FINAL EXAMINATION

CRIMINAL LAW AND PROCEDURE II

Professor Power

Time: 3 Hours, Closed Book

This is a 3-hour, closed book examination. There are 2 questions. You should allocate 90 minutes to each.

Please place your examination number on each of your examination booklets. On each booklet, please indicate both the number of that particular book in the series of books you write and the total number of books in the series. For example, Book 2 of 3.

Your handwriting must be legible. I will do my best to read your handwriting, but I cannot give credit unless I can figure out what you have written. **Please write on only one side of each page** and, if your handwriting makes it necessary, write only on every other line. Security will deal ruthlessly with anyone who disobeys this edict.

Attempt to answer the questions based on the facts given. If you find it necessary to make any factual assumption in writing your answer, **state** the assumption and **explain** why you are making it. If you believe that additional information is necessary to answer a question, explain what information is necessary and how it would affect your answer.

Question 1 - 90 minutes

(This is taken, with minor editing, from <u>The Axeman's Jazz</u>, by Julie Smith © St. Martin's Press, N.Y., 1991, just so you don't think I get everything from TV or movies.)

Policewoman Skip Langdon just *knew* that Di was the "Axeman Murderer" and decided to confront her. She went to Di's apartment building and was about to press the intercom to ask Di to let her in when another tenant used his key to open the main door. She simply slipped in behind him, saying "Hi," as if she belonged there. She took the elevator to Di's floor and knocked at the door to Di's apartment. As she knocked, she observed a vinyl glove on the floor, picked it up, and put it into her purse. Hearing no answer, she tried the door, which opened easily. "That's odd," she said.

"Di?" she called. There was no answer. She thought "I hope she's all right. Hmm, I could take a quick look, and who would ever know? Is this breaking and entering? No, not really, we're friends, and I didn't find her home and came in to leave her a note. I had a weird feeling - so I just *had* to look in and make sure everything was okay. She'll believe it, I almost believe it myself.

She moved into the apartment, leaving the door ajar. And with her first step in the door her attention was so riveted she couldn't have left if her conscience had attacked her with a cattle prod. Thrown casually on the back of the sofa, as if it had annoyed the wearer, was a scarf almost identical to the one that had been left on the body of Jerrilyn Jordan, the Axeman's second victim. It was a cheap rectangle of Indian cotton, a long neck scarf fringed on the ends. As soon as Skip saw it, she realized she'd seen it earlier - Di had been wearing it as a belt.

Since the light was on in the bathroom, she looked there next. On the counter were the usual toiletries and some other things, including a pair of discolored vinyl gloves, just like the one she found outside the apartment. Gloves like those the Axeman probably used.

Putting them on to avoid leaving prints of her own, Skip opened the drawers and found more gloves, a whole box of them. She took a clean pair and put the used ones back on the counter.

She went into the bedroom. There, in the bottom of the closet was a Smith-Corona portable typewriter, 30 years old if it was a day, just what the forensic experts said the Axeman used to type the letters to the newspapers. Skip thought, "Do I dare to type something out, something to compare to the Axeman's letters? No. That would be inviting permanent damage. And anyway, I hear someone on the stairs now." Pulling off the gloves and shoving them in her pocket, she called, "Di? Oh, Di? Di, are you home."

She had safely reached the living room and was standing tentatively like a person who'd

just arrived by the time Di came in. She put a hand to her throat. "Oh, Di. There you are. I saw your door open and I got worried."

Di said, "My door was open? But I usually lock it."

Skip said, "It was like this when I got here. Should we look around to make sure everything's okay?"

Di agreed. They looked throughout the apartment, Skip doing the work, Di hovering nervously. They found nothing out of place. They sat down and chatted for a while before Skip yawned, looked at her watch and said, "I'd better get going." She then got going, right back to the station house where she went directly to Lieutenant Cappello's office. The way she told it, Di's door had been not only unlocked, but nearly wide open. Skip had seen the scarf in the living room, and about that time Di had come home. They'd talked, and she'd gone to the bathroom and seen the gloves there. She didn't mention seeing the typewriter, figuring there was no way to make it seem natural. So she told him that there was a typed grocery list on the refrigerator, so maybe Di had a typewriter.

Cappello said, "I hate to take a chance on a warrant at this point, but see if she will admit to having a typewriter and let us compare it with the Axeman's letters."

Skip was just about to do that when Di walked in the stationhouse. Di said, "After you left, I went through the house one more time, just to make sure nothing was missing. But guess what?" She sounded genuinely puzzled. "I found something that isn't mine. I mean, somebody was in the apartment, but they brought something in rather than took anything out. What kind of burglar is that?"

Skip said, "What did you find?"

