

Self-Incrimination Practice Exam

1. Federal agents suspect Ziggy is involved in using the mails to defraud insurance companies. Without probable cause, the agents arrest him for mail fraud and immediately take him to the federal building. Inside an office, the agents advise Ziggy of his Miranda rights. Ziggy waives his Miranda rights. The agents interrogate Ziggy and he fully confesses to the crime. The agents formally charge Ziggy with mail fraud and take him for an initial appearance. Under the U.S. Constitution, can the government lawfully use Ziggy's confession to prosecute him for the crime?

- a. Yes, because Ziggy waived his Miranda rights and confessed to the crime.
- b. Yes, because Ziggy waived his Miranda rights and the U.S. mails were used in the fraud scheme.
- c. No, because Ziggy was arrested and the agents failed to notify the Public Defender's Office.
- d. No, because Ziggy was illegally arrested and the confession was the fruit of the unlawful arrest.

ANALYSIS:

a. Yes because Ziggy waived his Miranda rights and confessed to the crime.

INCORRECT: Despite obtaining a full confession after a waiver of Miranda rights, the confession was the fruit of an unlawful arrest made without probable cause. An unconstitutional seizure under the Fourth Amendment can result in the suppression of a defendant's statement. If a defendant is arrested without probable cause and the confession is the fruit of the illegal arrest, it is not admissible at trial. Even though the confession after proper Miranda warnings may be "voluntary," the close causal connection between the illegal seizure and the confession will require its suppression.

b. Yes because Ziggy waived his Miranda rights and the U.S. mails were used in the fraud scheme.

INCORRECT: Despite the Miranda rights waiver, the confession was the "fruit" of an unlawful arrest made without probable cause. It does not matter what type of crime occurred.

c. No because Ziggy was arrested and the agents failed to notify the Public Defender's Office.

INCORRECT: There is no requirement that law enforcement officers notify the Public Defender's Office when a person is arrested.

d. No because Ziggy was illegally arrested and the confession was the fruit of the unlawful arrest.

CORRECT: The defendant's confession was the "fruit" of an illegal arrest made without probable cause. However, if a confession can be purged of the "taint" of an illegal arrest, it can be admissible against a defendant. Several factors are considered in determining whether a "taint" has been purged: the temporal proximity of the arrest and the confession; the presence of intervening circumstances; and the purpose and flagrancy of the official misconduct. Here, no intervening events broke the connection between Ziggy's unlawful arrest and his confession and therefore the Constitution requires its suppression.

2. Federal Agent Andy Sippowitz and his partner are investigating Smith for trafficking in fraudulent documents. After developing probable cause to arrest Smith, the agents see Smith walking through a public parking lot. The agents approach Smith, place him under arrest and take him to their field office. Once inside the office, Agent Sippowitz reads Smith the Miranda warnings. Smith says that he fully understands his Miranda rights and that he waives his rights. Agent Sippowitz begins asking Smith questions about his involvement in the fraudulent documents scheme. Smith tells the agents that they should go back to training school because they don't know how to investigate a case and that they have the "wrong guy." Agent Sippowitz then tells Smith that he can go the "easy way" or the "hard way." When Smith continues to deny his involvement in the crime, Agent Sippowitz locks the door to the interrogation room and begins slapping Smith in the face. Smith then confesses to his involvement in the fraudulent document scheme. Did the agents violate Smith's constitutional rights when they obtained his confession?

- a. Yes, because agents cannot interrogate a person to obtain a confession after a suspect has been arrested.
- b. Yes, because the agents violated the suspect's right to due process in obtaining the confession.
- c. No, because the suspect validly waived his Miranda rights and confessed after he was arrested.
- d. No, because the suspect initially lied to the agents and the agents had to obtain a truthful confession.

ANALYSIS:

a. Yes, because agents cannot interrogate a person to obtain a confession after a suspect has been arrested. **INCORRECT:** Law enforcement officers can interrogate a person and obtain a confession after a suspect has been arrested. However, prior to custodial interrogation, the agents must first advise the suspect of his/her Miranda rights and obtain a knowing, voluntary and intelligent waiver of those rights before interrogating the suspect and obtaining a confession.

b. Yes, because the agents violated the suspect's right to due process in obtaining the confession. **CORRECT:** The agents violated the suspect's right to due process when they obtained his confession by use of a beating. As such, the confession was not voluntary. A defendant's statement must be freely and voluntarily given to be admissible at a criminal trial. In this case, the suspect's will was overborne by the circumstances surrounding the giving of the confession. Although the suspect validly waived his Miranda rights, the method used by the agents to obtain the confession during the interrogation violated the suspect's right to due process under the U.S. Constitution.

c. No, because the suspect validly waived his Miranda rights and confessed after he was arrested. **INCORRECT:** Although the suspect validly waived his Miranda rights, the method used by the agents to obtain the confession during the interrogation violated the suspect's right to due process under the U.S. Constitution.

d. No, because the suspect initially lied to the agents and the agents had to obtain a truthful confession. **INCORRECT:** Although the suspect may be lying during the course of an interrogation, law enforcement officers cannot use interrogation methods that violate the Due Process clause of the U.S. Constitution to obtain a confession.

