

Dershowitz Questions

1.

Described by Dershowitz as a case in which:

[In one fell swoop, five partisan judges have caused many Americans to question each of the assumptions undergirding the special status accorded these nine robed human beings. [This case] showed them to be little difference from ordinary politicians. Their votes reflected not any enduring constitutional values rooted in the precedents of the ages, but rather the partisan quest for immediate political victory. In so voting, they shamed themselves and the Court on which they serve, and they defiled their places in history.

2.

Dershowitz described the majority ruling in this case to mark a “number of significant firsts,” including:

Never before in American history have so many law professors, historians, political scientists, Supreme Court litigators, journalists who cover the high court, and other experts-at all points along the political spectrum-been in agreement that the majority decision of the Court was not only "bad constitutional law" but "lawless, "illegitimate," "unprincipled," "partisan," "fraudulent," "disingenuous," and motivated by improper considerations.

Answers to questions 1 & 2: What is *Bush v. Gore*?

Authority: A. Dershowitz, *Supreme Injustice*, at pp. 4-5.

3.

Justice Scalia described this doctrine as protecting:

[The legitimate expectations of those who live under the law, and, as Alexander Hamilton observed, is one of the means by which exercise of "an arbitrary discretion in the courts" is restrained

Answer: What is "Stare Decisis"?

Authority: *Hubbard v. U. S.*, 514 U. S. 695 (1995) (Scalia concurring.)
(Quoted by A. Dershowitz, *Supreme Injustice* at p. 125).

4.

Dershowitz asserts that this provision has been interpreted by courts and commentators to “mean radically different things” over the years, including the following to Supreme Court justices in various opinions:

1. The right to remain silent
2. The right to a private enclave into which the government may not pry
3. The right not to be compelled to expose one's own guilt
4. The right not be degraded
5. The right not be subjected to a "cruel dilemma" of self-accusation, perjury or contempt

Answer: What is the Fifth Amendment privilege against self incrimination?

Authority: A. Dershowitz, *Is There a Right to Remain Silent*, at p. 7.

5.

Dershowitz describes it as “an institution virtually unknown outside of Anglo-American law” that “is the heart and soul of our legal system.”

Answer: What is a jury?

Authority: A. Dershowitz, *Contrary to Popular Opinion*, at p. 13.

6.

In a June, 1991 article, Dershowitz described him as follows:

[The only real lawyer on the current high court-the only courtroom advocate who practiced his profession in the trenches and the emergency rooms of our legal system. . . . [He was a driving creative force against racial and economic injustice and in favor of equality. Almost single-handedly, he leveled the playing field of law politics and even public opinion.

Answer: Who is Thurgood Marshall?

Authority: A. Dershowitz, *Contrary to Popular Opinion*, at p. 21.

7.

While acknowledging that it “may well be among the most repulsive forms of speech,” Dershowitz describes it as “one of the most powerful and universal forms of symbolic speech.”

Answer: What is flag burning?

Authority: A. Dershowitz, *Contrary to Popular Opinion*, at p. 69

8.

Dershowitz notes that:

Although we began as a Puritan nation, our Constitution does not incorporate H. L. Mencken's definition of Puritanism as "the haunting fear that someone, somewhere, may be happy." Under our First Amendment we may not concern ourselves with how other people enjoy themselves, unless they harm us in the process.

Dershowitz describes this as being “One unfortunate exception to this constitutional rule...” and that under “a series of Supreme Court rulings, the government has the power to prevent its citizens from enjoying [it].”

Answer: What is obscenity?

Authority: A. Dershowitz, *Contrary to Popular Opinion*, at p. 178.

9.

Dershowitz offered a lecture “to complain about the agenda of legal ethics.” He noted that thirty years ago Professor Monroe Freedman set the agenda for the debate over legal ethics in the United States in criminal cases by posing three provocative questions:

One: Is it proper to cross-examine for the purpose of discrediting the reliability or

credibility of an adverse witness whom you know to be telling the truth? **Two:** Is it proper to put a witness, including the defendant, on the stand when you know he will commit perjury? And **three:** Is it proper to give your client legal advice when you have reason to believe that the knowledge you give him will tempt him to commit perjury?

Dershowitz complained because the focus of these debates has been almost exclusively on defense lawyers, as opposed on whom he I believe “the far more important focus should be”

Answer: Who are prosecutors?