Di responded, "A typewriter. An old, portable typewriter, and here it is." Skip took the typewriter - the same one that she had seen in the closet - down to the forensics lab immediately. Their tests were positive - it was in fact the typewriter used by the Axeman. On the basis of this information and the vinyl glove Skip found outside Di's apartment, the police obtained a search warrant. It authorized the police to search Di's apartment for and seize "any and all evidence of the Axeman murders." The search resulted in the seizure of the scarf from the living room, the gloves from the bathroom, and a book that was in Di's bedroom, but which Skip has not seen previously. The book described how to use an axe effectively.

I won't tell you "whodunit" in the book, but assume for the purpose of this question that the police charge Di with the Axeman murders. You are the judge. Di's attorney has moved to suppress all the evidence obtained from the apartment - the scarf, the gloves, the typewriter, and the book, as well as the glove found in the apartment building's hallway. All of the facts set out in the problem are proved to your satisfaction at the suppression hearing. Rule on the motions.

Question 2 - 90 minutes

Four days after a bank robbery in Susquehanna, in the state of West Wusl, the police conclude that Bonnie and Clyde robbed the bank while Alvin Karpis waited in a purple Volkswagen van close to town. They apply for arrest warrants, submitting the following information under oath:

- 1. Anna Sage identified Karpis from a picture as the person she observed on the morning of the robbery standing by a purple van on Linglestown Road, near Susquehanna.
- 2. On the morning of the robbery, Charles Floyd observed a male and a female traveling toward Susquehanna in a 1984 or 1985 pale blue four door car, closely followed by one male driving a purple van. Floyd observed the cars 5 miles from town on Mountain Road.
- 3. At the time of the robbery, Lester Gillis saw a man and a woman run from the bank and jump into a blue car. The car sped away.
- 4. The day after the robbery, Detective Erskine found a recently burned 1984 blue Chevy Vega on Linglestown Road, a half mile from the location where Sage observed Karpis.
- 5. Detective Starling has personal knowledge that Bonnie and Clyde live together.
- 6. George Kelly, a life-long resident of Susquehanna who has provided information to the police that proved to be true on 3 prior occasions, states that he ran into Bonnie 2 weeks ago and that she said, "We rob banks." She was in a pale blue car at the time.
- A. Should a magistrate issue arrest warrants for Bonnie, Clyde and/or Karpis? (30 minutes)
- B. Assume that the Magistrate issues the warrants and that Bonnie and Clyde are arrested. Evidence of the bank robbery is found in searches of their persons incident to arrest. Their attorneys move to suppress the evidence. The trial judge concludes that probable cause was lacking. Should the judge suppress the evidence? (15 minutes)
- C. **Now** assume that the arrests and searches were valid under the 4th Amendment but invalid under the West Wusl Constitution's equivalent of the 4th Amendment. What arguments are there in favor of and against the state court suppressing the evidence? (15 minutes)
- D. After their arrests, Bonnie and Clyde are taken downtown for questioning. One of the arresting officers takes Clyde into one interrogation room and the following colloquy takes place:

- Q. What is your name?
- A. Clyde Barrow
- Q. Your address?
- A. Stuff it, you lousy copper.
- Q. Do you understand that you have the right to remain silent?
- Q. Do you understand that any statement you make could be used for you or against you in court?
- Q. Do you understand that you have the constitutional right to have the advice of an a attorney before making this statement?
- Q. Do you understand that if you cannot afford an attorney, the court will obtain one for you?
- A. Yes.
- Q. Do you waive these rights?
- A. Yes.
- Q. Do you understand what the word "waive" means?
- A. Yes.
- Q. Is this statement voluntary on your part?
- A. Yes.

Clyde is an adult male, with a high school diploma and several years of experience working as a clerk in a record store. He reads at the college freshman level. During interrogation he admits that he participated in the bank robbery.

The next day Clyde asks the jailer to send one of the arresting officers over. Detective Starling comes to the jail that morning. Clyde asks if Starling wants to hear about other crimes. Starling says, "We're always interested, but I can't make any promises to you, and you don't have to say anything." Clyde says, "I know people do better in court when they admit their guilt." Starling says, "That's usually true, but don't think you can just talk your way out of this." Clyde says, "Well, I'm just a little part of a big group." Starling says, "Then talk to me, I'd like

to hear your side of it. If you say the right things, we can help you out." Clyde says, "Okay, then, here's the story," and proceeds to describe the organization of the gang and to admit to participation in 5 other robberies.

When the police officers meet with th D.A., they recommend leniency for Clyde, who had, after all, helped them. The D.A. says, "No way. We prosecute the kid, *then* get his cooperation against the others."

Accordingly, Clyde is prosecuted for all 6 robberies. Before trial, his attorney moves to suppress the evidence from the 2 confessions. What result and why? (30 minutes)