3. Oswald was dishonorably discharged from the armed forces. Oswald bought a firearm, a semi-automatic handgun, from a local drug dealer for \$100.00. Agents apprehended Oswald with the weapon and placed him under arrest. The agents then took him to their field office to interview him about the crime. After advising Oswald of his Miranda rights, the agents asked him if he wished to waive his rights and speak with them. In response, Oswald asked, "If I talk to you, will it help me out later?" The agents told Oswald that if he spoke with them, they would "make his cooperation known to the United States Attorney." Oswald then waived his rights and questioning began. During questioning, the agents falsely told Oswald that they had interviewed a witness who saw the drug dealer selling the firearm to him. Upon hearing this, Oswald confessed to purchasing the firearm from the drug dealer. Which of the following statements is true?

- a. Oswald's statement was voluntarily even though the agents falsely told Oswald that they had interviewed a witness who had implicated him in the crime.
- b. Oswald's statement was coerced because the agents falsely told Oswald that they had interviewed a witness who had implicated him in the crime.
- c. Oswald's waiver of rights was coerced because the agents told Smith they would make his cooperation known to the United States Attorney if he spoke with them.
- d. Oswald's statements were lawfully obtained because once a suspect is properly advised of his Miranda rights, any subsequent statement complies with Constitutional safeguards.

ANALYSIS:

a. Oswald's statement was voluntarily given even though the agents falsely told Oswald they had interviewed a witness who had implicated him in the crime.

CORRECT: Deception by law enforcement officers during an interrogation to get the truth does not automatically amount to coercion. Indeed, law enforcement officers commonly engage in such ruses as suggesting to a suspect that an accomplice has just confessed or that the officers have physical evidence against the suspect. The key inquiry is whether a defendant's will was overborne by the circumstances surrounding the giving of the confession. Here, the deception used did not cause the statement to be involuntary. Of note, it should be remembered that the voluntariness of a confession is distinct from the voluntariness of a waiver of Miranda rights. The Supreme Court has noted that any evidence that the defendant was threatened, tricked, or cajoled into a waiver will show that the defendant did not voluntarily waive his privilege.

b. Oswald's statement was coerced because the agents falsely told Oswald they had interviewed a witness who had implicated him in the crime.

INCORRECT: See justification (a), above.

c. Oswald's waiver of rights was coerced because the agents told Oswald they would make his cooperation known to the United States Attorney if he spoke with them.

INCORRECT: A defendant's waiver of Miranda rights must be made voluntarily, knowingly and intelligently. This inquiry has two distinct dimensions: First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than by intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. An agent's truthful statement or promise to a defendant that the prosecutor would be told of the defendant's cooperation will not result in an involuntary waiver of Miranda rights.

d. Oswald's statements were lawfully obtained because once a law enforcement officer properly advises a suspect of his Miranda rights, any subsequent confession complies with U.S. Constitutional safeguards.

INCORRECT: Even if a suspect validly waives his/her Miranda rights, a statement can be suppressed under the Fifth Amendment if it is involuntary. A defendant's statement must be freely and voluntarily given to be admissible at a criminal trial. This due process concept is called "voluntariness." It must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight; nor by the exertion of any improper influence. In other words, the person must not have been compelled to incriminate himself.

4. Davis is suspected of making threatening telephone calls to a Federal judge. With the judge's consent, the agents record one of the threatening telephone calls. A Federal grand jury is convened to investigate. Thereafter, a grand jury subpoena is issued to Davis directing him to provide a voice exemplar (sample). Two agents arrive at Davis' house and serve the subpoena upon him. Pursuant to the subpoena, Davis reports to the federal courthouse. Davis tells the agents that he wishes to invoke his Fifth Amendment privilege against self-incrimination regarding the taking of his voice exemplar (sample). The agents ignore his statement, provide him with a transcript to read, and obtain his voice exemplar (sample). The voice identification unit at the crime lab compares the voice exemplar (sample) from Davis with the tape recorded threatening telephone call. The crime lab expert concludes, to a reasonable degree of scientific certainty, that Davis is the person who made the threatening telephone call to the judge. Which of the following statements is true?

- a. Requiring Davis to provide his voice sample pursuant to the subpoena violated his Fifth Amendment privilege against self-incrimination.
- b. Requiring Davis to provide his voice sample pursuant to the subpoena violated his Fifth Amendment due process rights.
- c. Requiring Davis to provide his voice sample pursuant to the subpoena violated his Fifth Amendment right to counsel under Miranda.
- d. Requiring Davis to provide his voice sample pursuant to the subpoena did not violate his Fifth Amendment privilege against self-incrimination.

ANALYSIS:

a. Requiring Davis to provide his voice sample pursuant to the subpoena violated his Fifth Amendment privilege against self-incrimination.

INCORRECT: The Fifth Amendment privilege against self-incrimination applies only when the accused is compelled to make a "testimonial" communication that is incriminating. The privilege does not apply to "non-testimonial" evidence. Testimonial evidence is communicative in nature and comes from an individual's thought processes, while non-testimonial evidence is that which tends to identify a person, such as fingerprints, handwriting samples, and voice samples. Voice exemplars (samples) identify physical characteristics and are therefore not protected by the Fifth Amendment privilege against self-incrimination because they are considered to be "non-testimonial" evidence.

b. Requiring Davis to provide his voice sample pursuant to the subpoena violated his Fifth Amendment due process rights.