Authority: A. Dershowitz, *Shouting Fire*, at p. 349.

10.

In his lecture “to complain about the agenda of legal ethics,” Dershowitz asserted: “The time has come to shift the focus back to prosecutors,” as opposed to defense lawyers. He also stated:

The time has come for [them] to understand that they are a serious part of the problem. If there are hundreds of thousands of cases every year of transparent perjury, there is an ethics problem involving [them]. . . . at every level . . . who are the ones who say they believe it.

Answer: Who are courts and judges?

Authority: A. Dershowitz, *Shouting Fire*, at p. 351.

11.

Dershowitz argues; “If the first casualty of war is truth, then the second casualty has traditionally been” this.

Answer: What are civil liberties?

Authority: A. Dershowitz, *Shouting Fire*, at p. 178.

12.

In an interview regarding one of his more controversial criminal cases, Alan Dershowitz answered:

The code of Professional Responsibility precludes a lawyer from stating his opinions about the guilt or innocence of a client. I probably know no more about the facts of the case than most observers. I can say this: had I been on the jury in the civil case, based on the evidence submitted in that case, I probably would have voted the way the jury voted.

Answer: Do you think OJ was guilty?

13.

Evidence

1. Paul, the plaintiff in a personal injury action, called Wes as a witness to testify that Dan's car, in which Paul had been riding, ran a red light. Wes, however, testified that Dan's car did not run the light. Paul then called Vic to testify that Dan's car did run the light. The trial judge should rule that Vic's testimony is:

- a. Admissible because Paul was surprised by Wes's testimony.
- b. Admissible because Vic's testimony was relevant to material issues.
- c. Inadmissible because Paul cannot impeach his own witness.
- d. Inadmissible because Paul is bound by the testimony of his own witness.

The correct answer is (b). Vic's testimony goes to the same material issue of whether or not Dan ran the red light. Although it is admissible independently because it is relevant to a material issue in the lawsuit, it also serves to impeach Wes's testimony by contradicting it. See Federal Rule 607 (which specifically provides that a party can impeach its own witness using any means which is permissible to impeach a witness on cross-exam).

14.

2. David is being tried in federal court for criminal conspiracy with John to violate federal narcotics law. At trial, the prosecutor calls David's new wife, Wanda, and asks her to testify about a meeting between David and John that she observed before she married David. Which of the following is the most accurate statement of the applicable rule concerning whether Wanda may testify?

- a. The choice is Wanda's.
- b. The choice is David's.
- c. Wanda is permitted to testify only if both Wanda and David agree.
- d. Wanda may be compelled to testify even if both Wanda and David object.

The correct answer is (a). With regard to this privilege, the choice of whether to testify is held by the witness-spouse. The defendant has no say. Since Wanda is the spouse of David at the time of trial and, under Trammel v. California, one of the marital privileges allows the spouse of a criminal defendant in federal court to refuse to testify against the defendant.

15.

Ethics

Phil is having a great day. He was just offered, and accepted, a high paying job as general counsel for BigCorp, a manufacturing company headquartered in Florida. Phil, who is a member of the Pennsylvania Bar but not the Florida Bar, must relocate to Florida promptly. He buys a waterfront home in Boca Raton and settles in to his new office in Delray Beach. BigCorp provides him with a corner office and a secretary, Jennifer. Phil instructs Jennifer to order his new business cards as soon as possible, as he is going to be attending a conference soon and wants to hand them out to all of his industry contacts. Jennifer provides Phil with the standard card format and a proof of what his card will look like. She then asks him if he wants any additional information added to the card. Phil says "No, it says I am General Counsel and that's as good as it gets. Go ahead and order 5,000 of these on premium cardstock." Phil then begins working on his application for authorized house counsel status with the Florida Bar. Two days later, Phil's cards come back from the printer and read as follows:

Phil A. Torney, Esq.
GENERAL COUNSEL
BigCorp Manufacturing
123 Congress Ave.
Delray Beach, FL 33488
(561) 888-9876
philatorney@bigcorp.net

Phil tells Jennifer that these are the best business cards ever and heads out to attend his conference in Orlando, where he distributes his cards to everyone at the conference.

What should Phil have done differently?

- a. He should have asked the CEO what his spending authority was before he ordered his business cards.
- b. He should have included a statement on his business card that said that he was not admitted to

practice law in Florida.

