You should fake at least one hour for Question 1, which counts forty points. Questions 2-7 count 10 points each. They are to be answered fully but without extraneous discussion. You have four hours for the examination. If you feel you need it.

**QUESTION ONE**

The defendants Samuel Adams, Martha Baker, and Milton Carr stand charged with the offense of possession of cocaine with intent to sell and with the additional offense of conspiracy to distribute cocaine. The defendant Carr is charged with the additional offense of possession of heroin with intent to sell. They have made motions to suppress evidence and in a hearing on those motions have established the following facts.

On February 21, 1981 a federal drug agent in Miami, Florida named Agent Jones, talked with one of his regular informers. The informer had provided him with reliable information in the past. The informer told Jones that a male and a female named Martha had four kilograms of cocaine for sale in Room 1701 of the Sheraton Hotel. He told them nothing else. Agent Jones and another agent, Agent Fortega went to the Hotel and confirmed that a Martha Baker of Miami was staying in Room 1701. The two agents obtained permission from the Hotel management to use Room 702 for surveillance. Once inside the two agents could hear sounds and parts of conversations coming from 1701. The two rooms had a common wall with a connecting door that was locked at this time. There was a crack between the door and the door frame. By pressing their ears to the crack, the agents could hear additional noises and conversations. They could tell that the voices belonged to a man and a woman. Fortega, who had grown up in Cuba, recognized the woman's accent as Cuban.

PART TWO:

CARR HAS MOVED TO SUPPRESS THE FOLLOWING ITEMS OF EVIDENCE:

(1) ALL CONVERSATIONS AND NOISES HEARD BY THE AGENTS WHILE IN ROOM 1702;
(2) THE .22 CALIBER PISTOL;
(3) THE CONFESSION HE GAVE TO AUTHORITIES;
(4) THE HEROIN SEIZED FROM THE APARTMENT OF THE WOMAN WITH WHOM HE LIVED; AND
(5) THE CONTENTS OF THE BLUE SUITCASE.

DISCUSS FULLY THE ISSUES PERTINENT TO THIS MOTION.

QUESTION TWO

a. On March 6 a man armed with an automatic pistol robbed a Convenient store of $500. Only the clerk was present. The clerk stated to the investigating police, "I got a good look at him. I saw him for about a minute and a half and he was within three feet of me." The clerk's description was 'male white, about 30, black hair, 5'10, 165 pounds, leather jacket, blue jeans." Because of his arrest in another robbery, attention focused on Duncan, who was 5'8", 145 pounds, 33, black hair. Accordingly the investigating officer arranged for the clerk to view a six photo array, one of the photos being a recent photo of Duncan. Before the clerk looked at the pictures the officer said, "Now take your time because what you do is going to change somebody's life." The clerk looked at the photos, picked up #2 and said, "I think this is the man." The officer said, "That isn't the one. That's just an old drunk we threw in." The clerk then looked at the photos again and picked up #4, the photo of Duncan. He said, "This is the man." On the basis of this identification Duncan was arrested and charged with the robbery. The clerk was called as a witness to the preliminary hearing and there viewed Duncan seated with his attorney at defense table. Duncan was held over to the grand jury and indicted and his attorney has moved to suppress any out-of-court identification by the clerk and any Identification during trial. Assume the evidence at the suppression hearing to be as set out above. Rule on the motion, explaining your ruling.

Foster, treasurer of a public teachers' local union, was subpoenaed before a grant jury investigating public employees' unions and directed to bring with him the books of the local. He appeared before the grand jury but declined to produce the books on the ground that the books contained information which might tend to incriminate him, and on the further ground that there was no affidavit in support of the subpoena establishing grounds to believe that the books contain information relevant to the grand jury inquiry. The prosecutor moved to compel Foster to answer. You are the trial judge. Rule on the motion and explain your ruling.

b. Assume that the trial judge denied the prosecutor's motion and upheld Foster's claim of the privilege. The school board votes to dismiss Foster as a teacher for failing to cooperate with the grand jury. Foster sues to enjoin his dismissal. What result and why?

QUESTION FOUR

Dugan ran a bar in Metro City and was indicted for trafficking in heroin. He refused to cooperate with the authorities by naming his source. He was released on bail. After Indictment the investigating officer was approached by Jones, an informer, who volunteered to see if he could ascertain Dugan's source. The officer gave Jones instructions to go to the bar and keep his ears open, to start no conversations about narcotics with Dugan. For the next few weeks Jones patronized Dugan's bar in an attempt to spot the man who might be bringing narcotics to Dugan. In this he was unsuccessful. However Dugan and Jones began to exchange pleasantries and Jones asked Dugan one evening if he could get him some heroin. Hearing this Dugan said he could have a month ago but his sources had dried up since he was indicted. The state proposes to have Jones testify to Dugan's statement and Dugan has moved to suppress. Rule on the motion explaining your ruling.
QUESTION FIVE

Daniel was charged with income tax evasion. While the jury was deliberating Daniel suffered a severe heart attack. When this matter was reported to the trial judge he declared a mistrial and discharged the jury. This was not requested by defense counsel though defense counsel did not actively oppose the mistrial. The prosecutor objected strenuously to the mistrial. After the mistrial defense counsel moved for a judgment of acquittal contending that the evidence did not support a conviction. The jury's vote at the time of the mistrial was 9 to 3 for acquittal. The doctor's report indicated that Daniel could not be retried for at least six months and possibly not for a year. The judge entered the following order of dismissal, "The Court finds that the ends of justice are not served by the re-prosecution of Daniel. The indictment is hereby dismissed." The Government has appealed the order under the statute which permits the Government to appeal any order except where further proceedings are barred by the Double Jeopardy Clause. Defense counsel argues on appeal that the Double Jeopardy Clause precludes re-trial. Rule on the appeal explaining your ruling.

QUESTION SIX

Debra was stopped and legally arrested in an International airport with a kilo of heroin. She "stonewalled," refusing to discuss her source or destination with the prosecutor or her appointed counsel. She was Indicted for trafficking and pled guilty, her guilty plea tracking the requirements of Rule 11. After acceptance of the plea the judge ordered a pre-sentence report. The report contained the following statement, "Debra is believed to be working for the largest drug dealer in the city." At the sentencing hearing counsel objected to that portion of the pre-sentence report above as clearly based on speculation and moved for a continuance so he could present evidence to show that Debra's involvement in drug trafficking was minimal. The judge overruled the objection and motion and sentenced Debra to the maximum term of imprisonment with the following words, "Young lady, heroin is a plague in this community. You seemingly have the power to stop--or at least to substantially cut down--the flow of drugs into our community. You have chosen not to do so and you must pay the price!" Counsel has appealed the sentence and seeks to have the case remanded for a new pre-sentence report and re-sentencing. What result and why?

QUESTION SEVEN

Davis, a truck driver, was convicted of the armed robbery of a grocery store. Six months after the conviction the defense lawyer discovered, in a chance conversation with a jury commissioner, that the jury commissioners had not put the names of physicians into the jury wheel from which the panel was drawn that convicted Davis. The defense attorney confronted the prosecutor with this information and the prosecutor said he had known for years of the practice and didn't think there was anything wrong with it. Prior to trial defense counsel had made a general request for "Brady" material; the prosecutor did not tell him of the jury selection practice. Identify specifically the Constitutional issue to be raised in the motion for new trial and the standard the trial court should apply in passing on the motion.