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CRIMINAL PROCEDURE
PROFESSOR KRAVITZ
FALL SEMESTER--1989

*****THE FINAL EXAMINATION*****

This examination consists of twenty questions. They are each worth five points. Some may require more time to answer than others. The longest answers are not always the best. Organization is very important. Read the questions carefully. Answer in the order that they are asked. Do not use facts that appear subsequent to the questions asked.

There is a one page limit on each question unless instructions state otherwise. Answer the question and state your reasoning directly and concisely. Budget your time.

You have three hours for the examination. Once finished, forget about the exam and enjoy the holidays.

District Attorney Harvey Dent has just been advised that several famous pieces of art have been found desecrated at the Gotham City Art Museum. Someone had painted smiling red lips over many of the museum's classic paintings. As Dent and the curator toured the museum and assessed the considerable damage, they discovered that five valuable paintings by Picasso were missing.

District Attorney Vent left the museum and met with commissioner Gordon the next morning. Both acknowledged that a theft of this magnitude could not take place in Gotham City without the knowledge of crime boss Carl Grissom. Dent and Gordon knew that Grissom has a weakness for tall, thin blondes. The two recruited news reporter Vicky Vale to invite Grissom to her apartment to spend the evening. Grissom accepted the invitation and Vale charmed Grissom until the next morning.

That evening, Dent and Grissom asked Lt. Eckhart, their best theft detective, to break into Grissom's home. Lt. Eckhart broke in and stole Grissom's briefcase containing details of the art thefts on a map of the Gotham City Art Museum. On the bottom of the map was the word "Joker" which Eckhart suspected was the pseudonym for Jack Napier, a confederate of Grissom.

Q.1: Is the map that was taken by Eckhart admissible in a criminal prosecution of Joker for theft?

Based on this information, Lt. Eckhart immediately drives to the Joker's home. He lets himself in through a window, finds Joker in the bedroom, rousts him from the bed, throws him against the wall and demands to know why Joker had red lips drawn on the

museum's treasures. Joker replied, "I don't know if its art, but I like it!" Eckhart punches Joker in the mouth, grabs Joker by the lapels and demands to know where the three Picassos are. Joker tells him that the Penguin has the paintings.

Lt. Eckhart leaves the Joker and drives to Penguin's house, knocks on the door and requests entry, which is granted by the Penguin. Eckhart places Penguin under arrest for theft, reads Penguin his Miranda rights which Penguin waives, and demands the Picasso paintings. Penguin turns over one painting, "The Harlequin," and states he received it from Joker and the Riddler. He states that Joker and Riddler probably possess the other four paintings. Penguin is taken to jail.

Q.2: Are Penguin's statements to Lt. Eckhart admissible against Penguin?

Q.3: If Penguin would eventually testify against Joker and Riddler, would his testimony be admissible against each?

Q.4: Is the Picasso taken from Penguin by Lt. Eckhart admissible against Joker? Against Riddler?

Lt. Eckhart drives to Riddler's house, calls Riddler outside and places him under arrest. Riddler is told that he is being placed under arrest for the theft of the Picasso paintings. He is not read his Miranda rights. He is transported to the station without being questioned and placed in jail. At the jail he is read his Miranda rights and asked if he needs anything. The Riddler grabs the telephone and unscrews the mouthpiece. Eckhart yells to Dent that Riddler wants an attorney. Riddler is taken to a jail cell

Two hours later, Commissioner Gordon comes to the cell, reads Riddler his Miranda rights and asks Riddler if he will waive his rights. Riddler signs a written waiver and agrees to be questioned. He states that he is innocent and was at his maternal grandmother's house at the time of the theft. After the statements are made, a recognizance bond is secured for him and he is released from custody.

Q.5: May the prosecution use Riddler's statements at the time he was questioned in its case-in-chief?

Q.6: May the prosecution use Riddler's statements at the time he was questioned for impeachment if Riddler testifies at trial?

Q.7: In the event Riddler testifies at his trial, may the prosecutor argue that Riddler's silence after arrest is evidence of his guilt?