- c. He should have fired Jennifer for not telling him what the Florida Bar Rules said.
- d. He should have moved to Boynton Beach where the houses are more affordable.

The correct answer is (b). Florida Bar Ethics Opinion 70-44. It is not improper for a business card showing a corporation's name and Florida address to include identification of the corporate attorney's position. However, if the attorney is not licensed to practice in Florida a disclaimer to that effect should be included on the card. See also Rule 17-1.3 governing conduct of authorized house counsel and Rule 4-5.5 – a lawyer not admitted in Florida shall not hold himself out as a Florida attorney.

16.

George has been a partner at the law firm of Alpha and Beta for ten years. In an effort to expand their business, Alpha and Beta decided to hire several new associates and paralegals. George was assigned a junior associate and two paralegals to supervise. George is ecstatic because now he can download much of the tedious work that has been keeping him late at the office every night. Further, George decided to take a three week vacation two months after the new staff members began their employment with the firm.

While George was away on vacation, Associate Andrew, who was recently admitted to the Florida Bar, called George and asked if he wanted to review a pleading that Andrew prepared on one of George's cases. George was annoyed at being interrupted while he was preparing to hit the slopes, and told Andrew, "You graduated at the top of your class. I am sure you know what you are doing. Just go ahead and file the darn thing." Later, after George returned from vacation, opposing counsel won a motion for summary judgment on the same case due to defects in Andrew's pleading. The following week, depressed from losing his case on the motion for summary judgment, George went down to the Keys for a few days of fishing. While George was away, and unbeknownst to Andrew, Patty set up her own Paralegal Business, "Patty's Legal Assistance, Inc.", during her working hours at the firm. Patty had a great office in the firm right next to the reception area where it would be convenient to see clients of her new business. The receptionist noticed that Patty was getting several visitors, but just chalked it up to Patty's busy social life. Patty then began seeing clients in her office and providing them with legal forms and legal advice.

Who has violated the Florida Bar Rules?

- a. Associate Andrew, for not supervising Patty.
- b. Patty, for engaging in the unlicensed practice of law.
- c. George, for not supervising Andrew properly.
- d. George, for not supervising Patty properly.
- e. (b), © and (d).

The correct answer is (e). Andrew was not responsible for supervising Patty, but George was. Patty engaged in the unlicensed practice of law when she crossed the line from

providing forms to giving legal advice. George was responsible for supervising both Andrew and Patty. Florida Bar Rules 4-5.1 and 45.3.

17.

Reversal of Fortune (film clip 1:10:57 - 1:12:22)

Question type: Evidence

Question: The evidence that supported the prosecution's theory in the first trial, including a needle in the black bag + insulin on the needle + insulin found in the bloodstream.

Answer: What is circumstantial evidence?

Authority: (film clip 1:12:47)

18.

Reversal of Fortune (film clip 27:19 – 27:42)

Question type: Evidence/Appeal

Question: The basis for reversal of the first trial by the Rhode Island Supreme Court.

Answer: What is fundamental error?

Authority: §90.104(3) recognizes that the requirement of a timely specific objection is dispensed with on appeal when the error at the trial level is "fundamental." The Florida Supreme Court has defined fundamental error as error that is so fundamental that it "goes to the foundation of the case or goes to the merits of the cause of action."

19.

Appellate Procedure

True or False Question

All appeals invoking the appellate jurisdiction of the Circuit Court shall be heard by a 3 Judge panel.

Answer

True

Authority

15th Judicial Circuit Adm. Order No. 8.101-06/09

20.

Post Trial

True false Question

You receive a Final Judgment from the Court which is clearly wrong ,you should file your motion for new trial and as soon as it is filed you should contact the Judicial Assistant to schedule a special set hearing to argue your motion.

Answer

False

Authority

15th Circuit Local Rule 6.....The judge will either deny your motion or set it for oral argument.....you may not schedule it for hearing.

21.

Question 1: Ethics

Season 1.2: "Part II" March 11, 1997

Bobby Donnell is the court-appointed lawyer for a man charged with putting a gun to the head of an eighty-year-old proprietor while robbing her store. She cannot make a positive identification. There is a videotape from the security camera. After losing a motion to suppress the videotape, Donnell tells his client that he should consider a plea. The maximum penalty for armed robbery is life. Donnell tells the client he will try for the best deal he can get and says that six years, which he is not sure he can get, would be a fantastic deal. The client says, 'Yeah, for you. You just want to get rid of me and this case.'" During the ensuing conversation, the defendant shows disdain for court-appointed counsel in general and Donnell in particular. Donnell tells him to get another lawyer if he wants, but so long as he represents him, the defendant gets his full loyalty and attention. The defendant tells Donnell to see what he can get on a plea.

