**ConCrim Final Exam Review**

**Construction paper lawyers and I was in law school because you know there were people who they took a lot of comfort in charts and graphs and that's cool if that makes you happy as long as you were also understanding the material enough to answer questions but whatever it takes stand on your head do yoga while you eat peanut butter make charts and graphs don't tell me speaker so whatever you need but here this is this is how I did it now if something doesn't make sense shout it out so if you think you have questions or you're not understanding what I'm talking about that's the point is for you to walk away with sort of a basic idea of how to understand this or where to look before the exam so we started really talking about confessions this time in the first case we opened with was ashcraft versus Tennessee and that case sort of like the Scottsboro Boys with the right to counsel there's always a case that just offends everybody and sort of shows us where we are it's the Lynch it's the starting point in ashcraft we learned that you have to have coercive government action it could be actual like I'm going to beat you to death unless you confess that would be a 14th amendment due process violation held a gun to your head and said confessor I'll kill you that would be a problem that would be a due process violation but almost as bad as to do what they did to ashcraft which was 36 hour interrogation with a 5 minute break the factors are listed there the length of the detention the length of the interrogation whether the interrogation was incommunicado etc then we read state V Phillips where in that case I think it was it was a state case and it was DCS investigators who lied promised if you confess you'll get treatment denials threats all kinds of psychological cajoling to get the defendant to confess and I hope that I just listed that as something I maybe wouldn't have thought of which is promises or inducements so you can overtly threaten somebody you can promise them all anything that coerces you to the point where your will is overborne really is a due process problem in spano versus New York we learned that other characteristics of the defendant have to be taken into account in that case age intelligence level of education psychological makeup etc etc and these are all the cases that we started learning about the due process problem with confessions at some point just like in other contexts we start looking at you know if they had a lawyer maybe they wouldn't confess maybe rather than hang our hat completely on the due process problem we'll talk about the right to counsel and the lead case there is Messiah ma not me Messiah that was the one where they sent the forget if it was undercover or just snitches but into a jail cell after the defendant was charged that's a violation of the 6th amendment when they question you even when they use snitches if the government agents are questioning you after you're charged it's a violation of the 6th amendment I said there's a typo but C kuhlman versus Wilson for limits where the governments in a snitch in there the coolman opinion is kind of confusing to me because it mentions the 5th and the 6th amendment but it's clear that to me it's clear that if they send informants in who merely listen to you if they don't in fact question you then hey is it wouldn't be custodial interrogation for Miranda purposes but be for 6th amendment purposes there's no government action it's just somebody listening I think you could criticize: by saying that's not really what he was doing but that's what the court held and when does this right to counsel attach in escobido an we learn from Messiah it attaches when adverse aerial judicial proceedings begin in escobido it was after he was arrested so we know with when we read Messiah escobido the 6th amendment attaches at arrest or formal charge indictment probably not in fact not the issuance of an arrest warrant so it's an arrest or a formal charge like an indictment in order to waive that you have a right you get to waive it you can decide to talk to the police without a lawyer but it's gotta be intelligent voluntary and knowing this is part one of brewery Williams or Nix V Williams where they gave the Christian burial speech to the guy these were those awful facts that keep coming up in this class which make me think about getting a different textbook every year because they use this case for so many things but where the police had the guy in the back seat and they were basically tricking him into confessing by saying if we could find the body we could give him a Christian burial and he felt guilty as serial killers apparently do and confessed he had lawyers which was a problem and then in montijo we learned this I think I think the attachment of the 6th amendment is one of the most confusing things in criminal law there is a federal lawsuit right now up in Morristown basically where there's a federal court saying you have to have lawyers present when people come in tonight court because that's when the 6th amendment attaches to which I want to I love that I mean I think it's great I think everybody should have lawyers just walking around with him all day long but but you know the 6th amendment really attaches at arrest so