During the interrogation, lawyer Steve Dallas arrives at the

station and demands to see Riddler. He has been called by Riddler's Sister when she heard he was in jail. Dallas is denied access to Riddler as Riddler was waiving his rights. Riddler had never met Dallas and was not informed of his presence at the station.

Q.8: Reconsider your prior answer concerning the use of Riddler's statements at the time he was questioned. What is the significance of the appearance of Steven Dallas? What result?

After release from jail, Riddler went home. He decided to go on the roof of his apartment building and burglarize the penthouse of the building in order to find enough cash to leave town. As he was drilling holes in the roof, a man dressed as a bat appeared. The man grabbed Riddler, lifted him in the air, suspended him over the side of the building and shook him violently. "Don't kill me, don't kill me," cried the Riddler. "I'm not going to kill you as long as you tell me where the paintings are." Riddler said the Joker had the paintings. Riddler cried, "Who are you?" "I'm Batman," the man said and threw Riddler aside and then jumped over the ledge of the building.

Riddler was later found babbling incoherently about a big bat that drinks the blood of criminals and leaps off buildings into thin air. He was taken to the Gotham City Hospital, sedated, and was scheduled for a psychiatric exam the next day. Riddler's bond was revoked and two armed police guards were placed outside his hospital room to ensure he didn't escape.

Q.9: Should the trial judge suppress Riddler's statements to Batman on the roof of the building?

Two days later Commissioner Gordon and District Attorney Dent still had not heard from Vicky Vale when they were informed that Vale and Grissom had taken out a marriage license at the courthouse. Gordon and Dent sent Lt. Eckhart to determine if this was true and to inquire about any incriminating statements Grissom might have made to her during their apparently extended interlude at her apartment. Eckhart, driving an unmarked vehicle, spotted Vale driving down the street and noticed that she was weaving within her lane of traffic and going 36 in a 30 mile per hour zone. He pulled her over and placed her under arrest for weaving and speed. He then conducted a search incident to arrest of the passenger compartment of her car and discovered the second Picasso, The Harlequin's Family. He arrested her for receiving stolen property.

Q.10: Is the Picasso painting taken from the car of Vicky Vale by Lt. Eckhart admissible at Vale's trial for receiving stolen property?

Lt. Eckhart noticed a strong odor of an alcoholic beverage on

Vale's person and arrested her for operating a motor vehicle while under the influence of alcohol (OMVI) and transported her to the station. At the station, Vale refused to waive her Miranda rights. She was then placed before a videotape camera and filmed as she walked a line drawn on the floor. She was then asked to recite her ABC's on tape. She stated, "A, B, C, D, E, F, G,-- H, I, J, K, X, Y, Z" She was then taken to jail.

Q.11: Is the videotape or Vicky Vale "walking the line" and reciting her ABC's admissible at her trial for OMVI? Discuss all relevant issues.

Meanwhile, District Attorney Dent and Commissioner Gordon were worried that Riddler's prior exculpatory statements concerning his grandmother could lead to his acquittal. Dent remembered from the morning edition of the paper that philanthropist Bruce Wayne was in the Gotham City Hospital, having been found on the sidewalk with two broken ankles, several broken ribs, a broken arm and dressed as a giant bat. Dent remembered that Wayne always had a strong interest in law enforcement and visited Wayne in the hospital. Dent asked if Wayne would share a room with the Riddler. Wayne was instructed not to question Riddler but to feign friendship with Riddler and carefully remember - any incriminating statements. During Wayne's first night in the room, Wayne asked the Riddler what was the name of a thirty year old member of a baseball team that provided equipment to the players during the game? "Batman," the Riddler replied. Realizing what he said and recognizing Wayne's facial features, he stated, "Don't kill me," and then volunteered the planning and execution of the art theft to Wayne.

Q.12: Should the trial judge sustain Riddler's motion to suppress his statements to Wayne in the hospital room?

Meanwhile, the Penguin was still in the Gotham City Jail. Commissioner Gordon visited Penguin in Jail, read him his Miranda rights, which Penguin refused to waive. Commissioner Gordon continued to amicably chat with Penguin and Penguin finally related that the third Picasso, Harlequin Playing a Guitar, was hid in the bushes outside his house. Commissioner Gordon called Dent and asked him to pick up the painting, which he did.