INCORRECT: Requiring a suspect to produce non-testimonial evidence pursuant to a grand jury subpoena under these circumstances does not violate Fifth Amendment due process guarantees.

c. Requiring Davis to provide his voice sample pursuant to the subpoena violated his Fifth Amendment right to counsel under Miranda.

INCORRECT: The Supreme Court has repeatedly emphasized that Miranda warnings are due only when a suspect is interrogated by the police while the suspect is “in custody.” Here, Davis was not in custody at the time the voice sample was taken. Even if he were in custody, the taking of his voice sample was non-testimonial in nature, and there is no Fifth Amendment protection for such identifying characteristics.

d. Requiring Davis to provide his voice sample pursuant to the subpoena did not violate his Fifth Amendment privilege against self-incrimination.

CORRECT: The Fifth Amendment privilege against self-incrimination applies only when the accused is compelled to make a testimonial communication that is incriminating. The privilege does not apply to non-testimonial evidence. Voice exemplars (samples) are non-testimonial evidence beyond the scope of the privilege against self-incrimination. Thus, a suspect may be required to provide a voice sample, even when this sample will ultimately be used to “incriminate” the suspect.

5. Agents develop probable cause that Hinton is embezzling government property. The agents decide to arrest Hinton. They discuss a strategy to obtain a confession from him. Thereafter, they meet Hinton at his apartment and obtain Hinton's consent to come inside. They do not tell him that he is under arrest, nor do they tell him he is their prime suspect. Instead, they tell him they are conducting an investigation into an embezzlement of government property, and they ask him if there is a place they could speak privately. Hinton takes the agents to a nearby room. Once there, the agents inform Hinton that he isn't under arrest and he is not required to speak to them. The agents then question him regarding his knowledge of the missing government property, but do not read him his Miranda rights before doing so. Twice during the interview, Hinton left to use the bathroom, unaccompanied by the agents. Hinton confessed, was arrested, and was charged with embezzling government property. Did the agents violate Hinton's rights when they obtained his confession?

- a. Yes, because at the time the questioning was conducted, the agents had focused on Hinton as a prime suspect.
- b. Yes, because the agents had probable cause to arrest Hinton at the time of the interview and they intended to arrest him following its conclusion.
- c. No, because until a suspect is formally arrested, Miranda warnings are not required.
- d. No, because the agents weren't required to give Miranda warnings to Hinton in this situation.

ANALYSIS:

a. Yes, because at the time the questioning was conducted, the agents had focused in on Hinton as a suspect.

INCORRECT: A person is not in custody (arrest or the functional equivalent of arrest) for Miranda purposes simply because that person is the focus of a criminal investigation and is being questioned by authorities. Stansbury v. California. It is well settled that an officer's subjective and undisclosed view concerning whether the person being interrogated is a suspect is irrelevant to an assessment of whether the person is in custody.

Yes, because the agents had probable cause to arrest Hinton at the time of the interview and intended to arrest him following its conclusion.

INCORRECT: The only relevant inquiry regarding custody is how a reasonable person in the suspect's position would have understood his/her situation. Berkemer v. McCarty An officer's subjective and undisclosed view concerning whether the person being interrogated is a suspect is irrelevant to an assessment of whether the person is in custody. An officer's obligation to administer Miranda warnings attaches only where there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. Stansbury v. California. Since the agents' intent was unknown to Hinton at the time of the interview, their intent could have no effect on how Hinton understood his position at the time of the questioning.

c. No, because until a suspect is formally arrested, Miranda warnings are not required.

INCORRECT: Miranda warnings are required before interrogating a suspect who is either under arrest or the functional equivalent of arrest. Thus, there are times when a suspect must be read Miranda warnings, even though no formal arrest has been effected. For example, if a person is under restraint to a degree that amounts to the functional equivalent of arrest, then Miranda warnings must be given and a valid waiver of those warnings must be obtained before an interrogation can lawfully be conducted. For example, Miranda warnings were required when, at approximately 4 a.m., four police officers arrived at a suspect's home, entered his bedroom and began questioning the suspect. The warnings were required because the suspect was being interrogated and was in the functional equivalent of arrest.

d. No, because the agents weren't required to give Miranda warnings to Hinton in this situation.

CORRECT: An officer's obligation to administer Miranda warnings attaches only where there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. Stansbury v. California. A person being interrogated by law enforcement officers after being taken into custody must first be provided Miranda warnings and a valid waiver must be obtained before a lawful interrogation can be conducted. If the individual is not in "custody," the warnings need not be given. To determine whether "custody" is present, courts use a totality of circumstances approach to determine how a reasonable person in the suspect's position would have understood the situation. Here, the totality of the circumstances show that Hinton was not in "custody." Hinton had complete freedom of movement during the interview. He was never handcuffed or otherwise physically restrained. He was told that he was not under arrest, as well as that he did not have to speak with the agents if he did not wish to.