shouldn't we be riding in cop cars just in case and so I find that interesting and very confusing in montijo we found out that just having a lawyer appointed who you've never met because in Louisiana at the time they had a policy of disappointing lawyers doesn't necessarily trigger the right to counsel in Michigan Jackson it said it was but in montijo they also said you know we're going to amend this to determine your other 6th amendment right Edwards versus Arizona that's the one where we talked about reentry invoking once you invoke counsel the cops leave you alone and then they come back and then we got to the big daddy Miranda which is really if you think about it a super crazy decision before we go you know oh you violated the law they arrest you you can fast maybe they try and skirt through now we're actually requiring police to tell people two things you the right to a lawyer and you have the right to remain silent but not because you have the right to a lawyer and you have a right to remain silent because you have the right to remain silent and a lawyer helps that Miranda does not involve the 6th amendment right to counsel it comes really close and the decisions are hard sometimes sometimes cases brush up against it sometimes law students mix them up lawyers mix it up the Miranda is purely a Fifth Amendment case and a lawyer just like a lawyer stops coercion in the ashcraft versus Tennessee a lawyer helps you know to remain silent is not a 6th amendment case but it doesn't apply all the time it doesn't apply when a cop walks up to you and says how you doing and you go I did it I did it you dirty copper I killed him all it applies during custodial interrogation and we spent some time talking about what is custody mean remember all the JDB versus North Carolina the test of whether you're free to leave or whether a reasonable person is free to leave is objective when a reasonable person not subjective did this dude feel free and we learned that it does not always mean jail just because you're in jail you may not be subject to custodial interrogation for example when you're a prisoner already in prison and they take you out to another room that's not custodial because the thing we're trying to do with Miranda is stop coercion so that you can remain silent when you're already in prison more prisons not that coercive so that was not custodian also we learned roadside questioning after a traffic stop does not count you know that if you think about it don't feel free to leave seems like it ought to really count when you don't feel free to leave and I don't know about you but on the Interstate I would not feel free to leave if a cop pulled me over for speeding and they know that and that's why the police say things like where you going where you been do you drink what's that smoke you know all the things I always ask me but that does not mean that it's custodial roadside questioning is more like a Terry stop and custody test against AV Anderson is objective its totality of circumstances and what about interrogation what does that mean that doesn't just mean tell us who did it tell us who did it it what it means is actions designed to elicit an incriminating response and here I think we've got some pretty confusing cases Rhode Island viennas where the cops said the guy was riding in the back of the car and the cop said boy hate for a kid to find that clearly it reads like the police are trying to trick the guy they are they are designing their conversation to elicit an incriminating response but the court said no interrogation in Illinois V Perkins the this is another end where inmates are sent in by cops I think this was actually I wrote inmates I think it's actually undercover cops if I remember right but in Perkins they said no interrogation because the guy was bragging there was no compulsion don't confuse this with the 6th amendment in Perkins if I remember this correct there was no Miranda violation because they said no interrogation but cause no compulsion so Miranda is dead he wasn't yet charged with anything in the case he was in jail for other reasons so he wasn't yet charged so the 6th amendment didn't apply had he been indicted the 6th amendment would apply and then state V Sawyer which is also I think I think this whole area of what is interrogation you can find cases saying sort of both things this is where the cops read the charge to a guy and they said Tennessee says the reading of the charges was designed to elicit incriminating responses that was a different court then I think the Supreme Court in Tennessee will hold now I don't think they would hold that again and how do you invoke the right to silence or the right to counsel to support your right to silence be not by being silent being silent for three hours is not an indication of of your invocation to right to remain sound you gotta tell us I want to remain silent it's got to be clear and the word they use is unequivocal it can be implied by your actions that you're waving it if you say Nah screw that I'm ready to talk yeah you're not saying I hereby waive but it can be implied Edwards V Arizona this is when this is when it starts to get complicated when somebody invokes their right to silence or counsel cops leave and come back here they came back the next day