

Federal Court Procedures Practice Exam

1. Al is convicted of drug trafficking in U.S. District Court. Where would he appeal this conviction?

- A. Supreme Court
- B. Circuit Court
- C. State Court
- D. He has no right to appeal.

Answer: B. The Circuit Court of Appeals hears all appeals from convictions in District Court. If the Supreme Court did consider this case, it would not do so until *after* the Circuit Court made a decision. The state court systems do not consider appeals of federal cases.

2. Dan Defendant has been arrested for felony drug trafficking. Where will his trial be held?

- A. Magistrate Court
- B. District Court
- C. Circuit Court
- D. Supreme Court

Answer: B. The District Court presides over felony trials. The Magistrate Court judge can conduct many non-trial proceedings in a felony trial, but he cannot preside over a felony trial itself. The Circuit Court and Supreme Court could only consider appeals from this case.

3. Smith is charged with a serious misdemeanor for which he could be sentenced to up to one year in prison if found guilty. Where will his trial be held?

- A. It must be held in the District Court.
- B. It must be held in the Magistrate Court.
- C. It must be held in the Circuit Court.
- D. It can be held in either the District Court or the Magistrate Court, depending on Smith.

Answer: D. The Magistrate Court can preside over any misdemeanor trial. However, for a Class A misdemeanor, (anything beyond a “petty offense,” meaning any offense for which the defendant could be sentenced to imprisonment for more than 6 months but up to one year), the defendant has the right to insist on trial in the District Court. If the defendant waives his right to be tried in District Court, the trial will be held in Magistrate’s Court.

4. Special Agent Smith has probable cause that Joe Criminal purchased a small amount of marijuana. Rather than arrest Criminal, Agent Smith would like Joe Criminal ordered to come into court on his own to answer to the charges. Agent Smith would have Joe Criminal served with:

- A. an arrest warrant
- B. a subpoena ad testificandum
- C. a subpoena duces tecum
- D. a summons

Answer: D. A summons directs a person to appear in court at a specific time and place regarding the crime charged in the summons. An arrest warrant commands an officer to make an arrest. A subpoena requires the appearance of a witness.

5. Special Agent Smith has concluded his investigation of Joe Criminal for drug trafficking. Agent Smith explains his case to the AUSA. The AUSA accepts the case and obtains an indictment from the Grand Jury. Agent Smith obtains an arrest warrant and arrests Joe Criminal. When must Agent Smith prepare the criminal complaint?

- A. never
- B. prior to indictment
- C. prior to arrest
- D. after arrest

Answer: A. A criminal complaint can be used to establish probable cause in support of a warrantless arrest. A criminal complaint can also be used to obtain an arrest warrant. However, when an indictment is used to obtain an arrest warrant, there is no need for a criminal complaint.

6. Special Agent Smith made a warrantless arrest of Joe Criminal for drug trafficking. When must Agent Smith prepare the criminal complaint?

- A. never
- B. after arrest, but before the Initial Appearance
- C. prior to arrest, but after receiving approval by the AUSA
- D. after Indictment, but before the Preliminary Hearing

Answer: B. The criminal complaint is used to establish probable cause in support of the warrantless arrest at the Initial Appearance.

7. Joe Criminal is arrested and taken to his Initial Appearance. What will happen there?
- A. The Magistrate Judge will explain to the defendant the criminal charges and his rights.
 - B. The Grand Jury will determine if there is probable cause Joe Criminal committed the crime charged.
 - C. The defense attorney will present evidence of defendant's innocence.
 - D. The AUSA will explain to the defendant the criminal charges and his rights.

Answer: A. The Magistrate Judge will explain the charges to the defendant and advise the defendant of his rights. Evidence is not presented at an initial appearance.

8. Smith is arrested following indictment for drug trafficking. Pending his trial, will he be held in custody by the government?
- A. No, the government has no Constitutional right to incarcerate someone who has not been found guilty.
 - B. Yes, following a felony arrest the defendant must remain in custody until found not guilty.
 - C. Smith may be released pre-trial, if Smith can demonstrate that an electronic monitoring device is sufficient to guarantee he will not leave his home.
 - D. Smith must be released pre-trial, unless the government establishes he is a danger to the community or a flight risk.

