

Essay instructions:

You must answer both Parts A and B. Be aware that the question may present multiple issues. You should allocate your time and written response on the basis of relative importance of each issue and the depth of analysis required for that issue. If you think that you need more facts to address any issue, identify the additional facts and explain how they would affect your answer.

There is no page limit or word limit for the essay. Keep in mind, however, that well-organized and succinct responses are likely to receive more points than repetitive, meandering, or otherwise disorganized responses.

Be sure to include your exam number on your bluebook or typed exam. In accordance with standard law school procedure, do not write your name anywhere in your essay or on your exam.

If you are writing the essay by hand, please use a pen with blue or black ink, and please write legibly. I cannot give you credit for responses I cannot read. If you are writing your exam on computer, please follow the Registrar's instructions.

Part One
Essay (70 points)

Humbert was miserable. His troubles began in October, when his friend Charlie sent him several emails with mysterious attachments. Humbert opened the attachments and discovered various pornographic images of very young girls. Unbeknownst to Humbert, the local police had received a tip from a known and trusted informant that Humbert was “dabbling in kiddie porn.” Officer Adams had begun to conduct surveillance of Humbert’s home, and quickly discovered that Humbert used a dial-up modem that was placed right in front of a window at the front of the house. The flickering modem light was faintly visible from the street, and computer whiz Officer Adams had an inspired idea. From his squad car on the street, using a sophisticated high-speed video camera that shot tens of thousands of frames per second, Adams began recording the flickering modem light. Back at the station, he reviewed the videotape at slow speed, and was able to decode the contents of Humbert’s email transmissions based on the pattern of the light. Once Officer Adams confirmed that illegal child pornography had been transmitted through the modem, he prepared an affidavit describing his findings and sought a search warrant for Humbert’s home. Around 11 pm on Halloween, Officer Adams met his partner Officer Freddie at Humbert’s house with a search warrant that authorized them “to gather evidence of the possession, transmission, or distribution of child pornography.” No one answered the doorbell, and after waiting a few minutes at the front door, Adams and Freddie entered the house. To the officers’ disappointment (and in a rare stroke of good luck for Humbert), there was no computer in the house. Humbert’s laptop had been stolen the day before. But taped to the underside of Humbert’s bed, Officer Freddie found and seized a pistol with an illegal silencer attached. And on a nearby desk, Officer Adams found the following handwritten note: “Where the kids will be: 338 Creekside Dr., 10/31.” Taking the note, the officers decided to visit 338 Creekside.

It was after midnight by then, and there was already trouble at 338 Creekside. That was Charlie’s house, and Charlie was hosting a Halloween party. In response to noise complaints from Charlie’s elderly neighbors, two other officers arrived at 338 Creekside at about 11:30 pm (while Adams and Freddie were at Humbert’s home). Officers Marty and Jack could hear loud music and (according to Jack’s later testimony) “thumping” from the inside of the house. When no one answered their repeated knocks at the front door, Marty and Jack walked around to the back of the house. As they approached the back door, a young woman with blood on her face walked (“staggered,” in Jack’s words) out of the house. “It’s wild in there,” she said before running off. Marty and Jack knocked at the back door, shouted “Police!”, and then entered the house. The back door led into a kitchen, where four people (including Humbert) were seated around a table. In the middle of the table was a pile of marijuana. “Everybody freeze,” Officer Marty yelled. Officer Jack seized the marijuana, then frisked Humbert and his three friends (all young women in their early 20s). “Who brought the dope?” Jack asked, looking at Humbert. Each of the young women, and Humbert, denied ownership of the drugs. “C’mon, buddy,” said Jack to Humbert. “It’s pretty clear where this came from. Don’t make me arrest these nice young ladies.” Humbert grimaced in response. “Look,” Humbert said, “I’m not sayin’ I’ve never rolled a joint. But that stuff ain’t mine.” Officer Jack proceeded to arrest Humbert and the three women, reading *Miranda* rights to each. When Jack explained, “If you cannot afford a

lawyer, one will be provided to you,” Humbert laughed. “Yeah, give me a crappy public defender!” he said sarcastically. “No thanks, I want my own lawyer.”