6. A hiker notified Federal officers that marijuana was growing in a field next to Interstate 95. The officers went on foot to investigate. When they arrived, they noticed Jones standing in the middle of the field placing an unknown item into his backpack. The officers yelled at Jones to stop what he was doing and to come over to where they were standing. After identifying themselves as law enforcement officers, the officers told Jones he was not under arrest. They told Jones he was being temporarily detained while they investigated the marijuana field. At that point, one of the officers asked Jones what he had placed inside the backpack. Jones admitted that it was marijuana from the field. The officers arrested Jones and marijuana was found inside the backpack. Did the officers violate Jones' constitutional rights when they obtained his admission?

- a. Yes, because interrogation was taking place after Jones was in custody, thus requiring Miranda warnings.
- b. Yes, because the officers suspected that Jones had marijuana in his backpack.
- c. No, because the officers were not required to give Miranda warnings to Jones in this situation.
- d. No, because until Jones was formally told he was under arrest, Miranda warnings were not required.

ANALYSIS:

a. Yes, because interrogation was taking place after Jones was in custody, thus requiring Miranda warnings.

INCORRECT: Miranda warnings are required before questioning a suspect who is either under arrest or the functional equivalent of arrest. Here, the officers were conducting a Terry stop, and Jones was not free to leave. However, in Berkemer v. McCarty, the Supreme Court held that Miranda warnings are generally not required when a person is questioned during a routine stop pursuant to Terry, because such stops are not "custodial" for purposes of Miranda. In this case, because the statement made by Jones regarding what was in the backpack was made during a valid Terry stop, the officers were not required to read him his Miranda warnings before asking him that question.

b. Yes, because the officers suspected that Jones had marijuana in his backpack.

INCORRECT: A person is not placed in the functional equivalent of custody for Miranda purposes simply because that person is the focus of a criminal investigation and is being questioned by authorities. Berkemer v. McCarty; Stansbury v. California

c. No, because the officers were not required to give Miranda warnings to Jones in this situation.

CORRECT: As noted above, Miranda warnings are generally not required during Terry stops. This is so for two reasons: First, by their nature, Terry stops are presumptively temporary and brief. This is quite different from a custodial interrogation that Miranda was designed to address. Second, the typical Terry stop is public, at least to some degree. In short, the atmosphere surrounding an ordinary Terry stop is substantially less "police dominated" than that surrounding the kinds of interrogation at issue in Miranda itself. For these reasons, Miranda warnings are not required in this situation.

d. No, because until Jones was formally told he was under arrest, Miranda warnings were not required.

INCORRECT: Miranda warnings are required before questioning a suspect who is either under arrest or the functional equivalent of arrest. Thus, there are times when a suspect must be read Miranda warnings, even though no formal arrest has been affected. For example, Miranda warnings were required when, at approximately 4 a.m., four police officers arrived at a suspect's home, entered his bedroom and began questioning the suspect. The warnings were required because the suspect was being interrogated and was in the functional equivalent of arrest.

7. Thomas was arrested for narcotics trafficking. Following his arrest, two Federal agents brought Thomas into an interrogation room, introduced themselves, and read him the Miranda warnings. When they asked him if he understood his rights, Thomas stated “yes.” When they asked him if he would be willing to waive his rights and answer their questions regarding the narcotics charges, Thomas stated, “Go ahead and ask what you want, but I’m not putting anything in writing.” Thomas also waived his right to consult with or have a lawyer present. Thomas refused to sign a written waiver form the agents had available. During the interrogations, the agents began to suspect Thomas was involved in the homicide of an undercover Federal agent that had occurred a few weeks earlier. Disregarding the narcotics crimes, the agents began to question him about the unrelated homicide, and Thomas orally confessed to the homicide. Did the agents violate Thomas’ constitutional rights when they obtained his confession?

a. Yes, because by refusing to put anything in writing, Thomas effectively invoked his right to silence, thus making any subsequent oral statements he made inadmissible.

b. Yes, because Thomas’ waiver was not made in writing, it was not valid, thus making any subsequent statements regarding the murder of the Federal agent inadmissible.

c. No, because Thomas only had Miranda rights regarding the narcotics trafficking charge for which he was arrested and not the homicide charge for which he had not yet been formally arrested.

d. No, because Thomas validly waived his right to remain silent and his right to an attorney, the questions regarding the murder of the Federal agent could be used against him, even though the questioning initially concerned narcotics.

ANALYSIS:

a. Yes, because by refusing to put anything in writing, Thomas effectively invoked his right to silence, thus making any subsequent oral statements he made inadmissible.

INCORRECT: Thomas waived his right to counsel and also agreed to speak with the agents even though he did not agree to put anything in writing. With this waiver, the agents could lawfully question Thomas and the oral statements Thomas made are admissible.

b. Yes, because Thomas’ waiver was not made in writing, it was not valid, thus making any subsequent statements regarding the murder of the Federal agent inadmissible.

INCORRECT: The mere refusal to sign a written waiver does not automatically render inadmissible all further statements made by the defendant. An express written statement of waiver of the right to remain silent or of the right to counsel is usually strong proof of the validity of that waiver, but is not inevitably either necessary or sufficient to establish waiver. The question is not one of form, but rather whether the defendant in fact knowingly, intelligently, and voluntarily waived the rights delineated in the Miranda case.

c. No, because Thomas only had Miranda rights regarding the narcotics trafficking charge for which he was arrested and not the homicide charge for which he had not yet been formally arrested.