Answer: D. Defendants must be released pending trial unless the government demonstrates they are a flight risk or a danger to the community. Many facts can be considered in this determination, including: the seriousness of the charged offense, the defendant's ties to the local community, and the defendant's past criminal record.

9. Federal Agent Johnson just arrested Carl Criminal based on a warrant for drug trafficking. Procedurally, should he:

A. Complete booking procedures, then take Criminal to his Initial Appearance when directed by the Magistrate.

B. Take Criminal to his Initial Appearance when directed by the Magistrate, then complete booking procedures.

C. Complete booking procedures, but the Initial Appearance is not required since Criminal was arrested on a warrant.

D. Take Criminal to the Initial Appearance when directed by the Magistrate, but booking procedures are unnecessary since Criminal was arrested on a warrant.

Answer: A. Whenever someone is arrested, they will be processed by the officer through the routine booking process. This would include fingerprinting, photographing, and taking basic biographical information from the suspect. The defendant would then go to the Magistrate Judge for his Initial Appearance without unnecessary delay, whether or not he was arrested pursuant to a warrant.

10. Joe Citizen goes to visit Congressman Johnson at Johnson's office on Capitol Hill. Citizen criticizes Congressman Johnson so much that Johnson loses his temper and starts beating Joe Citizen. Federal law enforcement officers are called to the scene. These officers:

A. could not arrest Congressman Johnson because Members of Congress are immune from arrest

B. could not arrest Congressman Johnson because he is in his office on Capitol Hill

C. could arrest Congressman Johnson because he has committed a crime other than a non-violent misdemeanor

D. could not arrest Congressman Johnson, but they could detain him until impeachment proceedings begin

Answer: C. Congressmen are not immune from prosecution. They are subject to felony arrest like any other person. However, they cannot be arrested for a non-violent misdemeanor while working as Congressman or traveling to or from work as a Congressman. They could be issued a citation.

11. Congressman Johnson is walking from his Capitol Hill office to the Capitol Building to attend a session of Congress. He intentionally throws some trash down on the street, committing the misdemeanor offense of littering. Federal law enforcement Officer Smith observes this misdemeanor being committed. Officer Smith:

A. could not arrest Congressman Johnson because Members of Congress can never be arrested

B. could not arrest Congressman Johnson because Congress is in session

C. could arrest Congressman Johnson because Members of Congress have no special privilege from being arrested

D. could not arrest Congressman Johnson, but could detain him until impeachment proceedings begin

Answer: B. Congressmen are not immune from prosecution. They are subject to felony arrest like any other person. However, they cannot be arrested for a non-violent misdemeanor while working as a Congressman or traveling to or from work as a Congressman. They could be issued a citation.

12. Joe Criminal robbed a bank in Brunswick, Georgia. Brunswick is in the Southern District of Georgia. Special Agent Smith arrested Joe Criminal in Macon, Georgia. Macon is in the Middle District of Georgia, adjacent to the Southern District of Georgia.

Where could Special Agent Smith take Joe Criminal for his initial appearance?

A. the Middle District of Georgia

B. the Southern District of Georgia if the Initial Appearance could be held on the day of arrest

C. either A or B

D. any Federal court with jurisdiction over Joe Criminal's offense

Answer: C. The initial appearance may always be held in the District of arrest. However, if the arrest is made in a District adjacent to the one in which the crime occurred, the defendant may be taken to that District for his Initial Appearance if the Initial Appearance can be held on the day of arrest.

13. After being indicted, Joe Criminal was arrested for drug trafficking. When will his Preliminary Hearing be held?

- A. as soon as possible following the arrest
- B. after the Initial Appearance, but before the Arraignment
- C. after Arraignment, but prior to trial
- D. never

Answer: D. If an individual has been indicted or charged by information, they will not have a Preliminary Hearing.