Meanwhile Eugene Young, Donnell's friend and partner, represents a woman being harassed and threatened by the husband she is divorcing. The husband is ordered from the home, but despite

repeated efforts Young cannot get a protective order. The husband breaks into the house and begins to throw things around. The thirteen-year-old son shoots the father with an arrow and kills him.

The prosecutor on Donnell's armed robbery case is the same prosecutor who has the charging decision on Young's thirteen-year-old. Young asks Donnell, who has a particularly good relationship with the prosecutor, to persuade the prosecutor not to charge the boy. Donnell agrees. When he raises the charging issue, the prosecutor says let's talk about the two cases, the armed robber and the boy, together. Donnell protests that it would be improper.

The prosecutor says, 'You're right. We'll deal with them one at a time. Let's do the armed robber first.' It is clear to Donnell that the prosecutor will not charge the boy if Donnell will stop pushing for six years and persuade the armed robbery defendant to agree to ten years. Donnell believes he could work the prosecutor down to six years on the robbery if she did not now have the leverage provided by his interest in the thirteen-year-old's case. He believes, also, that he can persuade the armed robbery defendant to take the ten.

What should Donnell do?

- 1) Make the deal after obtaining consent from either the armed robber or the legal guardian of the boy.
- 2) Make the deal after obtaining consent from the armed robber only, because he is facing a harsher sentence.
- 3) Make the deal after obtaining consent from the legal guardian of the boy only, because the boy is a juvenile offender.
- 4) Make the deal and then tell both the armed robber and the legal guardian of the boy about it, because it is in the best interests of them both.

Answer: None of the above. Must obtain consent in writing from both.

RULE 4-1.8 CONFLICT OF INTEREST; PROHIBITED AND OTHER TRANSACTIONS

(g) Settlement of Claims for Multiple Clients. A lawyer who represents 2 or more clients shall not participate in making . . . in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

22.

Question 2: Ethics

Season 2.15. "Line of Duty" January 5, 1998

While in the heat of passion with Helen, Bobby overhears police plans to raid one of his drug clients. After Bobby warns the client, three police officers are killed and Bobby faces multiple reckless homicide charges.

Was it permissible for Bobby to tip off his client about the raid?

- 1) Yes, because the attorney-client relationship calls for disclosure by the attorney to the client of any and all legal consequences of proposed action or inaction, as part of the duty of loyalty.
- 2) No, because he learned of the information by eavesdropping on Helen's conversation in the course of her duties as a prosecutor who was privy to the raid, which makes the information confidential because she had no intention to disclose it.
- 3) Yes, because Bobby learned of the information from Helen who was already engaged in impermissible conduct, to wit, sex with Bobby.
- 4) No, because Bobby interfered with the police raid and obstructed their activities.

Answer: 4

RULE 4-8.4 MISCONDUCT

A lawyer shall not:

...

(d) engage in conduct in connection with the practice of law that is prejudicial to the administration of justice . . .

Code of Judicial Conduct, Canon 3E Regarding Disqualification:

1. E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

But see 3B(7) Regarding Ex Parte Communications:

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit,

or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits are authorized, provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond.

© A judge may consult with other judges or with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

23.

The Practice, Season 3, Episode 19, Closet Justice

1. Question 1: In this episode, the police respond to a woman who thinks she is locked up in an apartment with a man who picked her up the night before; after letting her out, the police open a closet and find the body of a dead nun inside. Lindsey Dole is assigned to defend the man who owned the apartment (clearly the murderer). She argues that the body is not admissible because its discovery was improper. But, without the body, there is no case and a murderer goes free. The judge wrestles with her conscience but ultimately agrees and throws out the case. Did the judge make the right decision? Why or why not.

A) No. The fact that the police did not have a warrant was cured by the exigent circumstances exception to the warrant requirement. The police had been called by a woman who believed she was in serious danger and locked in a strange man's apartment. In order to rescue her, they had the right to break into that man's apartment without his permission.