INCORRECT: Custodial interrogation means questioning initiated by law enforcement officers after a person has been taken into custody. The safeguards prescribed by Miranda become applicable as soon as a suspect's freedom is curtailed to a degree associated with formal arrest. Under Miranda, it does not matter what crime the person has been arrested for – custody is custody. When a person is in custody, Miranda specifically requires that the police inform a criminal suspect that he has the right to remain silent and that anything he says may be used against him. As long as that warning has been given, a suspect's awareness of all the possible subjects of questioning in advance of interrogation is not relevant to determining whether the suspect voluntarily, knowingly, and intelligently waived his Fifth Amendment privilege.

d. No, because Thomas validly waived his right to remain silent and his right to an attorney, the questions regarding the murder of the Federal agent could be used against him, even though the questioning initially concerned narcotics.

CORRECT: In this case, Thomas received a valid rights advisement. He then voluntarily, knowingly, and intelligently chose to waive his Miranda rights with regard to making oral statements to the agents. For the above reasons, the statements made by Thomas can be used against him in the murder of the Federal agent.

8. Clark was arrested for the murder of a federal employee. He was read his Miranda rights, stated that he understood those rights, and then waived them. During the questioning that followed, Clark was asked by the interviewing officer about a number of pieces of evidence that pointed to him as the murderer. When the officer told Clark that his story didn't make sense, Clark replied, "Maybe I should talk to a lawyer." The officer continued his questioning of Clark, without clarifying whether or not Clark was invoking his right to counsel. Clark then confessed to the murder. Based on this confession, he was indicted for the murder. Did the agents violate Clark's constitutional rights?

- a. Yes, because Clark's statement was an invocation of his right to counsel under Miranda.
- b. Yes, because the officer failed to clarify whether Clark was requesting counsel or not.
- c. No, because Clark's statement was not an invocation of his right to counsel under Miranda.
- d. No, because Clark did not have a right to counsel during the questioning because he had not yet been charged with the crime.

ANALYSIS:

a. Yes, because Clark's statement was an invocation of his right to counsel under Miranda. **INCORRECT:** If a suspect requests counsel at any time during an interview, he is not subject to further questioning until a lawyer has been made available or the suspect himself reinitiates conversation with the officers. However, the suspect must unambiguously request counsel. He must state his desire to have counsel present with sufficient clarity that a reasonable police officer in the circumstances would understand the statement to be a request for counsel. If the statement fails to meet this requisite level of clarity, a police officer is not required to stop questioning the suspect. In this case, Clark's statement was not an unequivocal request for counsel, so the officer was not required to stop the interview.

b. Yes, because the officer failed to clarify whether Clark was requesting counsel or not. **INCORRECT:** In this case, Clark's request for counsel was ambiguous. The Supreme Court has noted that, when a suspect makes an ambiguous or equivocal statement it is good police practice for the interviewing officers to clarify whether or not the suspect actually wants an attorney. However, there is no rule requiring officers to ask clarifying questions. Clarifying questions help protect the rights of the suspect by ensuring that he gets counsel if he wants one, and will minimize the chance of a confession being suppressed due to subsequent judicial second-guessing as to the meaning of the suspect's statement regarding counsel. If the suspect's statement is not an unambiguous or unequivocal request for counsel, the officers have no obligation to stop questioning him.

c. No, because Clark's statement was not an invocation of his right to counsel under Miranda. **CORRECT:** A suspect must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney. If the statement fails to meet the requisite level of clarity, officers are not required to stop questioning the suspect. In this case, Clark's statement was not an unequivocal request for counsel, so the officer was not required to stop the interview.

d. No, because Clark did not have a right to counsel during the questioning because he had not yet been charged with the crime.

INCORRECT: The Supreme Court held in Miranda v. Arizona that a suspect who is subject to custodial interrogation has the right to consult with counsel and to have counsel present during custodial interrogation. Police must advise the suspect of his Miranda rights and obtain a valid waiver before custodial interrogation. Here, Clark did have a right to counsel under Miranda because he was in custody and was subjected to interrogation.

9. Marcus was arrested at a motel for wire fraud. Officers sought to question him and read him his Miranda warnings. When he indicated he wanted to speak to a lawyer, the interview was terminated and Marcus was booked into the jail. Shortly thereafter, Marcus contacted one of the jailers and said that he needed to talk to somebody “about a murder.” Marcus was removed from his cell and taken to an interview room. Two officers arrived, and asked Marcus if he had something he wished to discuss with them. Marcus replied that he had information about a murder that had taken place a few days earlier. The officers then again advised Marcus of his Miranda rights. Marcus indicated he understood these rights and waived them. However, Marcus refused to sign a written waiver. After Agents began questioning Marcus about the murder, Marcus admitted to being an accomplice to the murder. Did the officers violate Marcus’ constitutional rights when they obtained his confession?