Q.13: Is the third Picasso admissible against Penguin? is it admissible against the Riddler and Joker?

Later that evening, Commissioner Gordon visited Penguin in Jail again. He read him his Miranda rights which Penguin waived. The Commissioner then asked if Penguin knew where the other paintings were. Penguin replied, "I don't ever rub another man's rhubarb." The Commissioner kicked Penguin in the shins and punched him in the stomach. Penguin then related that the fourth Picasso, Harlequin with Vase, was in the bushes at the Joker's house. Commissioner Gordon called Dent and asked him to pick up the

painting, which he did.

Q.14: Is the third Picasso admissible against Penguin?
Is it admissible against the Riddler and Joker?

Joker is still living at home. He has never been arrested. Lt. Eckhart has rented an apartment across the street in order to watch the Joker's actions. After two days, Lt. Eckhart procured a search warrant based on the following affidavit:

"For the last two days, I, Lt. Eckhart, have been employing a lip reader, who does not have a prior record, is an upstanding citizen and is a teacher at the local school for the deaf and dumb. The lip reader is watching the home of the Joker who I believe is responsible for the vandalism and theft at the Gotham City Art Museum. The lip reader has been watching the home of the Joker from an apartment rented across the street. We have borrowed a highly sophisticated camera from the Air Force which has the capability to magnify 2,500 times. Last night, the lip reader was able to see via this camera through a crack in the curtains covering the windows. As Joker was talking on the telephone, he related that a stolen Picasso was hidden under his bed in his home and that he will be moving it soon."

"I, Lt. Eckhart, further request authority to search in the nighttime based upon the following: Joker has the reputation as a violent person. He has been heard to brag that he is the 'world's first, fully functional, homicidal artist.' An search in the nighttime will reduce the possibility that the painting will be moved. In addition, it will afford us the opportunity to surprise Joker and thus reduce the likelihood of violence."

"I, Lt. Eckhart, further request authority to dispense with any notification requirement in the execution of the search warrant in order to surprise Joker, reduce violence,, and recover the painting."

The warrant was issued and executed two days later. The painting was recovered under the bed and Joker was arrested without incident.

Q.15, 16 & 17: Joker has moved to suppress the fruits of the search. Rule on his request. **(You must limit this answer 'to no more than two pages. Organize your answer before writing.)**

Joker, Penguin and Riddler were indicted for vandalism and theft. At the arraignment, Steve Dallas appears to represent all three defendants. No objection was made to the joint representation of the defendants by Dallas. The judge entered the appearance of Dallas on the record for all three defendants and

scheduled a joint trial in the future.

Dallas filed a motion for discovery requesting, among other things, the following:

Disclosure of any and all consideration the government has held out to a witness or which the witness subjectively anticipates, including but not limited to:

grants or promises of immunity; confirmed or tentative plea bargaining; monetary compensation; assistance in avoiding prosecution in other jurisdictions; omission from being named in an indictment or as an unindicted co conspirator; any other consideration, regardless of its nature, or promised in return for testimony or help.

The prosecution did not respond to this request. During trial, Vicky Vale appeared as a government witness and testified against the Joker, Penguin and Riddler. She testified that she was granted probation on the receiving stolen property charge however it was not part of a plea bargain or leniency from the government.

At trial, the Joker and Penguin do not testify. The Riddler testifies in his own behalf and testifies that he was at his grandmother's house at the time of the crime. Assume the trial court denied Penguin's motion to suppress his statements to Lt. Eckhart. At trial the prosecution attempts to introduce Penguin's statements to Lt. Eckhart in their, case in chief against the three.

Q.18: Should the trial judge permit the introduction of Penguin's statements? 4

Q.19: The defendants were convicted. After trial, they discover that Vale was guaranteed probation by a Gotham City prosecuting attorney who was not responsible for the trial of the case. He did not notify the trial attorney for Gotham City. The three defendants move to vacate their convictions. What result?

Q.20: As an additional ground for their motion to vacate, The defendants allege that Steve Dallas was ineffective for representing all three co-defendants at a joint trial. What issues are involved? What result?