.

INCORRECT: The “routine booking question” exception to Miranda allows questions to secure biographical data necessary to complete booking or pretrial services. The fact that a “wants and warrants” check was done does not cause this exception to be inapplicable.

c. No, because Carter was not under arrest for the crime of Obstruction of Justice.

INCORRECT: Miranda applies anytime a person is subjected to custodial interrogation. However, the Supreme Court has ruled that the “routine booking question” exception to Miranda allows questions to secure biographical data necessary to complete booking or pretrial services.

d. No because Miranda warnings are not required prior to asking questions to obtain this biographical data.

CORRECT: The “routine booking question” exception to Miranda allows questions to secure biographical data necessary to complete booking or pretrial services. The questions are for record-keeping purposes only and are reasonably related to police administrative concerns.

11. An informant was being used by Federal agents to purchase narcotics from an unknown individual during a “buy-walk” in a city alley. The suspect, who was wearing a hooded sweatshirt, sold narcotics to the informant. When this happened, the informant gave a pre-arranged signal to arrest the suspect. The suspect punched and kicked the informant and fled the scene. Surveillance agents attempted to apprehend the suspect but lost him while running through city street traffic. The agents radioed a description of the suspect and his direction of travel. Approximately 8 blocks away and 20 minutes after the crime, a patrol officer spotted a suspect walking down the street who fit the description of the suspect. The officer stopped the suspect and radioed the agents. The agents took the informant to the location. Upon arrival, the informant immediately said “that’s the guy – that’s the guy who sold me the drugs and then beat me.” The suspect was placed under arrest. Did the officers violate the suspect’s rights in obtaining this identification?

- a. Yes, because a one-to-one viewing is always unnecessarily suggestive and a violation of the due process clause.
- b. Yes, because only a law enforcement officer can identify a suspect under these circumstances.
- c. No, because the suspect’s due process rights were not violated by the use of this one-to-one viewing.
- d. No, because informants are presumed credible and any identification made by an informant is reliable.

ANALYSIS:

a. Yes, because a one-to-one viewing is always unnecessarily suggestive and a violation of the due process clause.

INCORRECT: Under constitutional standards, show-ups can be proper and not unduly suggestive under certain circumstances. As such, there is no prohibition under the due process clause that automatically bans show-ups.

b. Yes, because only a law enforcement officer can identify a suspect under these circumstances.

INCORRECT: Any witness can identify a suspect at a line-up or show-up. This procedure is not limited to law enforcement officers.

c. No, because the suspect’s due process rights were not violated by the use of this one-to one viewing.

CORRECT: Show-ups that occur shortly after a crime are permissible. Immediate show-ups can serve legitimate law-enforcement purposes, as they allow identification before the suspect has altered his appearance and while the witness' memory is fresh, and permit the quick release of innocent persons. As such, a prompt showing of a detained suspect at or near the scene of a crime has a very valid function: to prevent the mistaken arrest of innocent persons.

d. No, because informants are presumed credible and any identification made by an informant is reliable.

INCORRECT: Informants are not presumed credible. Rather, any identification will be viewed under the totality of the circumstances to determine if it is reliable.

12. Which of the following do not have a Fifth Amendment privilege against self-incrimination?

- a. A witness subpoenaed to testify before the federal grand jury.
- b. A corporation being investigated by federal agents.
- c. A suspect who has been arrested by federal authorities.
- d. A public employee being questioned by his/her employer in an internal investigation.

ANALYSIS:

a. A witness subpoenaed to testify before the federal grand jury.

INCORRECT: The Fifth Amendment privilege against compulsory self-incrimination can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory. When asserted, the Fifth Amendment privilege protects against any disclosures that the witness reasonably believes could be used against him/her in a criminal prosecution or could lead to other evidence that might be so used. If a witness subpoenaed to testify before the federal grand jury desires the protection of the Fifth Amendment privilege against self-incrimination, the witness can claim the privilege.

b. A corporation being investigated by federal agents.