14. What happens at the Preliminary Hearing?

- A. The Grand Jury decides if there is probable cause for the case to continue.
- B. The Magistrate Judge decides if there is probable cause for the case to continue.
- C. The Defendant must prove there is no probable cause for the case to continue.
- D. The Defendant must enter a plea.

Answer: B. The Preliminary Hearing is an adversarial proceeding before the Magistrate Judge. At the Preliminary Hearing, the government has the burden of proving that there is probable cause the case should continue.

15. What happens at the Arraignment?

- A. The Grand Jury decides if there is probable cause for the case to continue.
- B. The Magistrate Judge decides if there is probable cause for the case to continue.
- C. The Defendant must prove there is no probable cause for the case to continue.
- D. The Defendant enters a plea.

Answer: D. The primary purpose of the Arraignment is for the Defendant to enter a plea.

16. The Grand Jury decides:

- A. if probable cause exists to issue an Indictment
- B. if probable cause exists to issue an Information
- C. if Defendant is guilty or not guilty
- D. if a Preliminary Hearing is necessary

Answer: A. If the Grand Jury determines there is probable cause the Defendant committed the charged offense, it will issue an Indictment. This is called a “true bill.” If the Grand Jury did not find probable cause, it would be a “no bill.”

17. Special Agent Johnson is investigating Joe Criminal for illegal drug activity. As part of this investigation, Agent Johnson attempted to interview Willy Witness. Willy Witness appears to have information regarding Joe Criminal's illegal activity, but is unwilling to voluntarily answer Agent Johnson's questions. Regarding Willy Witness, Agent Johnson should:

- A. make no further effort since no one can make Willy Witness talk
- B. offer Willy Witness money or other things of value to encourage him to cooperate
- C. arrest Willy Witness for obstruction of justice
- D. arrange with the AUSA to have Willy Witness subpoenaed to testify before the Grand Jury

Answer: D. Requiring an individual to appear before the Grand Jury is how the government can make uncooperative witnesses provide information. The government should not simply give up on this witness, nor should it offer him a bribe for his testimony. The mere refusal of this witness to answer questions when approached by a law enforcement officer does not constitute obstruction of justice.

18. You are a Federal law enforcement officer and want Willy Witness to appear before the Grand Jury and testify. Who do you see about getting a Grand Jury subpoena?

- A. the Judge
- B. the Grand Jury foreperson
- C. the Court Reporter
- D. the Assistant U.S. Attorney

Answer: D. The Assistant U.S. Attorney is the person who will issue subpoenas to appear before the Grand Jury.

19. You want Willy Witness to appear before the Grand Jury and testify. Willy Witness should be served with a:

- A. summons testificandum
- B. testimonial warrant
- C. subpoena duces tecum
- D. subpoena ad testificandum

Answer: D. The subpoena ad testificandum orders a person to appear and testify.

20. You are a Federal law enforcement agent investigating Carl Criminal. During your investigation, you witness Carl Criminal sell drugs on the street corner to a 12 year old girl. You then testify before the Grand Jury about this observation. Which of the following information could you tell your friends who are not involved in the investigation of Carl Criminal?

- A. You could only tell them about witnessing the drug transaction.
- B. You could tell them about witnessing the drug transaction, and that you testified before the Grand Jury. However, you could not tell them what you told the Grand Jury.
- C. You could tell them about witnessing the drug transaction, and testifying before the Grand Jury, including the substance of your testimony before the Grand Jury.
- D. You couldn't tell them anything about this case.

Answer: A. The witnessing of the drug transaction is not a “grand jury matter” and therefore, not secret under the grand jury secrecy rules. Accordingly, this information could be shared with others. However, the Grand Jury secrecy rules forbid the law enforcement officer from discussing the substance of his testimony before the Grand Jury. They also prevent him from stating he testified as a witness before the Grand Jury investigating Carl Criminal.

21. The AUSA learned much information from Willy Witness when Witness testified before the Grand Jury. The AUSA has shared this information with you, the Federal LEO. Who may you discuss this information with?

