CRIMINAL PROCEDURE I
FINAL EXAMINATION

Professor Welling

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This is a traditional essay examination. Explain your answers. Proofread your exam. The weight of each question is indicated.

I. (30%)

When Joan Jacobs was discovered stabbed to death, police in Versailles, Kentucky suspected that her husband Sam Jacobs had done it. They called Jacobs and asked if he could come down to the station to talk about the case. Jacobs and the police set up an appointment for three days later.

On the appointed date, Jacobs drove to the station. Three officers met him and said they just wanted to talk a while. They went to the station coffee room and the four sat down together over coffee. The police mentioned several confusing things that had turned up during their investigation. The four spoke for about 20 minutes, during which time other persons came and went through the room getting coffee. During this time, Jacobs made several incriminating remarks. He denied participation, but his knowledge of details of the homicide which had not been released to the public confirmed police suspicions.

The police arrested Jacobs for murder. Later that day, he was charged by information with murder. At arraignment, he pleaded not guilty, and the court denied bail.

Jacobs was taken to the Versailles jail and put in a cell with Harold Brown. Unknown to Jacobs, Brown was a police agent. He was wearing a wire which was transmitting to a police receiver and tape recorder in the next room. Brown asked Jacobs what he was in for. Jacobs said he was in for the murder of his wife, but the police were so stupid, they would never find enough of the evidence to convict him. Jacobs explained where he had hidden the evidence so that the police would never find it.

Of course, the police then found it. A bundle containing some of Joan's clothing and the knife used to kill her was found buried in a field.

The next day, police approached Jacobs, gave him his Miranda rights, and asked if he would speak with them. Jacobs remained silent. When Jacobs' silence continued, the police left him alone. Soon, Jacobs heard murmuring in the next room. An officer came out of the room, set a tape recorder on the floor in the hallway, and walked off. The tape that was playing contained Jacobs' comments to Brown. After hearing this, Jacobs said that he wanted to explain. He then admitted he stabbed his wife.

When Jacobs moves to suppress the evidence because it was unconstitutionally gathered, how should the court rule? Why? Be sure to discuss all the evidence.

II. (30%)

Adam, Barbara and Carl live in a trailer in a trailer park in rural Woodford County. The trailer is up on blocks, and is hooked up to utilities. Adam and Barbara are married and they own the trailer. Carl is a friend of Adam's who is staying at the trailer until he finds a new job; he pays Adam and Barbara $25 each week to sleep at the trailer. Delores is Carl's girlfriend. She was visiting Carl at the trailer on the afternoon of April 9, 1990, while Adam and Barbara were
at work.

Woodford County deputies suspected that drugs were being sold out of this trailer. On the afternoon of April 9, 1990, two undercover officers went to the trailer. They knocked on the door, and when Delores answered, they stated that they were repairmen who had been hired by Adam and Barbara to fix the refrigerator. Carl had gone to the store, so Delores was alone. She let the two men into the trailer. One of the men began to examine the refrigerator while the other looked around the trailer. The man at the refrigerator said he had made a small adjustment and now the refrigerator was fine. The two men left the trailer. While he was inside, the man who was looking around had seen some mirrors, razors, glassine bags and water pipes on a nearby table.

Later that day, the two police officers returned to the trailer with two additional officers and knocked on the door. Carl and Delores were there. When the police identified themselves and asked for permission to search the trailer, Carl refused. One of the officers told Carl, "We'll just go get a warrant if you don't let us in." Carl said OK, get a warrant. Two of the officers entered the trailer to secure it while a warrant was issued, and the other two officers went off to get the warrant. Carl and Delores were not permitted to leave.

Several minutes later, Adam and Barbara arrived home from work. They were informed that they would have to remain while a search warrant was obtained for the trailer.

Meanwhile, the two officers in charge of the warrant filled out an affidavit. It alleged that while one of the officers had been in the trailer, he had seen evidence of drug-related activity, specifically some water pipes, razors, glassine bags and mirrors. The affidavit was reviewed by a magistrate, who issued a search warrant for all evidence of drug-related contraband in the trailer.

The officers returned to the trailer with their warrant. It had been four (4) hours since they left the trailer to get the warrant. The officers entered the trailer and began to search it. Adam, Barbara, Carl and Delores were not permitted to leave.

In a closet, the officers found a suitcase and a footlocker. These were opened and marijuana was inside. The officers then opened Adam's backpack, which Adam had been wearing when he returned to the trailer but which he had taken off and set on the kitchen counter. In the backpack, the officers found an address book containing names with dollar figures and dates following them. The officers then asked Delores her lap if they could search her purse, which she was holding in her lap. She handed it to the officers, who opened it and discovered some crack. The officers informed Adam, Barbara, Carl and Delores that they were under arrest.

As the officers were leaving the trailer with the four, one of the officers saw a fresh mound of dirt under the trailer steps. He moved about two inches of soil with his hand and discovered a glassine bag of heroin. The officer took the heroin, put it with the other drugs and went on to the station.

Adam, Barbara, Carl and Delores are charged with possession of marijuana with intent to distribute and possession of heroin. Delores is charged with possession of crack.

As the police continued investigating, they contacted people listed in the address book taken from Adam. One of the persons listed, Nina, is willing to testify that Adam had possessed marijuana on previous occasions and had sold it to her.

Adam, Barbara, Carl, and Delores file motions to suppress the marijuana, heroin, the address book and the testimony of Nina. Delores files a motion to suppress the crack. How should the court rule on these motions? Why?

III.