B) No. The fact that the police did not have a warrant was cured by the “plain view” exception to the warrant requirement.

C) Yes, because the police did not get the kidnapped woman’s consent to search the home.

D) Yes, while entry to the apartment may have been lawful, search of the closet was not.

E) No. Although the police did not have a lawful basis to search the closet, they were acting in good faith, so the “good faith” exception to the exclusionary rule applies.

Answer: D

A is wrong because the exigent exception only gets police in the house to rescue the woman. It doesn’t get them into the closet.

B is wrong because if the body was in the closet, it was not in the police’s plain view.

C is wrong bc the kidnapped woman, who doesn’t live in the apartment and does not have a reasonable expectation of privacy in the apartment, cannot give police consent to search the home.

E is wrong because the “good faith exception” only applies if you have a warrant, but the warrant is defective. Then, if police were acting on the warrant in good faith, the evidence can still come in.

24.

Question 2: Would any of the following changes in the factual scenario have given the judge a “back door” around the exclusionary rule in this case?

A) If the kidnapped woman had opened the closet door and found the body, the body could be admissible

B) If the apartment had been available for rent, with real estate showings of the home happening frequently, the body could be admissible

C) If the strong and unmistakable smell of a dead body had been emanating from the closet, the body could be admissible

D) A and B, but not C

E) AB and C

Answer: E

Even the exclusionary rule has a backdoor. Under the scenario in A, if the woman had opened the

closet door, the evidence would be admissible because the exclusionary rule only applies to government action, not to actions by private individuals. If the woman had opened the closet door of her own volition (and not at the direction of the police) that would not violate the Fourth Amendment.

Under the scenario for B, the government could get the body in under the inevitable discovery doctrine. Under this exception, a court may admit illegally obtained evidence if the evidence would inevitably have been discovered through independent, lawful means. IN Nix v. Williams, the Supreme Court held that evidence concerning the location and condition of a murder victim's body was admissible even though the police obtained the evidence unlawfully. The court reasoned that a comprehensive search already under way at the time of the police illegality would have inevitably resulted in the discovery of the body. 467 US 431 (1984). But note, there is a circuit divide as to whether the inevitable discovery doctrine requires a showing that police were actively pursuing alternative avenue at time constitutional violation occurred. Under the scenario of the apartment being up for rent, with frequent showings to prospective tenants, government can make at least a colorable argument that the body would have been found by the landlord or a prospective tenant during a viewing of the apartment. This would have been lawful means having nothing to do with a police search.

Under the scenario in C, in certain situations police may seize evidence that is in plain view without a warrant. First, the police must not violate the Fourth Amendment in arriving at the place from which the evidence could plainly be viewed. Thus, police may lawfully seize evidence in plain view when conducting a lawful warrantless search. (Here, police were lawfully in the apartment under the exigent circumstances exception based on the complaint of a woman who was kidnapped and locked in the apartment.). In Minnesota v. Dickerson, the Supreme Court expanded the plain view doctrine to include a "plain touch" corollary. 508 U.S. 366, 375 (1993). Some courts, including the Eleventh Circuit, have expanded the plain view doctrine to include a "plain smell" corollary as well. U.S. v. Tobin, 923 F.2d 1506, 1511-12 (11th Cir. 1991).

25.

Judicial Demeanor Question:

1. Season 3, Episode 13, Judge and Jury (Clip is from minute 5 to minute 9)

In the middle of trial, Judge Kittleson reveals to Bobby that she had an erotic dream about him six weeks ago. She shared this with another judge, who thought Judge Kittleson should recuse herself from presiding over the trial. Judge Kittleson believes the fact that she had this dream will have no influence on the case, but she also recognizes that a judge is supposed to avoid any appearance of impropriety. After thinking it over, Bobby tells Judge Kittleson that he sees no reason for her to recuse herself, since it has no bearing on her view of the case, and since the trial appears to be "going well for his client." The judge agrees that it has no bearing, and decides that she will not

recuse herself. She also asks Bobby not to tell anyone because of the embarrassing nature of the information. Was this handled appropriately?

a) No. Judge Kittleson should recuse herself to avoid the appearance of impropriety. Having an erotic dream about a lawyer in a trial before her is clearly improper, and she must avoid even the appearance of impropriety.

b) No. Judge Kittleson does not have to recuse herself if the dream will not lead her to have a personal bias or prejudice for or against either party, but if she was going to talk to the lawyers about it, she should have discussed it with both Bobby and the lawyer for the opposing party to avoid improper ex parte communications and to allow them both an opportunity to respond.

c) Yes. Judge Kittleson need not recuse herself so long as the dream will not lead her to have a personal bias or prejudice either for or against either party.

d) Depends. This kind of thing needs to be decided on a case by case basis.