CORRECT: “Collective Entities” do not have a privilege against self-incrimination. The Fifth Amendment privilege applies only to individuals. Corporations and other collective entities are not protected by the Fifth Amendment.

c. A suspect who has been arrested by federal authorities.

INCORRECT: Suspects under arrest have a Fifth Amendment privilege against self-incrimination. The concern in Miranda was that coercion inherent in custodial interrogation blurs the line between voluntary and involuntary statements, and thus heightens the risk that an individual will not be accorded his privilege under the Fifth Amendment not to be compelled to incriminate himself. Therefore, the Supreme Court created the Miranda warnings designed to protect this Fifth Amendment privilege.

d. A public employee being questioned by his/her employer in an internal investigation.

INCORRECT: Public employees can have a Fifth Amendment privilege against self-incrimination. Generally, a public employer cannot use the threat of discharge to secure incriminating evidence from an employee and then use that evidence against the employee to obtain a conviction. Likewise, a public employee cannot be terminated from employment for invoking and refusing to waive their Fifth Amendment privilege against self-incrimination.

13. Morgan was arrested for bank robbery and taken to an initial appearance, where he requested that a lawyer be appointed to represent him. This request was approved, and a lawyer was appointed to represent him. Following a detention hearing, he was released on bail. Approximately two days later, Federal agents, suspecting that Morgan was also involved in narcotics trafficking, went to his home to interview him about that offense. Upon arrival, the agents introduced themselves, told Morgan he was not under arrest and asked him if he would answer their questions. Morgan agreed, and ultimately admitted that he had been involved in narcotics trafficking. At no time did the agents provide Morgan his Miranda warnings. Did the agents violate any of Morgan's constitutional rights when they obtained his statements?

a. The agents violated Morgan's Fifth and Sixth Amendment rights to counsel by initiating contact and questioning him without first notifying the attorney that had been appointed to represent him.

b. The agents did not violate either Morgan's Fifth or Sixth Amendment rights to counsel by initiating contact and questioning him without first notifying the attorney that had been appointed to represent him.

c. The agents violated Morgan's Sixth Amendment right to counsel by initiating contact and questioning him without notifying the attorney that had been appointed to represent him.

d. The agents violated Morgan's Fifth Amendment right to counsel by initiating contact and questioning him without first notifying the attorney that had been appointed to represent him.

ANALYSIS:

a. The agents violated Morgan's Fifth and Sixth Amendment rights to counsel by initiating contact and questioning him without first notifying the attorney that had been appointed to represent him.

INCORRECT: The Supreme Court has repeatedly emphasized that Miranda warnings are due only when a suspect interrogated by the police is "in custody." In this case, the agents did not violate Morgan's Fifth Amendment right to counsel because he was not in custody at the time of the questioning. Further, the Sixth Amendment right to counsel is "offense specific" and does not attach until a prosecution is commenced (i.e., at or after the initiation of adversarial judicial criminal proceedings, such as by way of indictment, information, or initial appearance). Thus, Morgan's Sixth Amendment right to counsel regarding the bank robbery attached and was asserted by Morgan at the initial appearance. However, in this case, the agents did not violate Morgan's Sixth Amendment right to counsel because no formal charges had yet been filed on the narcotics charge.

b. The agents did not violate either Morgan's Fifth or Sixth Amendment rights to counsel by initiating contact and questioning him without first notifying the attorney that had been appointed to represent him.

CORRECT: Morgan had neither a Fifth nor Sixth Amendment right to counsel when the questioning concerning the narcotics offense was conducted. The agents did not violate Morgan's Fifth Amendment right to counsel because he was not in custody at the time of the questioning. Similarly, the agents did not violate Morgan's Sixth Amendment right to counsel because no formal charges had yet been filed on the narcotics charge.

c. The agents violated Morgan's Sixth Amendment right to counsel by initiating contact and questioning him without notifying the attorney that had been appointed to represent him.

