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**CRIMINAL PROCEDURE II**  
**Semester II, 2004**

UNM School of Law  
Final Examination

Professor Charles Daniels  
Friday, May 7, 2004  
Monday, May 10, 2004  
9:00 a.m. to 12:00 noon

**INSTRUCTIONS**  
(Three Hours)

1. This is a closed-book examination.
2. Identify, and explain succinctly the proper resolution of, the issues appearing in these three situations, each of which is weighted equally and deserves one-third of your time.
3. If more facts are needed, briefly explain why.
4. Allocate your time wisely.

(Examination begins on page 2.)

## Problem 1

To: You, my law clerk  
From: Me, the federal district judge you work for

I want you to look over a habeas corpus petition that was recently filed by a state prisoner and brief me on the issues and your suggested resolutions. These are the facts that were developed in the record of the state proceedings.

The indigent defendant, Sam Redbird, a Native American, was convicted of capital murder and sentenced to die for the murder of Joe Snitch, a witness to Redbird's embezzlement of funds of the Mormon church where he was a deacon.

During jury selection, the prosecutor made peremptory challenges to the only two Native Americans and the only three Mormons in the jury venire. When the defense objected, the judge said he would not get involved in how a party exercised peremptories.

A fact unknown to Redbird until after the trial is that his prior appointed trial counsel, Dan Dreamer, was addicted to heroin throughout his representation of Redbird. Redbird did notice that Dreamer was drowsy during the trial and actually fell asleep for at least a few minutes during the prosecutor's cross of Redbird and a few minutes during the prosecutor's summation. Dreamer did conduct some brief cross-examinations and a direct examination of Redbird. He waived final argument in the guilt phase, but did call the defendant's mother as a mitigation witness and made a brief closing argument in the death penalty phase of the trial.

Dreamer objected at trial to the admission of a shotgun shell found in Redbird's car during a search based on an anonymous tip that Redbird might possibly have drugs in the car. The trial judge denied the motion on the ground that it was not presented before trial, as required by the State rules of criminal procedure.

Redbird was tried with a co-defendant, Jimmy Coyote, whose redacted confession was introduced at the joint trial. When Dreamer responded to the offer of the confession, the prosecutor offered to redact the confession to change the references in the statement from "Coyote and me shot Snitch" to "another person and me shot Snitch." The judge then admitted the revised statement. Coyote testified and repudiated the confession, saying the police questioners had kept trying to get him to get him to admit he and Redbird had killed Snitch, but told them to write the statement how they wanted to, but the statement they wrote up was not true.

After the trial, the prosecutor and defense counsel learned for the first time from the chief investigating officer that a key eyewitness who testified she had gone to a lineup and identified Redbird as the shooter had in fact identified instead a police officer standing in the lineup as a "filler." The defense had filed a general discovery request before trial asking for "all evidence discoverable under the procedural rules and all exculpatory evidence."

What issues do you see, and what should I take into account in resolving them?

## Problem 2

To: You, my law clerk  
From: Me, the federal district judge you work for

I want you to look over a habeas corpus petition that was recently filed by a state prisoner and brief me on the issues and your suggested resolutions. These are the facts that were developed in the record of the state proceedings.

The indigent defendant, Sam Redbird, a Native American, was convicted of capital murder and sentenced to die in the New Mexico death chamber for murder of Joe Snitch, a witness to Redbird's embezzlement of funds of the Mormon church where he was a deacon.

During jury selection, the prosecutor made peremptory challenges to the only two Native Americans and the only three Mormons in the jury venire. When the defense objected, the judge ruled that he would not get involved in how a party chose to exercise his peremptories.

A fact unknown to Redbird until after the trial is that his prior appointed trial counsel, Dan Dreamer, was addicted to heroin throughout his representation of Redbird. Redbird did notice that Dreamer was drowsy during the trial and actually fell asleep for at least a few minutes during the prosecutor's cross of Redbird and a few minutes during the prosecutor's summation. Dreamer did conduct some brief cross-examinations and a direct examination of Redbird. He waived final argument in the guilt phase, but did call the defendant's mother as a mitigation witness and made a brief closing argument in the death penalty phase of the trial.

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After the trial, the prosecutor and defense counsel learned for the first time from the chief investigating officer that a key eyewitness who testified she had gone to a lineup and identified Redbird as the shooter had in fact identified instead a police officer standing in the lineup as a "filler." The defense had filed a general discovery request before trial asking for "all evidence discoverable under the procedural rules and all exculpatory evidence."

What issues do you see, and what should I take into account in resolving them?

### Problem 3

To: You, my student  
From: Me, your professor

What are the issues involved in the following facts, what arguments should the parties have made and how should the court have ruled?

Defendants Able, Baker, and Charlie were charged jointly in federal court with knowing possession of over 100 kilos of marijuana and conspiracy to distribute marijuana. Baker was also charged in the indictment with an unrelated armed robbery. The marijuana was allegedly found in Able's camper pickup, which Baker had been driving. Counsel for Able have advised counsel for Baker and Charlie that Able was the only one who was involved with the marijuana or knew the marijuana was in the truck, but that he will not take the stand at his own trial, to avoid incriminating himself. Baker told his counsel he wanted to testify to his innocence on the marijuana charges, but did not want to testify on the robbery charge

After their arrest but before indictment, they were brought before a federal magistrate, who set bail at \$100,000 for each of them, saying that in drug cases, his bonds were based on the retail value of the drugs. Able and Baker posted bond, but Charlie was unable to do so.

The defendants each demanded a preliminary hearing, and the judge scheduled one. An indictment was returned before the scheduled preliminary, and the judge vacated the preliminary hearing setting, over the defendants' objections.

Because of a very crowded court docket, the case did not come to trial until 18 months after the indictment and arraignment.

At the joint trial, the judge excused for cause all jurors who indicated they had any criticisms of the federal drug laws, over objection of the defense.

Charlie testified in his own defense and protested his innocence. The other two defendants did not testify.

The case was submitted to the jury at 4 p.m. on Friday afternoon. At 6 pm, the jury returned with a verdict of acquittal of Charlie on the count of possession of marijuana, but that they were unable to agree any remaining counts. The judge said, "Well, I'm sure that you all have plans, as I do, for the weekend, so I'll declare a mistrial."

The case was set for retrial, and before that date, the prosecutor obtained a superseding indictment, charging all three defendants with possession of over 100 kilos of marijuana with intent to distribute and conspiracy to distribute marijuana.

That ought to be enough to tax your minds with. I've enjoyed working with you this semester. Have a nice summer.