Answer: B

Code of Judicial Conduct, Canon 3E Regarding Disqualification:

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

But see 3B(7) Regarding Ex Parte Communications:

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits are authorized, provided:

(I) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding

before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond.

© A judge may consult with other judges or with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

26.

Question: (clip)

1. Bobby Donnell is called to meet with friends for legal advice after a family emergency arises. It turns out that the teenage daughter had a baby born at home. When Bobby is called, the baby is dead and he questions the family as to what happened. It turns out that the unstable mother killed the baby. However, the father, fearful that news of the baby killed by his wife will destroy the life of his wife and daughter, he questions Bobby as to the options he has to dispose of the body. Bobby threatens the father that if they do not turn themselves into the police, Bobby would tell the police what happened. If Bobby represents all three family members, can Bobby turn his clients in for murder or accessory to murder without violating the attorney client privilege?

1. Yes, Bobby can turn the mother into police for murder because of the seriousness of the crime.

2. Yes, Bobby can turn the mother in for murder, because it was not she herself that admitted to the crime.

3. No. Bobby cannot turn the mother into police for murder after admission of a crime that has already been completed.

4. No. Bobby cannot the father the client in because it was not the mother that admitted to the crime.

The correct answer is # 3. Assuming that all family members are his clients, Bobby cannot tell anyone about the substance of the conversation Florida Rules of Professional Conduct 4-1.6 provides that:

[1] The **lawyer** is part of a judicial system charged with upholding the law. One of the lawyer's functions is to advise clients so that they avoid any violation of the law in the proper exercise of their rights.

[2] The observance of the ethical obligation of a **lawyer** to hold inviolate confidential information of the client not only facilitates the full development of facts essential to proper representation of the client but also encourages people to seek early legal assistance.

[3] Almost without exception, clients come to lawyers in order to determine what their rights are and what is, in the maze of laws and regulations, deemed to be legal and correct. The common law recognizes that the client's confidences must be protected from disclosure. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[4] A fundamental principle in the client-lawyer relationship is that the **lawyer** maintain confidentiality of information relating to the representation. The client is thereby encouraged to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter.

[5] The principle of confidentiality is given effect in 2 related bodies of law, the attorney-client privilege (which includes the work product doctrine) in the law of evidence and the rule of confidentiality established in professional ethics. The attorney-client privilege applies in judicial and other proceedings in which a **lawyer** may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or by law. However, none of the foregoing limits the requirement of disclosure in subdivision (b). This disclosure is required to prevent a lawyer from becoming an unwitting accomplice in the **fraudulent** acts of a client. See also Scope.

[6] The requirement of maintaining confidentiality of information relating to representation applies to government lawyers who may disagree with the policy goals that their representation is designed to advance.

However, there are exceptions which permit disclosure adverse to one's own client. As set forth in Rule of Professional Conduct 4-1.6(b), "[a] **lawyer** shall reveal such information to the extent the lawyer **reasonably believes** necessary to prevent a client from committing a crime; or to prevent a death or **substantial** bodily harm to another. However, in this case, the crime of murder has already been committed. As a result, Bobby cannot turn him in.

27.

Jean: Substantive Law, Judicial Demeanor

Question Type: SUBSTANTIVE LAW

Question: What amendment to the constitution which was the foundation for the national civil rights policy during the Civil War did AL lay the framework for?

Answer: 14th Amendment guaranteed protection of fundamental civil rights without regard to race.

- A. 1st Amendment
- A. 12th Amendment
- A. 18th Amendment

Authority: Herman Betz, Abraham Lincoln Constitutionalism & Equal Rights in the Civil War Era.

28.

Question Type: ANECDOTE/QUIRKY QUESTIONS

Question: To what principal was AL referring when he was quoted in 1861 weeks before his inaugural speech “_____ as the fitly spoken proved “an apple of gold” and the Constitution and Union as the picture of silver framed around it. AL urged his fellow citizens “to act to that neither picture or apple shall ever be blurred or bruised or broken”?