- a. Yes, because the officers violated his Miranda rights by interrogating him after he had invoked his right to counsel.
- b. Yes, because both a written Miranda warnings and a written waiver are required when a suspect is being interrogated about a serious crime like murder.
- c. No, because the officers did not violate his Miranda rights by questioning him after he had invoked his right to counsel.
- d. No, because the officers were questioning Marcus about a different crime than the one for which he had previously invoked his right to counsel.

ANALYSIS:

a. Yes, because the officers violated his Miranda rights by interrogating him after he had invoked his right to counsel.

INCORRECT: In Edwards v. Arizona, the Supreme Court said that once an accused, having expressed his desire to deal with the police only through counsel, cannot be subject to further interrogation by the authorities until counsel has been made available to him unless the accused himself initiates further communication, exchanges, or conversations with the police. A defendant’s statements are properly obtained when a defendant asserts his right to counsel, subsequently initiates further conversation and then validly waives his Miranda rights. Oregon v. Bradshaw. In this case, Marcus initiated the conversations with the officers about his case. Once they read him his Miranda rights and obtained a valid waiver of those rights, they were free to question him without the presence of an attorney.

b. Yes, because both a written Miranda warnings and a written waiver are required when a suspect is being interrogated about a serious crime like murder.

INCORRECT: A suspect can waive the Miranda rights orally, but refuse to sign the form. North Carolina v. Butler. The degree of crime does not dictate what form, oral or written, the waiver must take. An oral waiver of the Miranda rights can be sufficient, even in a murder case.

c. No, because the officers did not violate his Miranda rights by questioning him after he had invoked his right to counsel.

CORRECT: In Edwards v. Arizona, the Supreme Court said that once an accused, having expressed his desire to deal with the police only through counsel, cannot be subject to further interrogation by the authorities until counsel has been made available to him unless the accused himself initiates further communication, exchanges, or conversations with the police. In this case, Marcus initiated the conversations with the officers. Once they read him his Miranda rights and obtained a valid waiver of those rights, they were free to question him without the presence of an attorney.

d. No, because the officers were questioning Marcus about a different crime than the one for which he had previously invoked his right to counsel.

INCORRECT: In Arizona v. Roberson, the Supreme Court extended the Edwards rule to apply to situations where the police want to interrogate the suspect about an offense that is unrelated to the subject of their initial interrogation. Thus, once a suspect in custody invokes his right to counsel, no further police interrogation regarding any crime may occur unless the accused himself initiates further communications, exchanges, or conversations with the police.

10. Carter was arrested for selling heroin to an undercover officer. At the police station, two officers took him into the processing area. One officer took out a booking sheet and began asking him questions including his full name, address, height, weight, date of birth and social security number. Carter answered all of the questions. When this was completed, another officer took the information and conducted a “wants and warrants” check through the National Crime Information Center (NCIC). The check showed that Carter was wanted for Obstruction of Justice under Title 18 U.S.C. 1503. Did the officers violate Carter’s constitutional rights in obtaining the information?

- a. Yes, because Carter was in custody and was interrogated without first being advised of, and without validly waiving, his Miranda rights.
- b. Yes, because the information was used to run the wants and warrants records check that showed he was wanted for another crime.
- c. No, because Carter was not under arrest for the crime of Obstruction of Justice.
- d. No, because Miranda warnings are not required prior to asking questions to obtain routine booking information.

ANALYSIS:

a. Yes, because Carter was in custody and was interrogated without first being advised of, and without validly waiving, his Miranda rights.

INCORRECT: Despite Carter being under arrest, the “routine booking question” exception to Miranda allows questions to secure biographical data necessary to complete booking or pretrial services. The questions are for record-keeping purposes only and are reasonably related to police administrative concerns.

b. Yes, because the information was used to run the “wants and warrants” records check that showed he was wanted for another crime.

INCORRECT: The “routine booking question” exception to Miranda allows questions to secure biographical data necessary to complete booking or pretrial services. The fact that a “wants and warrants” check was done does not cause this exception to be inapplicable.

c. No, because Carter was not under arrest for the crime of Obstruction of Justice.

INCORRECT: Miranda applies anytime a person is subjected to custodial interrogation. However, the Supreme Court has ruled that the “routine booking question” exception to Miranda allows questions to secure biographical data necessary to complete booking or pretrial services.

d. No because Miranda warnings are not required prior to asking questions to obtain this biographical data.

CORRECT: The “routine booking question” exception to Miranda allows questions to secure biographical data necessary to complete booking or pretrial services. The questions are for record-keeping purposes only and are reasonably related to police administrative concerns.

11. An informant was being used by Federal agents to purchase narcotics from an unknown individual during a “buy-walk” in a city alley. The suspect, who was wearing a hooded sweatshirt, sold narcotics to the informant. When this happened, the informant gave a pre-arranged signal to arrest the suspect. The suspect punched and kicked the informant and fled the scene. Surveillance agents attempted to apprehend the suspect but lost him while running through city street traffic. The agents radioed a description of the suspect and his direction of travel. Approximately 8 blocks away and 20 minutes after the crime, a patrol officer spotted a suspect walking down the street who fit the description of the suspect. The officer stopped the suspect and radioed the agents. The agents took the informant to the location. Upon arrival, the informant immediately said “that’s the guy – that’s the guy who sold me the drugs and then beat me.” The suspect was placed under arrest. Did the officers violate the suspect’s rights in obtaining this identification?