he said he wanted a lawyer he wanted count questioning to stop the questioning stop and come back the next day and at some point he's ready to confess and the Supreme Court said no that invocation was valid and you never got him to waive it and then we have the other**

**That came up with what the book called the Wade Gilbert rule snowball versus demo was released on the same day that's where he was brought to a hospital room and identified that was actually more of a due process case because it was so suggestive and stovall versus Dino came up with the test and so telling the circumstances was it suggestive and Secondly was it necessary there was a 6th amendment claim in Kirby versus Illinois this is where the victim was brought to the station and the defendant just happened in on unrelated charges and the victim said that's him the court said not a six minute violation because he was there for something else so you got you got no 6th amendment when you're not accused yeah when you're not charged you're not arrested or formally charged and then Manson versus Braithwaite we start hearing the language reliability is the linchpin meaning it's all about reliability in that case there was an undercover detective who had a limited ability to view and the other cop came and brought a single photo and put it on his desk and then remember Neil versus biggers was the federal case state versus Scarborough was the state case they were kind of similar facts in that the victim seemed really sympathetic pick the defendant out of a show up after not picking anybody for a long time it can be suggestive but in those both those cases for different slightly different reasons they were not unreliable and then in Perry versus New Hampshire they kind of contradicted what I just said and said Oh yeah reliability is the linchpin here we have some unreliable behavior but remember what we're talking about all the way around with due process there's got to be some police misconduct here it was just kind of unreliable on its own cross examination at trial will cure that but it's not suppressed now here we are on to the right to counsel the 6th amendment standing alone right to counsel the most egregious case was Powell versus Alabama I don't think it's separately noted in your book but they all allude to it due process due process means nothing if not a right to counsel is this this case established due process as the idea of you heard general fan talk about due process equals fairness that comes from this case and then I wrote the two cases Griffin versus Illinois Douglas versus California they start sort of probe that what does that mean well it means it's for some lawyers they get a transcript if they don't have it sometimes they get a lawyer that was pre Gideon but under certain circumstances and then we start to see it creeping up to the level of a state right guaranteed through the 14th amendment that the 6th is incorporated through the 14th but not yet in Johnson V ZRP they said you know what all federal trials the 6th amendment means you really get a lawyer it says lawyer it's not clear that it said he doesn't say the word free it doesn't say you get a free lawyer it says you have the right to counsel you can interpret that I suppose as meaning you have the right to go higher council you saw the right does it beep or not have that but it starts getting interpreted as if you don't have a lawyer the government is going to provide one for you and Johnson V zerbst and then there was a case that's be Brady that said it does not mean a lawyer for every case and then Gideon came along overruled that says you process clause the 14th amendment means that the 6th amendment right to counsel applies to the states which means the states have to provide lawyers for you for state charges but when I say lawyer at that point I may as well use air quotes because it didn't be Clarence darrow it meant well a lot of deficient lawyers particularly early on and there was a case Strickland V Washington finds the limit of what does it mean and it means two things have to be proven for you to allege a strict gun violation or that you that you don't have a lawyer that's good enough to count as as meeting council or what but the language we use is ineffective assistance of counsel in other words OK you gave me a human but that doesn't satisfy Strickland V Washington says you gotta show deficient performance which is below an objective standard of reasonableness there are lots of lawyers who don't make that objective standard of reasonableness sleeping using drugs drunk at trial hitting on your client running away whatever all the lawyers do but the second Chrome is the hardest to me and that is for the way I shortcut handed is to say that it mattered the word is prejudice and we could fight about that definition lots of courts to deprived of a fair trial which means a reasonable probability of a different result without errors in other words I discover that drunk the whole trial OK or pretty much the same as blowing a 19 so he wasn't like passed out throwing up but he's like one of these functional matters OK and I go complain about him the court's going to go well what would you have done differently how would it have mattered and then they start basically saying are you