Officer Marty took Humbert to the police station while Officer Jack remained with the young women, waiting for backup officers to arrive. On the way to the station, Marty said to Humbert, “Look, you’re really putting those girls in a bad situation. There’s still time to keep them out of trouble.” Humbert replied, “I was straight with the other cop, and I’m being straight with you. That pot wasn’t mine. The girls bought it from me hours before you showed up.”

At the station, Humbert was booked and fingerprinted. Then, to his surprise, Officer Marty told him to open his mouth. Marty explained that under a new state law, the police were authorized to take saliva samples of any person arrested and taken into custody. The new law was intended (in the legislature’s words) “to ensure the accuracy of, and public confidence in, the criminal justice system.” Specifically, the law provided that “at booking after a custodial arrest, law enforcement officers may, at their discretion, obtain a saliva sample of the suspect for DNA analysis.” Humbert grudgingly opened his mouth. He would soon learn that his DNA matched that obtained at the scene of a previously unsolved sexual assault. A week after the arrest at 338 Creekside, Humbert was indicted for sexual assault, felony possession of marijuana, and illegal weapon possession. Bail was set at \$80,000, and Humbert knew only one person who might be able to help. He called his loyal friend Juan, who posted bail and picked Humbert up from the station. In the car, Juan tossed Humbert a fanny pack. “You left this at Charlie’s the night they picked you up,” he said. Humbert thanked Juan and put the fanny pack around his waist.

On the way back to Humbert’s house, all-too-familiar red and blue lights flashed behind Juan’s car. “It can’t be!” cried Humbert in dismay. “What were you doing?”

“Not a thing,” muttered Juan angrily as he pulled to the side of the road. Officer Debbie approached the car. “Do you know how fast you were going?” she asked Juan. “About 40,” he replied. “43 in a 40, to be exact,” Debbie said. “I might let you off with a citation, but I’ll need you and your passenger to step out of the car.” After Juan and Humbert complied, she proceeded to frisk each of them. “Why are you doing this?” Juan protested. “Safety first,” Debbie answered with a smirk. She found no contraband on Juan, but felt a round object inside Humbert’s fanny pack. She opened the pack and found a rolled-up magazine that contained photos of naked children. “Look at this!” Debbie said to Humbert. “I only pulled him over because he looked like one of those Mexican dealers, but I guess I hit the jackpot with you.” She placed Humbert under arrest and read him *Miranda* warnings, but gave Juan a warning and let him go. As Debbie placed Humbert in her cruiser, she said, “Aren’t you the same guy they just indicted for sexual assault? Man, is there any kind of trouble you haven’t been in?”

“Hey, I’m no pervert,” Humbert said. “As a dealer I need a gun for protection, and I know they’ll get me on the weapons charge. But those filthy pictures aren’t mine. Don’t go accusing me of the sex stuff.” Predictably enough, a child pornography possession charge was added to the list of charges against Humbert.

A. (55 points) Explain Humbert’s best constitutional arguments to suppress the pistol, the handwritten note, the marijuana, the saliva sample and resulting DNA evidence, the magazine,

and all incriminating statements. Explain the prosecution's likely responses, and how you think a court is likely to rule.

B. (15 points) Which of the doctrinal rules that you have applied in Part A represents the greatest departure from the Supreme Court's early articulations of Fourth, Fifth, or Sixth Amendment principles? Does this departure represent a regrettable decay of constitutional principles, or a welcome correction of the Court's early folly? Your answer should refer to the Court's analysis in at least one of the following cases: *Boyd v. United States*, *Katz v. United States*, *Mapp v. Ohio*, *Miranda v. Arizona*, or *Massiah v. United States*.