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Examination No. _____

632 EVIDENCE/TRIAL PRACTICE
Semester I, 2001-2002

Final Examination
UNM School of Law
Six Credits

Professor Barbara Bergman
Saturday, December 8, 2001
Monday, December 10, 2001
9:00 a.m. to 12:00 noon

INSTRUCTIONS

1. This examination consists of twenty (20) multiple-choice questions and one essay question. The multiple-choice questions are worth a total of fifty (50) points. The essay question is worth fifty (50) points. Thus, the entire examination is worth a total of one hundred (100) points. I suggest you allocate your time accordingly.
2. Answer the multiple-choice questions on the examination itself. Answer the essay question in a bluebook(s). Please be sure to:
 - (a) Put your examination number on each page of your exam and on each bluebook.
 - (b) Turn in everything at the end.
3. This is a MODIFIED OPEN BOOK EXAMINATION. You are permitted to use your notes, any outlines that you and/or your classmates prepared, any required texts, and any material distributed in class (including the Lexis/Nexis booklet of the Federal Rules of Evidence). You may **not** use any commercial outlines.

End of Instructions

GOOD LUCK!

[THE QUESTIONS BEGIN ON PAGE 2.]

PART II – Essay Question
(50 points)

For purposes of answering this question, assume that the Federal Rules of Evidence (or federal common law when appropriate) apply, unless instructed otherwise. Please answer the question in your bluebook(s).

Louis Corelli, the supervising chemist in the local police laboratory, was fired when the FBI reviewed his testimony in fifteen randomly selected cases and determined that Corelli's testimony in five of those cases was not supported by the physical evidence and scientific tests upon which he supposedly relied. In other words, these preliminary results seemed to indicate that Corelli apparently "made up" evidence in order to help the prosecution obtain convictions. At that point, FBI Agent Tuesday confronted Corelli in his lab and stated: "Louie, it looks like you were making up test results to fit with the state's theories in a whole bunch of these cases. I sure would like to think that I'm wrong. I've known you a long time, and I consider you my friend." Corelli just looked at Agent Tuesday and then looked down at the floor, saying nothing.

These preliminary results prompted the FBI to conduct an exhaustive review – to the extent possible -- of all the cases in which Corelli had testified as an expert in his twenty-year career. During that investigation, Amos Techy, a lab technician who had worked under Corelli's supervision, approached the FBI. He asked if there was any chance he could get immunity from prosecution in exchange for telling them what he knew. The FBI then contacted you, the Special Assistant Attorney General who had been appointed to oversee this investigation and possible prosecution. You arranged for use immunity for Techy.

Techy then explained that Corelli had made it clear to all the staff in the lab that if they didn't get the results the local prosecutors wanted the first time, they should keep looking. If they simply couldn't produce what was needed, they were to let Corelli know. He would then take over the case and inevitably the "right results" seemed to miraculously appear. Needless to say, those lab technicians who wanted promotions and good evaluations started emulating Corelli's approach. But for his use immunity, Techy would have been facing a number of possible felony perjury charges based on his own testimony in several cases.

According to Techy, one of the cases in which Corelli had perjured himself was a death penalty case in which the defendant, Arturo Villa, was probably innocent, but Villa had been convicted and executed based primarily on Corelli's testimony. Techy had gone to speak to Corelli shortly before Corelli testified in Villa's case. When Techy raised some questions about Corelli's test results, Corelli told him not to worry. The prosecutor, Alan Junkin, knew about the problem with the test results, but he had assured Corelli that they had the right man and he needed Corelli's help to make sure that Villa didn't get off -- so Corelli was just making sure the

"justice system worked properly." Corelli told Techy that he intended to testify as Junkin wanted and that Junkin had promised Corelli he would be protected. When the case was over, Junkin would see to it that the case file and all the physical evidence "disappeared."

When you start investigating the Villa case, you look everywhere for the state's case file as well as the physical evidence, but it cannot be found. When you ask him, Junkin has no explanation other than his office is notorious about not properly storing old case files and that everyone knows the police evidence storage facility is "a disaster waiting to happen." Despite the absence of those records, you re-investigate that murder case and are able to prove that someone other than Villa -- who has already been executed -- had committed the murder and that Villa was, indeed, innocent. The man who had actually committed the murder, Barney Fife, was already serving a life sentence for another murder. You promise Fife that you will not seek the death penalty for the murder in Villa's case if he tells you the truth. At that point, Fife breaks down and confesses in detail to the murder for which Villa had been executed, explaining that he had been tormented knowing that an innocent man had died for a murder he had committed. Shortly afterwards, Fife is stabbed to death in a prison riot.

Corelli also appears to have perjured himself in the William Tate case. The FBI lab tells you that they have a brand new sophisticated test that they developed just to test the degraded samples that remain in the police evidence file in the Tate case. Based on the FBI's test results, Corelli could not have gotten the test results he had testified about. The FBI's new testing procedure has not been peer reviewed, but the FBI chemist who is helping with the investigation is confident that the test is accurate and is willing to bet his career and reputation on it. The scientific principles on which it is based are valid and have been published in peer review journals. If the sample had not degraded so badly, they would have been able to conduct widely accepted tests but that option was no longer available given the many years that had passed and the conditions under which the evidence had been stored. This particular FBI chemist has testified as an expert in thousands of cases throughout the country. (The chemist does warn you that there is a widely respected book published by Dr. Kornberg that contains a passage contradicting one of the principles upon which the chemist based this new test, but the chemist is convinced that Kornberg is simply wrong on that point. If asked, however, the chemist would have to concede that Kornberg's text is established as reliable authority in the field.)

You decide to prosecute Corelli for perjury in the Tate case and to prosecute Corelli and Junkin for murder and conspiracy as a result of Villa's execution. In the course of the investigation, you have also identified one hundred other cases in which it is likely that Corelli falsified test results and gave perjured testimony but you have decided to just charge Corelli in these two cases because they are the strongest ones. (Junkin was the prosecutor in eighty of those one hundred cases.)

Corelli and Junkin are represented by the two most talented and experienced defense attorneys in the state. What evidence do you want to introduce that the defendants are likely to challenge and what evidence would you like to exclude? How is the court likely to rule on each of these evidentiary issues?

[END OF EXAM]