INCORRECT: The Sixth Amendment right to counsel is "offense specific" and does not attach until a prosecution is commenced (i.e., at or after the initiation of adversarial judicial criminal proceedings, such as by way of indictment, information, or initial appearance). In this case, Morgan's Sixth Amendment right to counsel had attached and was asserted for the armed robbery charge, because he had already been to an initial appearance and requested an attorney. However, because no formal charges had yet been filed on the narcotics charge, he had no Sixth Amendment right to counsel for that offense.

d. The agents violated Morgan's Fifth Amendment right to counsel by initiating contact and questioning him without first notifying the attorney that had been appointed to represent him.

INCORRECT: The Supreme Court has repeatedly emphasized that Miranda warnings are due only when a suspect interrogated by the police is "in custody." In this case, the agents did not violate Morgan's Fifth Amendment right to counsel because he was not in custody at the time of the questioning.

14. Jones was indicted for bank robbery and arrested approximately two weeks later. At his initial appearance, an attorney was appointed to represent him. Two days later, a Federal agent, without notice to Jones' counsel, arranged to have two of the tellers observe a line-up of Jones and five other prisoners. Jones voluntarily came to the line-up. All of the lineup participants were required to state, "Put the money in the bag." Both tellers identified Jones as the robber. Did the agents violate Jones' constitutional rights when they conducted this identification procedure?

- a. Yes, because the lineup violated Jones' Sixth Amendment right to counsel.
- b. Yes, because requiring Jones to say, "Put the money in the bag" violated his Miranda rights.
- c. No, because the lineup did not violate Jones' Sixth Amendment right to counsel.
- d. No, because Jones did not have a Sixth Amendment right to counsel at this line-up

ANALYSIS:

a. Yes, because the lineup violated Jones' Sixth Amendment right to counsel.

CORRECT: The Sixth Amendment right to counsel attaches when the "adversarial judicial process" begins. After this point, an accused is entitled to have counsel present at "critical stages" of the proceedings, such as during police questioning and at all court appearances. The Supreme Court has also determined that post-indictment lineups are "critical stages" for purposes of the Sixth Amendment. Thus, both Jones and his counsel should have been notified of the impending lineup, and the presence of Jones' counsel was required, absent a waiver of that right by Jones. The agent's failure to provide Jones an opportunity to have his counsel present during the post-indictment lineup was a violation of his Sixth Amendment right to counsel.

b. Yes, because requiring Jones to say, "Put the money in the bag" violated his Miranda rights.

INCORRECT: Requiring Jones to say, "Put the money in the bag" did not violate Jones' Fifth Amendment privilege against self-incrimination. The Fifth Amendment privilege against self-incrimination applies only when the accused is compelled to make a testimonial communication that is incriminating. The privilege does not apply to non-testimonial evidence. In this case, Jones' statement was non-testimonial. His statement did not reveal his thoughts; rather it only identified the physical characteristics of his voice.

c. No, because the lineup did not violate Jones' Sixth Amendment right to counsel.

INCORRECT: The Sixth Amendment right to counsel attaches when the "adversarial judicial process" begins. After this point, an accused is entitled to have counsel present at "critical stages" of the proceedings, such as during police questioning and at all court appearances. The Supreme Court has also determined that post-indictment lineups are "critical stages" for purposes of the Sixth Amendment. Thus, both Jones and his counsel should have been notified of the impending lineup, and the presence of Jones' counsel was required, absent a waiver of that right by Jones. The agent's failure to provide Jones an opportunity to have his counsel present during the post-indictment lineup was a violation of his Sixth Amendment right to counsel.

d. No, because Jones did not have a Sixth Amendment right to counsel at this line-up.

INCORRECT: The lineup was conducted in violation of Jones' Sixth Amendment right to counsel. The Supreme Court has determined that post-indictment lineups are "critical stages" for purposes of the Sixth Amendment. Thus, both Jones and his counsel should have been notified of the impending line-up, and the presence of Jones' counsel was required, absent a waiver of that right by Jones.