- a. Yes, because a one-to-one viewing is always unnecessarily suggestive and a violation of the due process clause.
- b. Yes, because only a law enforcement officer can identify a suspect under these circumstances.
- c. No, because the suspect’s due process rights were not violated by the use of this one-to-one viewing.
- d. No, because informants are presumed credible and any identification made by an informant is reliable.

ANALYSIS:

a. Yes, because a one-to-one viewing is always unnecessarily suggestive and a violation of the due process clause.

INCORRECT: Under constitutional standards, show-ups can be proper and not unduly suggestive under certain circumstances. As such, there is no prohibition under the due process clause that automatically bans show-ups.

b. Yes, because only a law enforcement officer can identify a suspect under these circumstances.

INCORRECT: Any witness can identify a suspect at a line-up or show-up. This procedure is not limited to law enforcement officers.

c. No, because the suspect’s due process rights were not violated by the use of this one-to one viewing.

CORRECT: Show-ups that occur shortly after a crime are permissible. Immediate show-ups can serve legitimate law-enforcement purposes, as they allow identification before the suspect has altered his appearance and while the witness' memory is fresh, and permit the quick release of innocent persons. As such, a prompt showing of a detained suspect at or near the scene of a crime has a very valid function: to prevent the mistaken arrest of innocent persons.

d. No, because informants are presumed credible and any identification made by an informant is reliable.

INCORRECT: Informants are not presumed credible. Rather, any identification will be viewed under the totality of the circumstances to determine if it is reliable.

12. Which of the following do not have a Fifth Amendment privilege against self-incrimination?

- a. A witness subpoenaed to testify before the federal grand jury.
- b. A corporation being investigated by federal agents.
- c. A suspect who has been arrested by federal authorities.
- d. A public employee being questioned by his/her employer in an internal investigation.

ANALYSIS:

a. A witness subpoenaed to testify before the federal grand jury.

INCORRECT: The Fifth Amendment privilege against compulsory self-incrimination can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory. When asserted, the Fifth Amendment privilege protects against any disclosures that the witness reasonably believes could be used against him/her in a criminal prosecution or could lead to other evidence that might be so used. If a witness subpoenaed to testify before the federal grand jury desires the protection of the Fifth Amendment privilege against self-incrimination, the witness can claim the privilege.

b. A corporation being investigated by federal agents.

CORRECT: “Collective Entities” do not have a privilege against self-incrimination. The Fifth Amendment privilege applies only to individuals. Corporations and other collective entities are not protected by the Fifth Amendment.

c. A suspect who has been arrested by federal authorities.

INCORRECT: Suspects under arrest have a Fifth Amendment privilege against self-incrimination. The concern in Miranda was that coercion inherent in custodial interrogation blurs the line between voluntary and involuntary statements, and thus heightens the risk that an individual will not be accorded his privilege under the Fifth Amendment not to be compelled to incriminate himself. Therefore, the Supreme Court created the Miranda warnings designed to protect this Fifth Amendment privilege.

d. A public employee being questioned by his/her employer in an internal investigation.

INCORRECT: Public employees can have a Fifth Amendment privilege against self-incrimination. Generally, a public employer cannot use the threat of discharge to secure incriminating evidence from an employee and then use that evidence against the employee to obtain a conviction. Likewise, a public employee cannot be terminated from employment for invoking and refusing to waive their Fifth Amendment privilege against self-incrimination.

13. Morgan was arrested for bank robbery and taken to an initial appearance, where he requested that a lawyer be appointed to represent him. This request was approved, and a lawyer was appointed to represent him. Following a detention hearing, he was released on bail. Approximately two days later, Federal agents, suspecting that Morgan was also involved in narcotics trafficking, went to his home to interview him about that offense. Upon arrival, the agents introduced themselves, told Morgan he was not under arrest and asked him if he would answer their questions. Morgan agreed, and ultimately admitted that he had been involved in narcotics trafficking. At no time did the agents provide Morgan his Miranda warnings. Did the agents violate any of Morgan's constitutional rights when they obtained his statements?

a. The agents violated Morgan's Fifth and Sixth Amendment rights to counsel by initiating contact and questioning him without first notifying the attorney that had been appointed to represent him.

b. The agents did not violate either Morgan's Fifth or Sixth Amendment rights to counsel by initiating contact and questioning him without first notifying the attorney that had been appointed to represent him.

c. The agents violated Morgan's Sixth Amendment right to counsel by initiating contact and questioning him without notifying the attorney that had been appointed to represent him.

d. The agents violated Morgan's Fifth Amendment right to counsel by initiating contact and questioning him without first notifying the attorney that had been appointed to represent him.

ANALYSIS:

a. The agents violated Morgan's Fifth and Sixth Amendment rights to counsel by initiating contact and questioning him without first notifying the attorney that had been appointed to represent him.