Officers Ness and Marconi saw Albert Allender walking down the street. Ness and Marconi knew Allender had a reputation for being a heroin addict. As he walked down the street, Ness and Marconi thought Allender looked guilty,
like he was hiding something. They began to follow him. As Allender walked faster, so did the police. Soon Allender was running, and the police where running behind him.

As Allender rounded the corner, he dropped something. Ness continued after him, but Marconi stopped and retrieved the object. Soon the two officers caught up with Allender. Ness held him by the upper arm, and Marconi stood on Allender's other side. When Marconi looked at the object Allender had discarded, he saw it was a condom with some white powder in it. Marconi held the condom in front of Allender and said, "Well! What have we here!" Allender said, "It's heroin." Ness and Marconi asked Allender where he got it. Allender said he got it from Brother Bromagen. Ness and Marconi advised Allender of his rights and took him down to the station, where he was booked for possession of heroin.

Ness and Marconi ran a check on Bromagen and found his address. They went by Bromagen's apartment. They knocked on the door, and a man answered. When the officers asked if he was Bromagen, he said no. In response to police questions, the man said that his name was Cob Cresser. The police said they wanted to talk to Bromagen and asked if they could look around the apartment. Cresser stepped back and opened the door, stating that Bromagen was not home. The police entered the apartment and began looking around. just then Bromagen returned, and the police detained him while they looked around his apartment.

In a drawer in the kitchen, Ness and Marconi found several kilos of a white powder that turned out to be heroin. As they continued, they found an athletic bag with $18,000 in small denomination bills in a closet. They seized both items and arrested Bromagen and Cresser for possession of heroin.

(As it turned out, Cresser was a friend of Bromagen's who did not live at the apartment but had slept there for the two previous nights since he had a fight with his girlfriend. Cresser was bummed by the arrest and wished he had gone somewhere else.)

At the station, Bromagen and Cresser were advised of their Miranda rights and put in separate cells. Bromagen agreed to talk to the police but said he first wanted to talk to an attorney. The police put in a call to the defender's office and left Bromagen alone in his cell.

Meanwhile, Allender had waived his Miranda rights and talked to the police. He told them he frequently purchased heroin from Bromagen.

Later that day, the police went by Bromagen's cell. They told him that it would be better for him to explain what the $18,000 in cash was doing at his apartment, that if he could help them on that, he wouldn't even need to talk to a lawyer, because the police might be able to get the charges dropped. Bromagen said that the money was from a series of convenience store robberies, and that he was waiting to take it to Dogger Dugan for laundering. Bromagen said Dugan was doing a lot of laundering in town. Bromagen had not yet seen his lawyer.

Based on the information from Bromagen, the police got an arrest warrant for Dugan. Ness and Marconi went to Dugan's warehouse. The door was unlocked, and they walked in. In an office in the corner, they found a man who identified himself as Dugan, and they arrested him. They searched the warehouse and saw several boxes of currency. They seized these boxes. Dugan was taken to the station, and charged with money laundering.

Allender is charged with possession of heroin. At his trial, he denies knowing that it was heroin in the condom, so the state wants to introduce his statement ("It's heroin.") as evidence of his mental state. Of course, the state also wants to introduce the heroin.

Bromagen and Cresser are charged with possession of heroin based on the heroin found at the apartment.

Dugan is charged with money laundering. The state wants to introduce the athletic bag of currency, the boxes of currency, and the testimony of Bromagen.

All four move to suppress all evidence unconstitutionally gathered. How should the court rule? Why?
IV.

Three patients in Good Samaritan Hospital died mysteriously. When autopsies were done, the cause of death was established as asphyxiation. The coroner noted that one of the patients' noses was bruised, as if something had been clamped over the nostrils. The pattern of the bruise suggested a clothespin. After investigation, a nurses' aide named Nikki Tolliver was arrested for homicide. She was taken to the police station, booked and fingerprinted. She was advised as follows: "You have the right not to say anything. Should you waive that right, anything you say might be introduced against you if and when you go to trial. You have the right to consult with an attorney. If you are indigent, an attorney will be appointed for you if and when you go to court." Nikki stated, "I'll talk, but I want a lawyer here." Nikki was placed in a cell.

A public defender was called for Nikki. In the meantime, the police had no contact with her. After conferring with the defender, Nikki changed her mind and decided not to talk to the police. Nikki and the defender -informed the police of her decision to remain silent. The defender told the police Nikki was not to be questioned.

Nikki could not make bail and spent that night at the county jail. Sometime during the night, a deputy put a bushel basket of clothespins down outside Nikki's cell. When Nikki saw them the next morning, she broke down sobbing and told the police she wanted to talk. She was again advised of her rights and signed a waiver form. She then described how she and another aide (Ben) killed the patients. Nikki said that Ben had been the leader and smothered two of the three patients. Nikki had smothered one - she had used a clothespin on the nose which left the bruises.

The prosecutor offered Nikki the following deal. Nikki would plead guilty to one count of manslaughter, get five years in jail and cooperate in the prosecution of Ben. Nikki agreed and she was released on bail.

The next day, Ben was arrested for homicide. He was advised of his rights, booked and placed in a holding cell. He made no statements at all and the police did not question him.

Five days later, Nikki and Ben were arraigned on charges of homicide. Both of them were represented by public defenders. Both of them entered pleas of not guilty, and Ben posted bail. After the arraignment, Ben asked Nikki to go for a drink. They went to a local bar. Ben emphasized to Nikki the need to say nothing and keep their stories straight. Ben told Nikki they'd have no problems beating the charges if they could get a good story and stick with it.

Unknown to Ben, Nikki was wired, and a tape recording was made of Ben's comments.

Nikki now wants to decline the plea bargain and go to trial with Ben. When Nikki and Ben move to suppress their statements, how should the court rule and why?