Answer: liberty

A. Farming

A. Carpentry

A. The practice of law.

Authority: Roy P. Basler et al, eds., The Collected Works of Abraham Lincoln, 9 Vols (New Brunswick, NJ: Rutgers University Press, 1953=1955), 4: 168-169.

29.

Question Type: ANECDOTE/QUIRKY QUESTIONS

Question: What was the name of AL’s law office and in what city in Illinois?

Answer: Office of Lincoln & Henderson, Springfield, IL

Authority: James Baird McClure, Anecdotes of Abraham Lincoln & Lincoln Stories (Chicago: Rhodes & McClure 1880)

30.

Question Type: ANECDOTE/QUIRKY QUESTIONS

Question: How many times did AL pick up his pen before signing the Emancipation Proclamation?

Answer: 3 times

A. Once

A. Ten times

A. None, he used a pencil.

Authority: James Baird McClure, *Anecdotes of Abraham Lincoln & Lincoln Stories* (Chicago: Rhodes & McClure 1880)

31.

Question Type: JUDICIAL DEMEANOR

Question: What type of demeanor did AL have with Supreme Court Justices?

Answer: Precise and document bound, example: in 1855 corrected Justice Taney in the Dred Scott decision when the Supreme Court Justice wrote that slaves had rights to property that were in the Constitution and AL stated in his critique of the decision that the Supreme Court would have a hard time finding any such reference in the Constitution.

A. Comical and Witty

A. Loud and Foul-Mouthed

A. Sleepy and, on occasion, asleep.

Authority: Roy P. Basler et al, eds., *The Collected Works of Abraham Lincoln*, 9 Vols (New Brunswick, NJ: Rutgers University Press, 1953=1955), 3: 230-231.

32.

Question Type: JUDICIAL DEMEANOR

Question: How was AL described as an attorney?

Answer: Perversely honest, example: if client deceived him he would drop case, he did not take a case or fees if he advised the person not to pursue the matter and when he found out he was on the wrong side of a case he quit the case let someone else defend and did not share in any of the fees. Example: he won a judgment against a railroad company and the judge was going to give him more than he had petitioned for and AL refused and asked to receive the fair amount sought in the case; his desire for exact justice was greater than his desire for victory or his clients interests.

- A. Clumsy
- A. Irrational
- A. As a "double biller."

Authority: James Baird McClure, Anecdotes of Abraham Lincoln & Lincoln Stories (Chicago: Rhodes & McClure 1880)

33.

Tonya: Judicial Demeanor, Attorney Client Relations

Question Type:

Question: In a medical malpractice case, Lincoln used chicken bones to explain to the jury the organic changes that take place in bones during the aging process. This idea came to Lincoln after this.

Answer: Speaking with his client, Dr. Crothers.

- A. speaking ex-parte with Judge Davis at the local inn
- A. reading an anatomy book
- A. overhearing a conversation between opposing counsel and the plaintiff

34.

Question Type: Ethics

Question: "Judge" Lincoln presided over a case where a merchant sold a \$28 suit on credit to a minor and without the permission of the father. The merchant sued the father for payment. To prevail the merchant had to prove the clothes were a necessity and suitable to the boys lifestyle. "Judge" Lincoln:

ANSWER: ruled for the father stating, "I have rarely in my life worn a suit of clothes costing \$28."

- A. ruled for the merchant, stating, "A father is responsible for his son."
- A. ruled for the merchant stating, "Every child should have a suit to wear."
- A. None of the above as Lincoln was never a Judge.

Chris: Ethics, Substantive Law

35.

Jill: Substantive Law, Attorney Client Relations

Question Type: substantive law

Question: This is the power that Congress was given under the Constitution which was involved in Hurd v. Rock Island Railroad Company.

Answer: What is the power to regulate interstate commerce?

- A. What is the power to wage war.
- A. What is the power to tax railroads.
- A. What is the power of love.

Authority: https://www.indianahistory.org/ihs_press/web_publications/railroad05/Ely1.pdf

36.

FORMAT

Question Type: Attorney-client privilege

Question: Lincoln told the adversarial party, Rutherford, that he could not represent him because he was already representing the opposing party and it would be against his professional obligations. Lincoln's representation was of:

Answer: a slave owner trying to get the return of his escaped slaves?