super duper guilty 'cause if so it's harder to meet that standard so that's the criticism of Strickland but that's what it says Anne for example here at herrington versus Richter the lawyer didn't get I don't remember I think it was blood spatter experts or something and they said you know what that lawyer is pretty good we're not going to Monday morning quarterback they did in last Libby Cooper say it's not just at trial when a lawyer in that case I forget the plea but it was like I don't know mid need 2 digits of monthly like 31 to 46 months I'm making that up but it's closed was the plea agreement an the guy ends up getting like 180 months so he gets a lot more and they said that is cognizable mean if it matters in Weaver versus Massachusetts they wouldn't let people come in the courtroom if I remember this right and the guy said I hi you've held in the past that structural errors don't require prejudice this is a structural error because you don't let my family come on trial it's not really a public trial that's a structural error and the court said yeah that's still a standard but not here you still gotta go show prejudice and then McCoy versus Louisiana where you're saying not guilty goes to court and says you are that can be an ineffective assistance claim thankfully I read this as scope like if we're you know what is the scope of Gideon it certainly doesn't apply to my divorce and it applies to criminal cases but which criminal cases all of them traffic tickets dog catcher citations what we know from Argus singer that it applies to small cases it applies to cases in which jail is involved we think but it means actual jail could be but not you could go to jail get probation or you could get a suspended sentence only but then if you violate that then you can go to jail but a suspended sentence where actually the opposite I think we're going this is finished sentence is more like actual jail because it can become jail so scratch that I said that backwards but it is not necessarily required past your direct appeal so you get a right to go to trial and have a direct appeal but I think it was yeah North Carolina like Tennessee their third level of appellate review is discretionary meaning the Supreme Court doesn't take everything they just pick and choose what they want to take you get a lawyer from your trial to your direct appeal but not past that not to discretionary appeals right now my agency provides lawyers up through all three levels but where we stop until the client you're on your own is after the Tennessee Supreme Court rejects or takes the case you know anybody can go from the Tennessee Supreme Court onto the United states Supreme Court if they want to ask that's also discretionary my agency doesn't do that constitutionally we don't have to provide the discretionary deal that's what the case is when does the right to counsel initiate initial appearance not the arrest illuminary hearing is a critical stage at which council is required that was tested in Cullman this is where back to McCoy where the lawyer said he was guilty even though he said he wasn't and they reminded us that the lawyer does not get to decide that however this comes up a lot it's come up a lot in our practice where I will see this in court where somebody wants to represent themselves and judges just don't want to see that happen and so they'll appoint somebody over the defendant's objection if the defendant wants to they get to represent themselves as an aside there's like a you gotta ask him some questions there's like a case on it there's a method interesting Lee I'm not sure if it matters what the answers are but you have to ask them if they're familiar with the rules of evidence and all this I've had clients you know say shut up and still it's not a good answer but they still get to represent themselves we learned about discovery we learned the sources are court rules mostly 16 but a little bit 12 we learned in Williams versus Florida that the Alabama notice that should say requirement in local rules does not violate due process for the 5th amendment because trial is fair somebody tried to claim pay as a defense lawyer by this rule requiring me to turn over alibi notice it's basically requiring me to disclose my defense before I'm on the field before I hear the offense in the court that said now that's not that this alibi notice they can impose and they can interpret it strictly so they can keep you if they require notice and you don't give notice they can keep you from using your Alabama we also learned some due process limits so to the extent a prosecutor says I've complied with rule 16 that's all I ever have to do you can remind him no you also have to have to provide material evidence favorable to the accused so if you have that evidence which is material and favorable to the accused and you suppress that that's a violation of due process well obviously we've got to get into what those words mean what is materiali T mean in US versus agr's the prosecution held back that the victim had a propensity for violence to defend it discovers it later and says that's a due process violation it's a Brady violation because if I had known that I would have used it in the court said it wasn't really material we already had evidence in the trial that you