- A. no one
- B. only Federal law enforcement officers on the 6(e) list
- C. any government personnel on the 6(e) list
- D. anyone

Answer: C. Rule 6(e) of the Rules of Criminal Procedure authorizes disclosure of Grand Jury information to any government personnel the government attorney deems necessary to assist with the criminal investigation. These personnel should be listed on the 6(e) list maintained by the government attorney.

22. Who is present when the Grand Jury is voting on whether there is probable cause to issue an Indictment?

- A. only the Grand Jurors
- B. only the AUSA and the Grand Jurors
- C. only the court reporter and the Grand Jurors
- D. only the AUSA, the Grand Jurors and the court reporter

Answer: A. Only the Grand Jurors may be present when the Grand Jury is deliberating and voting.

23. Who is present when the Grand Jury is listening to witness testimony?

- A. only the Grand Jurors and the witness
- B. only the AUSA, the Grand Jurors and the witness
- C. only the court reporter, the Grand Jurors, and the witness
- D. only the AUSA, the Grand Jurors, the court reporter, and the witness

Answer: D. These are the people present when a witness is testifying before a Grand Jury.

24. What document is usually used to charge a felony?

- A. indictment
- B. information
- C. subpoena
- D. bill of particulars

Answer: A. An indictment is the usual charging document in a felony case. An information, which is signed by the U.S. Attorney, may be used to charge a felony if it is a non-capital case and the defendant waives his right to indictment.

25. What charging document is issued by the Grand Jury?

- A. indictment
- B. information
- C. subpoena
- D. bill of particulars

Answer: A. An indictment is the charging document issued by the Grand Jury when they find probable cause the defendant has committed the alleged offense.

26. What charging document is issued by the U.S. Attorney?

- A. indictment
- B. information
- C. subpoena
- D. bill of particulars

Answer: B. An information is the charging document issued by the U.S. Attorney. It is commonly used in misdemeanor cases, and can be used in non-capital felony cases when the defendant waives his right to indictment.

27. Agent Smith is scheduled to be the star witness in the case against Carl Criminal. Other Agents discovered that Smith had been disciplined in the past for lying during an administrative investigation into the alleged misuse of a government vehicle. The AUSA must tell the defense attorney about this under which of the following:

- A. Rule 16
- B. the Brady doctrine
- C. the Jencks Act
- D. Giglio

Answer: D. Giglio [Giglio v. United States, 405 U.S. 150 (1974)] requires that the government give the defendant any information about government witnesses that might reasonably be used to impeach them. This includes information about prior false statements. It also includes disclosing promises made to witnesses in exchange for their testimony, such a plea bargains made in exchange for testimony.

28. The defense attorney has requested the AUSA provide him with a copy of defendant's criminal record. The AUSA should give him this information according to:

- A. Rule 16
- B. the Brady doctrine
- C. the Jencks Act
- D. Giglio

Answer: A. Rule 16 requires the government to provide the defendant with a copy of his criminal record if he requests it.

29. The defense attorney has requested the AUSA provide him with a copy of defendant's prior statements. The AUSA should give him these statements according to:

- A. Rule 16
- B. the Brady doctrine
- C. the Jencks Act
- D. Giglio

Answer: A. Rule 16 requires the government to provide the defendant with a copy of his prior statements (except those oral statements made to agents who the defendant did not know were agents - such as undercover agents) if he requests it.

30. Special Agent Jones is investigating Joe Criminal for bank robbery. One witness interviewed by Agent Jones says that Joe Criminal could not have robbed the bank, because Joe Criminal was not in town on the day of the bank robbery. Must the government inform the defense about this witness?

- A. yes, under Rule 17
- B. yes, under the Brady doctrine
- C. no, according to the Jencks Act
- D. no, according to the 3rd Amendment

Answer: B. The Brady doctrine requires the government to inform the defense of any exculpatory information, whether or not requested by the defense.