INCORRECT: The Supreme Court has repeatedly emphasized that Miranda warnings are due only when a suspect interrogated by the police is "in custody." In this case, the agents did not violate Morgan's Fifth Amendment right to counsel because he was not in custody at the time of the questioning. Further, the Sixth Amendment right to counsel is "offense specific" and does not attach until a prosecution is commenced (i.e., at or after the initiation of adversarial judicial criminal proceedings, such as by way of indictment, information, or initial appearance). Thus, Morgan's Sixth Amendment right to counsel regarding the bank robbery attached and was asserted by Morgan at the initial appearance. However, in this case, the agents did not violate Morgan's Sixth Amendment right to counsel because no formal charges had yet been filed on the narcotics charge.

b. The agents did not violate either Morgan's Fifth or Sixth Amendment rights to counsel by initiating contact and questioning him without first notifying the attorney that had been appointed to represent him.

CORRECT: Morgan had neither a Fifth nor Sixth Amendment right to counsel when the questioning concerning the narcotics offense was conducted. The agents did not violate Morgan's Fifth Amendment right to counsel because he was not in custody at the time of the questioning. Similarly, the agents did not violate Morgan's Sixth Amendment right to counsel because no formal charges had yet been filed on the narcotics charge.

c. The agents violated Morgan's Sixth Amendment right to counsel by initiating contact and questioning him without notifying the attorney that had been appointed to represent him.

INCORRECT: The Sixth Amendment right to counsel is "offense specific" and does not attach until a prosecution is commenced (i.e., at or after the initiation of adversarial judicial criminal proceedings, such as by way of indictment, information, or initial appearance). In this case, Morgan's Sixth Amendment right to counsel had attached and was asserted for the armed robbery charge, because he had already been to an initial appearance and requested an attorney. However, because no formal charges had yet been filed on the narcotics charge, he had no Sixth Amendment right to counsel for that offense.

d. The agents violated Morgan's Fifth Amendment right to counsel by initiating contact and questioning him without first notifying the attorney that had been appointed to represent him.

INCORRECT: The Supreme Court has repeatedly emphasized that Miranda warnings are due only when a suspect interrogated by the police is "in custody." In this case, the agents did not violate Morgan's Fifth Amendment right to counsel because he was not in custody at the time of the questioning.

14. Jones was indicted for bank robbery and arrested approximately two weeks later. At his initial appearance, an attorney was appointed to represent him. Two days later, a Federal agent, without notice to Jones' counsel, arranged to have two of the tellers observe a line-up of Jones and five other prisoners. Jones voluntarily came to the line-up. All of the lineup participants were required to state, "Put the money in the bag." Both tellers identified Jones as the robber. Did the agents violate Jones' constitutional rights when they conducted this identification procedure?

- a. Yes, because the lineup violated Jones' Sixth Amendment right to counsel.
- b. Yes, because requiring Jones to say, "Put the money in the bag" violated his Miranda rights.
- c. No, because the lineup did not violate Jones' Sixth Amendment right to counsel.
- d. No, because Jones did not have a Sixth Amendment right to counsel at this line-up

ANALYSIS:

a. Yes, because the lineup violated Jones' Sixth Amendment right to counsel.

CORRECT: The Sixth Amendment right to counsel attaches when the "adversarial judicial process" begins. After this point, an accused is entitled to have counsel present at "critical stages" of the proceedings, such as during police questioning and at all court appearances. The Supreme Court has also determined that post-indictment lineups are "critical stages" for purposes of the Sixth Amendment. Thus, both Jones and his counsel should have been notified of the impending lineup, and the presence of Jones' counsel was required, absent a waiver of that right by Jones. The agent's failure to provide Jones an opportunity to have his counsel present during the post-indictment lineup was a violation of his Sixth Amendment right to counsel.

b. Yes, because requiring Jones to say, "Put the money in the bag" violated his Miranda rights.

INCORRECT: Requiring Jones to say, "Put the money in the bag" did not violate Jones' Fifth Amendment privilege against self-incrimination. The Fifth Amendment privilege against self-incrimination applies only when the accused is compelled to make a testimonial communication that is incriminating. The privilege does not apply to non-testimonial evidence. In this case, Jones' statement was non-testimonial. His statement did not reveal his thoughts; rather it only identified the physical characteristics of his voice.

c. No, because the lineup did not violate Jones' Sixth Amendment right to counsel.

INCORRECT: The Sixth Amendment right to counsel attaches when the "adversarial judicial process" begins. After this point, an accused is entitled to have counsel present at "critical stages" of the proceedings, such as during police questioning and at all court appearances. The Supreme Court has also determined that post-indictment lineups are "critical stages" for purposes of the Sixth Amendment. Thus, both Jones and his counsel should have been notified of the impending lineup, and the presence of Jones' counsel was required, absent a waiver of that right by Jones. The agent's failure to provide Jones an opportunity to have his counsel present during the post-indictment lineup was a violation of his Sixth Amendment right to counsel.

d. No, because Jones did not have a Sixth Amendment right to counsel at this line-up.

INCORRECT: The lineup was conducted in violation of Jones' Sixth Amendment right to counsel. The Supreme Court has determined that post-indictment lineups are "critical stages" for purposes of the Sixth Amendment. Thus, both Jones and his counsel should have been notified of the impending line-up, and the presence of Jones' counsel was required, absent a waiver of that right by Jones.