had two knives there was already evidence that you were violent so we're not sure that it rises to that level because of materiali T and we learn from Bagley oh that's a big type of says wind tests that paying witnesses there's like a victims compensation fee so it sounds really offensive paying witnesses might not be that big a deal but they said it might be they remained in it to determine if it is material that is what it have led is there reasonable probability that the result would have been different and then in Johnson versus state we learned about the PAC man bullet that was the bullet that the state the prosecutor relied on in saying he's the money pulled the trigger that's why he gets the death penalty so that that is material when there was a police report that was suppressed that he couldn't have fired the gun doesn't mean he wasn't guilty but it's less likely that he gets the death penalty and then what happens when the police or prosecutors destroy evidence which happens all the time not if you ever go to the evidence room in Nashville you'll see it's a massive warehouse it's like stuff gets lossed even if people are doing their best in Arizona versus youngblood we learned the due process standard is if police acted in bad faith in Ferguson you gotta show the duty to preserve the failure to meet the duty degree of negligence significant of destroyed evidence and sufficiency of other evidence then we learned a little bit about the confrontation clause what does that mean in the 6th amendment well it means in Davis versus Alaska this was Mr. Green if I remember right the juvenile's criminal history there was a just yeah this was the juvenile who was on probation for burglary who was the witness saying that guys the burglar and he lived near the side of the burglary there was a rule in Alaska just a statute if I remember right that said juveniles criminal histories are secret and the defense lawyer said I see that that's a rule but I've got a constitutional right to confront my accuser and the court agreed and said yeah yeah you do and the constitution Trump's rules and laws in Pennsylvania versus Richie we learned that that doesn't mean you just get to go hunting as a defense lawyer I'd like that but you don't get to just go look at every file in that case it may have been Brady material but the proper answer was for the court to review it in camera I don't know why we don't just say for the court reviewed in his chambers but that's what we say then we learned about guilty pleas they are governed by rule 11 they gotta be voluntary even if it's voluntary doesn't mean you can't come back later on certain constitutional claims the claim in North Carolina versus Alford where you claim I only played guilty because I was afraid so that's irrational the court said most of them are based on fear in otherwise why would anybody plead why would anybody enter a plea agreement if they didn't fear a worse result in the unfortunately named boyken that was one where the guy just walked in and played I'm guilty and walked out and the the appellate court said we can't presume voluntary waiver of rights without some record some record and in US versus Ruiz that was where the woman got on a fast track docket to plead guilty waived her rights if I remember right or no refused to and then they imposed a greater sentence and she came back and said the whole thing was a due process violation asking me to waive the rights including rights to impeach witnesses that I don't know anything about he said that's OK in the effective ineffective assistance of counsel realm what does that look like for a plea agreement in Missouri versus Frye we learned the lawyer never conveyed a plea offer the plea offer that 90 days on the screen doesn't doesn't that's how long the plea offer was it's not how long time passed so there was a plea offer for 90 days in jail lawyer never says anything fried gets three years to serve an the Supreme Court said yeah you do have the right to effective assistance of counsel in that setting there are two things you gotta prove you got to prove that the defendant would have accepted the offer and at the plea would have been implemented so basically you got to prove the defendant and the court would have accepted it and then we talked about prosecutorial limits on guilty pleas basically they come down to vindictiveness see that really shouldn't go into the guilty pleas this shows the imperfection of this system following a successful appeal of a misdemeanor a prosecutor increased a charge to felony the Supreme Court says you can't do that same thing North Carolina versus Pierce they got more severe punishment following appeal generally that's going to be barred by due process but then Borden kirker versus Hayes the defender sort of standard situation where I mean this happens daily prosecutor says if you don't take X you're going to get X + 10 the defendant says I'll take my chances goes to trial gets X + 10 and he wanted to come back and use those vindictive cases to say isn't this just like that the court said no in these cases you were completely warned this is just like a marketplace you didn't take the deal you get what you get and then santobello that was the one where the prosecutor induced to please saying I'm not going