- A. a prospector trying to lay claim to underground quarries.
- A. a circus owner's claim to a lost elephant that had been found by school children wandering the prairie.
- A. another attorney's former client seeking return of already paid fees.

Authority: <http://www.mrlincolnandfreedom.org/inside.asp?ID=6&subjectID=2>.

37.

Question Type: Filler

Question: This is the name of the organized group whom Abraham Lincoln denied habeas corpus.

Answer: Who are the Copperheads?

- A. Knuckleheads
- A. Metalheads
- A. Meatheads

38.

Question Type: Filler

Question: This special power was given by Congress to Abraham Lincoln in March of 1863?

Answer: What is habeas corpus?

- A. What is power as commander in chief.
- A. What is the power of

Authority: Lincoln's Supreme Court by David Mayer Silver

39.

G. Steven: Attorney Client Relations, Ethics

Robin: Ethics, Judicial demeanor

Question: Judge Davis and Lincoln enjoyed a close working relationship, as well as a personal friendship. Lincoln traveled with other attorneys who followed Davis's circuit in a 'circus like caravan,' often entertaining the judge and his fellow lawyers after hours with his humorous stories and anecdotes. The judge respected the future president's legal opinions and his skill as a hardworking, frontier lawyer and occasionally asked Lincoln to take the bench in his absence. As a result of this interaction, Judge Davis became one of Lincoln's mentors.

This apparent conflict of interest was not uncommon on the circuit and rarely aroused objections from other lawyers familiar with the rigors of travel within the Court's

jurisdiction. Younger attorneys on the trial circuit often sought the services of Lincoln, whose experience and presence in the courtroom had earned their respect.

Fla. Code Jud. Conduct, Canon 3E(1) A judge shall disqualify himself or herself where his or her impartiality might reasonably be questioned.

If this situation occurred today, would it violate a rule of professional responsibility or judicial canon?

- a. No, this situation was perfectly acceptable in Lincoln's time and is acceptable now.
- b. Yes, this situation violates Florida's rules of Professional Responsibility.
- c. Yes, this situation violates Florida's Code of Judicial Conduct
- d. Both b and c.

Authority:

40.

APPROPRIATE REASON FOR CONTINUANCE?

By September, the doctors had suffered the loss of another vital witness from the Bloomington area. Isaac Small, who had helped to administer the chloroform to Fleming at the time the attempt was made to re-break his right thigh bone, had moved to Nashville, Tennessee. Judge Davis's decision to grant this latest continuance in the Fleming suit, however, was based more on Lincoln's preoccupation at the time with an important regional case involving the Rock Island Bridge—the first built over the Mississippi River—and the importance of east-west transportation to the expanding United States.

Fla. Code Jud. Conduct, Canon 2B A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment.

Did Davis appropriately grant the continuance?

- a. Yes, the judge can use his or her discretion to grant a continuance.
- b. No, the judge allowed his relationship with Lincoln to influence his decision.
- c. No, a continuance should not have been granted because several continuances were already granted.
- d. Both b and c.

41.

Damian: Judicial Demeanor, Substantive Law

Question Type: Filler

VIDEO – Start at 1:07, continue through 1:40

http://www.youtube.com/watch?v=2B73vkTeL_g

Question: This video shown at the 2008 Republican National Convention indicated that the Democrats called Lincoln a third rate lawyer. How long exactly was Lincoln a lawyer prior to becoming president?

Answer: 25 years – 1837-1861

A. 5 years

A. 10 years

A. 15 years

Authority: <http://showcase.netins.net/web/creative/lincoln/tours/lawpartners.htm>,

42.

Type: Ethics

Question: As a junior partner practicing with John Todd Stuart, Stuart gave Lincoln the job of keeping the books. It appears this wasn't his strength. In a review of the firm's books, long intervals of time are found between entries and Lincoln's notes are often unclear. One such note states "I have received five dollars from Deed of Macon, five from Lewis Keeling, five from Andrew Finley, one-half of which belongs to Stuart and has not been entered on the books." This behavior may violate what Rule regulating the Florida Bar?

Answer: Rule 5-1.2 – Trust Accounting Records and Procedures

A. Rule 8.1

A. Rule 4.18

A. Rule 10.51

Authority: Rules Regulating the Florida Bar, A. Lincoln by Ronald C. White, Jr., Random House 2009