31. Willy Doe is a witness for the government at trial. Willy Doe signed a statement to Special Agent Smith prior to testifying stating he saw the defendant commit the crime. Is the AUSA required to give the defense a copy of this statement?

- A. yes, according to the Jencks Act
- B. yes, according to *Brady*
- C. no, because providing the statement violates the *Giglio* doctrine
- D. no, because the defense is never able to obtain prior statements of government witnesses

Answer: A. The Jencks Act requires that the written, recorded, signed, or adopted statement of a government trial witness be given to the defense attorney no later than after the witness testifies on direct-examination for the government, but prior to cross-examination. The government could give the statement to the defense attorney at an earlier time if it wished. The judge could also order the statement be provided earlier. Because the statement does not appear to contain any exculpatory information, *Brady* doesn't apply. *Giglio* requires the government to give the defense possible impeachment evidence about witnesses the government may call. Answer D is simply not true - as we see by the correct answer, answer A.

32. Johnson lived in Little Rock, Arkansas his whole life. Johnson and some friends in Arkansas developed a hatred of the Federal government, and decided to blow up the Federal Building in Dallas, Texas. Johnson, with the help of his friends, actually went to Dallas and blew up the Federal Building. Following extensive investigation, Johnson is eventually arrested by Federal Agents in New York and charged with blowing up the Federal Building. Where must Johnson's trial for blowing up the Federal Building take place?

- A. Johnson's trial must be held in New York.
- B. Johnson's trial must be held in Dallas.
- C. Johnson's trial must be held in Arkansas.
- D. Johnson's trial could be held in any federal court.

Answer: D. The rules of venue state that the trial should be held in the District where the crime occurred. However, for good reason, the trial can be moved to another Federal Court in another District (change of venue). This is particularly true where the defendant is charged with a very horrible crime, creating a prejudice which prevents a fair trial in the District where the crime occurred.

33. In 1995, Joe stole 2 computers which were the property of the Federal government. The statute of limitations for this Federal crime is 5 years. Joe was indicted for this offense in 2001. Which of the following statements is correct?

- A. Since it has been more than 5 years, Joe can't be prosecuted for this crime under any circumstances.
- B. Since Joe stole 2 computers, the statute of limitations is 10 years, Joe can be prosecuted for the crime.
- C. If Joe was indicted after 5 years, but prosecuted within 100 days of arrest, the Speedy Trial Act would permit his prosecution.
- D. Joe could still be prosecuted if the 5 year statute of limitations was tolled by his concealing his identity or fleeing the jurisdiction to avoid prosecution.

Answer: D. If Joe fled or concealed his identity to avoid prosecution, the 5 year statute of limitations "clock" does not run during this time. Applicability of the statute of limitations is very case-specific. Therefore, Federal law enforcement officers should not drop a case based on the statute of limitations without first checking with the U.S. Attorney's office.

34. Who prepares the Pre-Sentencing Report used by the District Judge to determine the proper sentence for the Defendant?

- A. the U.S. Probation Office with the help of the Federal law enforcement officer
- B. the Clerk of Court with the help of the Federal law enforcement officer
- C. the U.S. Probation Office with the help of the defense attorney
- D. the Bailiff, with the help of the Clerk of Court

Answer: A. The Pre-Sentencing Report is prepared by the U.S. Probation Office with the help of the Federal law enforcement officer. The LEO should assist in providing such information.

35. Joe Smith robbed a bank in New York City. He is indicted and an arrest warrant is issued. Federal Agents arrest Joe Smith when they find him hiding in Cleveland, Ohio. Which of the following is a true statement about Joe Smith's case?

- A. Smith's trial must be held in Cleveland, since that was the place of arrest.
- B. Smith can choose whether to have his trial in Cleveland or New York.
- C. Federal Agents should take Smith to New York without unnecessary delay for his initial appearance.
- D. Once Smith is identified as the Joe Smith on the warrant, his case may be transferred to New York for trial.