to make a recommendation in sensing and prosecutor was replaced even they quit or got fired or something new prosecutor comes in and does make a bad recommendation and the defendant said appealed and said you know I had a right to this agreement and it was remanded because they have to be fair alright then we get into speedy things and there's basically I put a statute of limitations felonies and misdemeanors 'cause I wanted to remind myself to tell you to know that that's all you really got to know about the statute of limitations and when an age when something when it commences but those are on your outline I mean on your PowerPoint basically there's three areas you gotta figure out statutes of limitations when do those run the speedy trial when does that run and due process typically Statute of limitations are going to run from Commission of the crime or its discovery until arrest or charging or charge from their arrester charge until trial is typically going to be a speedy trial violation you do have a category of cases where you're still within the statute of limitations but it's pre indictment delay so they arrest me in Tennessee there's two levels of courts and they rest in a restaurant I go to court gets put off a year because of covid finally come in have a preliminary hearing gets put off another year but doesn't fire flood or earthquake that happens in Nashville so all of a sudden it's been two years of pre indictment delay that's probably not a speedy trial violation at that point but on the other hand an it's not a statute of limitations problem but it could be a due process problem so that's pre indictment delay lovasco was the case and they gave us standards that we talked about in lovasco and Gray that are very close but slightly different between state and federal government I think Glenn walked you guys through prosecutorial discretion in those cases these are the cases that you should have covered yeah So what do you have to do to allege an abuse of discretion it's really a standard equal protection argument and the way you claim that is that I'm being singled out and they aren't that's two parts to that you're singling me out and you're not seeing singling out others in a protected class in bachelder this is important it's not double jeopardy most clients would would come to me and say this is double jeopardy but it's not there are often when you commit a crime or you're accused of it often it violates multiple statutes and you don't have a right to the lowest one the prosecutor typically is just as a as a standard I mean I'm not going to argue it in some case but as a standard rule of law black letter law the prosecutor is allowed to pick as long as it's not for a bad reason like you don't like black people or even like you or something that's a bad reason and then we're back to the vindictive cases I think those are pretty self extent explanatory that we've gone through that don't forget the grand jury Vasquez versus Hillary an area where it was error to systematically exclude African Americans from the grand jury when the defendant was a member of the class in other words was African American and hearsay is admissible in grand jury hearings then we talked about where do you actually get one of these juries like for everything serious crimes including the one which carried a potential of two years even though the defendant got only 60 days bland versus North Las Vegas a petty offense no jury required but only six months and then they sort of started drawing that line and they said six months wasn't the only factor but they couldn't tell us any other factors so we think six months is kind of a hard line there what does a jury have to look like in other words does that look like me or you whoever you are the purpose is to know not exactly is the answer the purpose is to encourage group deliberation protect against outside influences and provide a cross section and to protect against bad judges and prosecutors we learned only this year that a jury verdict must be unanimous either cut out part of my outline that talked about you could have five of six or nine of 12 but not I mean there was a whole math part of this outlook not anymore it's going to be unanimous Taylor versus Louisiana that was where the court was systematically excluding women because only women had to fill out a form because their place was in the home according to the locals there in batson remember use of a peremptory challenge in a racially biased way violates equal protection clause so if the defendant is a member of a cognizable racial group and the prosecutor uses a challenge on that group the defendant raises a batson challenge which puts the burden on the prosecutor to provide a race neutral explanation and it's up to judge whether to accept it they almost always do Oh yeah Pena Rodriguez that was where the verdict was already done and some jurors came forward and said that one juror was really racist and was goading people into voting but there was a rule in I want to say Nevada but I can't remember that where you couldn't go ask behind a verdict and they said no that's unconstitutional but 'cause if you're super duper racist we're going to let your lawyer ask about a juror who was super duper racist we learned that death qualified