1991 EXAM QUESTIONS

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## PROBLEM 1

A Grand Jury was convened in a state court to investigate possible violations of the laws prohibiting prostitution. Artie Fleabag, a proprietor of a hotel, has been subpoenaed to appear before the Grand Jury and bring along all of his records concerning customers for the last three months. Artie's lawyer files a motion to quash the subpoena on the grounds that there has been no showing of even a reasonable suspicion, let alone probable cause, to believe that Artie is engaged in any criminal activity, and that the Fourth Amendment is therefore being violated.

During the proceedings before the Grand Jury a witness is asked whether she was aware that Artie kept various sex devices for prostitutes at the hotel. She replies, "Yes, I heard about that." The sex devices had been seized by police, but ordered suppressed on Fourth-Amendment grounds (no probable cause) in a previous unsuccessful prosecution of Artie.

The only other witness is an F.B.I. agent who testifies concerning Artie's alleged running of a prostitution ring at the hotel based on information received from an informant.

Artie is indicted on prostitution related offenses. His lawyer moves to quash the indictment on the ground that it was based in material part on questioning derived from unconstitutionally seized evidence in violation of the Fourth Amendment. Additionally, he claims because it was based entirely on hearsay it violates his Fifth Amendment right to a Grand Jury indictment and his due process rights because the evidence was unreliable.

Address the constitutional claims raised by Artie's lawyer in his motion to quash the subpoena and the motion to discuss the indictment, evaluating their chances for success.



## PROBLEM 2

Homeowners who shot intruders were not arrested at all by the prosecutor in defendant's county for a few years even though a self-defense claim was only arguably valid in some of those cases. This is because a valid self-defense claim requires a reasonable fear of imminent serious bodily injury. After defendant shot the burglar coming through his basement window, he was arrested and charged with aggravated assault and simple assault. Defendant's lawyer moved to dismiss the charges on equal protection and due process grounds, and produced evidence at a hearing establishing that the last 8 homeowners in similar circumstances the last 4 years had not been arrested. The prosecutor responded that he had the evidence to make out the charges and was starting to worry that people were beginning to take the law into their own hands.

What is the likely outcome of this motion and why?