

ESSAY EXAMINATION INSTRUCTIONS:

1. This portion of the examination contains three questions. Together, they are worth approximately 50% of the total grade for the final examination. Preceding each question is a recommended amount of time to spend on that question, corresponding approximately to the proportional value the question has as part of the whole examination. You have a total of 1 hour and 15 minutes to complete this portion of the exam. Be sure you answer all questions asked; do not omit any. No additional time will be given, so watch your time carefully.
2. You may not ask any questions during the examination period unless the question deals exclusively with administrative matters and is asked of the proctor.
3. **NO EXAMINATION OR EXAMINATION ANSWER MAY BE REMOVED FROM THE ASSIGNED TESTING ROOM FOR ANY REASON OTHER THAN GOING DIRECTLY TO OR FROM A TYPING ROOM.**
4. You must use the Blue Books provided unless you are typing, in which case you may use other normal typing paper, or you may use a computer in accordance with the Law School's written policies on computer usage. Place your examination number on each answer page unless you use a Blue Book. If you use a Blue Book, you may place your exam number on only the cover of each book used. **Do not place your name or other identifying mark anywhere on the examination answer.**
5. This is an "open-book" test. You may use any written materials you have brought with you. You may not ask for or receive information, directly or indirectly, from any other person, or from materials brought to the examination by another person. Assume that any facts described in a question take place in Texas unless the question specifically states otherwise.
6. You must turn in to the proctor all copies of the examination along with your answers. You may leave as soon as you complete the examination. If you leave early, please be quiet so you don't disturb your classmates.
7. Read the fact situation and questions carefully. Answer only what is asked, and write your answers legibly.
8. It is not necessary to indicate on your answer that you are a "graduating senior." All examinations in the course will be graded in sufficient time to meet the deadline for those graduating.
9. Have a great summer!

QUESTION 1
(5 minutes)

After both sides have rested and closed (in a jury trial for aggravated assault), the court provides you and the prosecutor with a proposed jury charge. You notice that while the charge states the law applicable to the case, it does not apply the law to the facts of the case. On what grounds should you challenge the proposed jury charge, what must you do to perfect your challenge, at what stage of the proceedings must you assert the challenge, and what is the consequence of your failure to do so? Explain your answer.

QUESTION 2
(45 minutes)

The police department in Texasville received an unsigned note which read, "Last night at the Cut 'N Shoot Club on Ponderosa, Jimmy Joe Johnson was talking about how he had some prime weed at his house that he was selling cheap. Check it out." Detective Marvel Manson and his partner checked the city's water records and discovered a Jimmy Joe Johnson living at 416 Eldorado Street. They set up surveillance on the house at that address and in the course of two hours saw three persons known to them to be drug users come and go from the house.

Marvel put all of this in an affidavit and took it to the Texasville municipal court judge, "Ma" G. Strait. Judge Strait looked it over and asked Marvel about the people who had been seen at the house. Marvel told the judge that in all three cases, they were in and out of the house within five minutes, and that when they left, each was carrying a paper bag. Judge Strait issued a search and arrest warrant authorizing a search for marijuana and any other controlled substances or evidence of crime found in the house, and for the arrest of Jimmy Joe Johnson.

Detective Manson and his partner went directly to the house with the other three police officers in Texasville to execute the warrant. To prevent Johnson from disposing of the evidence, they broke down the door and rushed into the house where they found Jimmy Joe drinking a beer and watching wrestling on TV. The search turned up two joints of marijuana in the bedroom, and several computer diskettes found laying alongside the marijuana which were seized to be searched later for evidence that Johnson had been selling drugs. When the diskettes were examined, they were found to contain photographs of children engaged in various sex acts.

Jimmy Joe Johnson was charged with misdemeanor possession of a controlled substance, and with felony possession of child pornography. You have been appointed to represent him.

Answer the following questions:

1. How, when, and on what grounds will you object to the introduction of the marijuana and the contents of the computer diskettes? What do you expect to be

the results of your objections, and why?

2. If you move for production of anything permitted by Article 39.14 of the Code of Criminal Procedure, as well as any *Brady* material in the possession of the State, and the trial judge grants your motion, but the State doesn't produce anything, including the informant's note, does the State's failure constitute grounds for reversal on appeal? Why or why not? Explain.

QUESTION 3
(25 minutes)

In the case against Jimmy Joe Johnson described in Question 2, the Assistant District Attorney prepared the following indictment, which the Grand Jury voted out as a true bill:

COUNTY OF MESQUITE)

STATE OF TEXAS)

TRUE BILL OF INDICTMENT

BY AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURY of Mesquite County, State of Texas, duly organized in the district court of said county, in said court, does present that **JIMMY JOE JOHNSON** on or about the 15th day of April, 2000, did then and there knowingly possess material containing a film image that visually depicts a child younger than 18 years of age at the time the film image of the child was made who is engaging in sexual conduct,

AGAINST THE PEACE AND DIGNITY OF THE STATE.

(signed on original)

Foreperson, Grand Jury

The applicable Penal Code provision for Possession of Child Pornography is as follows:

§ 43.26. Possession or Promotion of Child Pornography

- (a) A person commits an offense if:
 - (1) the person knowingly or intentionally possesses material containing a film image that visually depicts a child younger than 18 years of age at the time the film image of the child was made who is engaging in sexual conduct;
 - and

- (2) the person knows that the material depicts the child as described by Subdivision (1).
- (b) In this section:
 - (1) "Film image" includes a photograph, slide, negative, film, or videotape, or a reproduction of any of these.
 - (2) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals.

ANSWER THESE QUESTIONS:

1. What facial defects are in the indictment? List and describe them, indicating whether any defect you find results in a failure of the indictment to charge an offense, or not.

2. If you file a Motion to Set Aside the indictment before trial, contending that the term "sexual conduct" used in the indictment does not provide adequate notice, should the trial court rule in your favor? Explain why or why not.

3. Before trial, the State moves to amend that part of the indictment which alleges that the offense occurred "on or about the 15th day of April, 2000." The State wants to change only one allegation. It wants to change the date alleged to the 23rd day of April, 2000, a date on which officers executing a search warrant at Mr. Johnson's place of work discovered child pornography in his locked desk. If you object to this amendment, should the trial court permit amendment over your objection, or refuse to allow it? Explain your answer.