Answer: D. Once it is established that the Joe Smith who has been arrested is the Joe Smith identified on the arrest warrant, the Court may transfer (remove) Smith's case to New York for further proceedings. This is the most common scenario, and the only correct choice above. It should be noted however, that if Smith wanted to waive his right to trial and plead guilty, his case could be resolved in Cleveland without transfer to New York.

36. Jacques Pierre, a citizen of France, is arrested by a federal agent in Jacksonville, Florida. Pierre is not a U.S. Citizen, but he has applied for citizenship and is expecting to complete the process within the next two to three months. Assume that France is not on the Vienna Convention on Consular Relations (VCCR) “mandatory notification countries” list. Which of the following actions must the arresting agent take?

- A. He must notify the French Consulate of Pierre’s arrest without delay.
- B. He must offer, without delay, to notify Pierre’s consular officials of the arrest.
- C. He must determine the status of Pierre’s citizenship application.
- D. He must release Pierre because foreign nationals have diplomatic immunity.

Answer: B. The VCCR applies to all detentions and arrests of foreign nationals, so long as they are not U.S. citizens. The arrestee’s immigration status is immaterial. In this case, because France is not on the VCCR “mandatory notification countries” list, the arresting officer is not required to immediately notify the French Consulate. Instead, the officer must offer to notify Pierre’s consular officials of the arrest. Whether consular notification will be made depends upon Pierre’s response. (As for answer D, there is nothing in the question to suggest that Pierre is a foreign diplomat. Not all foreign nationals are foreign diplomats or have diplomatic immunity.)

37. Austin Powers, a citizen of the United Kingdom, is arrested by a federal agent in Alexandria, VA, for selling unlicensed coffee mugs bearing the image of “Smokey Bear.” Unlawful use of the “Smokey Bear” character or name is a federal misdemeanor (18 U.S.C. § 711). The United Kingdom is on the Vienna Convention on Consular Relations (VCCR) “mandatory notification countries” list. Is the arresting agent required to notify the British Consulate of Powers’s arrest pursuant to the VCCR?

- A. No, because the VCCR does not apply to misdemeanor offenses.
- B. No, because the United Kingdom is an ally of the United States.
- C. Yes, because the VCCR requires notification without delay to “mandatory notification countries.”
- D. Yes, but only if Powers immediately requests that his consular officials be notified.

Answer: C. The VCCR applies to all detentions and arrests of foreign nationals; the seriousness of the charge is immaterial. The VCCR requires, at a minimum, that the foreign national who is detained or arrested be told of the right to consular notification and access. In this case, because the United Kingdom is on the VCCR “mandatory notification countries” list, U.S. officials are required to notify the British Consulate of the arrest regardless of the arrestee’s wishes.

38. The Vienna Convention on Consular Relations (VCCR) requires that foreign nationals who are detained or arrested in the U.S. be notified of:

- A. the nature of the charges and their right to counsel
- B. the right of consular notification and access
- C. the right to remain silent and to refuse to sign any statements
- D. the right to petition the U.S. Government for redress of grievances

Answer. B. The VCCR requires that in all cases, a foreign national (non-U.S. citizen) arrested or detained within the United States be told of the right of consular notification and access. The rights described in answers A, C, and D, are protected by the Bill of Rights in the U.S. Constitution, not the VCCR.

39. Joe Youngster is a juvenile and has been arrested by federal officers. Which of the following is correct with respect to providing *Miranda* warnings before the officers attempt to question Joe?

- A. Joe must be advised of his *Miranda* rights before questioning in words that a juvenile can understand.
- B. Joe's parents or guardian, if they can be located through good faith efforts by law enforcement, must be advised of Joe's *Miranda* rights before questioning.
- C. There is no requirement to advise Joe of his *Miranda* rights because he is a juvenile.
- D. Both A and B.

Answer: D. In addition, law enforcement must also advise the parents or guardian of the alleged offense. If Joe's parents or guardian are located and they want to speak to Joe, that must be allowed. Remember also that law enforcement must not make the identity of the juvenile known publicly without prior approval of the district court.