jurors that means jurors who say I I will I can impose I'm in favor of imposing the death penalty under certain circumstances or OK using juries that exclude people who say the opposite that's OK and this isn't clear from the outline but we learned that if the federal rule says the prosecutor must agree to waive a jury pool then that's OK too then we learned about the trial in Illinois versus Allen the defendant can waive the right to be present if after being warned he's so disruptive that trial cannot continue you can't just decide that he's waived it by not sitting there we learned about Crawford versus Washington this is a little bit tricky but we learned because you haven't had evidence yet don't worry about hearsay and all that stuff this is purer than that hearsay is a layer of rules on top of this this is straight constitutional law about the confrontation clause you'll get into all that next year but Ohio V Roberts said it does not violate the confrontation clause even though I have a right to confront my accusers if somebody repeats what my accuser says in my accusers not there that doesn't violate the confrontation clause as long as some judge says it's reliable that's what I'd be Roberts said Crawford came along and said that's not true confrontation means confrontation as long as the statement is testimony OK and we tried to figure out what testimonial means by Michigan V Bryant that was where the victim with the gunshot responding to police questions about what happened did not provide a testimonial extradition statement because he wasn't trying to do anything for court or help the police investigate he was dying and so when the police said what he said the court said no that's not testimonial because that wasn't the point of it it was not to investigate it was not getting ready for court it wasn't any of that it was basically help me not die so how do we know whether it's testimonial not what you look at the primary purpose of the communication and then we learned about Britain which because we all have a right to testify or not and bycause you can use my confession against me if I have a joint trial you have a right to sever or redact and then we're back to Davis versus Alaska the prior burglary this time though we're not talking about the juvenile records we're talking about Oh yeah we are talking about the juvenile records because of the confrontation clause we're just as a different part of the outline the prosecutor cannot comment on your right remain silent if you sit there like a bump on a log the prosecutor can't say that you're sitting there like a bump on a log and that an innocent person wouldn't do that and then we talked about arkansas's ban on posthypnotic testimony which was crazy town but that was a ban on the defendant's right to testify for almost done thank the Lord you do have a right to present a defense that's inherent in the due process clause and the confrontation clause and read together in a South Carolina rule that says you don't have a right to talk about anybody else who must have done it that violated the defendants right to present a defense and for sentencing we just did this the trial court gets to rely on your trial perjury in determining your sentence they may not rely on you sitting there like a bump on a log so those are two different things you gotta think about it blankly this is not as tough as it sounds the if other than a fact of a prior conviction the court cannot increase your sentence for something that the judge has to find independent of the trial so when the trial verdict comes down or the guilty plea comes down whatever that alone carries let's say carries 8 to 12 the judge can give you between 8:00 and 12:00 but if you're in a state where your law says unless you dye your hair dark on Tuesdays in which case the judge can give you 9000 years and the judge says I'm going to be 9000 years because normally take 12 but right now it's 9000 because I have this extra funding that's what's illegal that's what Blakely crimins which sounds silly but that's what the entire federal sentencing structure was looked like in part of Tennessee yeah in mccleskey versus Kemp there was statistical proof of racial disparities which they said was not enough to show individualized discrimination and in that Case No 8th amendment Graham versus Florida the 8th amendment bans life sentences for juveniles for not non murders there was a case that came out today of the Supreme Court I just saw a blurb but I'm pretty sure the Supreme court's backing way off of their ban on life without parole's for juveniles I think in the case that came out today the court is the Supreme Court said and you're not going to test it on this but just so you know the Supreme Court said you know somebody sharing it Jones versus Mississippi as long as you have an option of not life then it's constitutional you can't have an automatic life without parole for juveniles but if you're if you give a juvenile life or maybe life without parole I don't remember and you had an option not to them that statutory scheme is not unconstitutional and then you've got local sentencing procedures alright that was really terrible and hard thank you for listening and if you if you have questions you've got a couple of weeks what do you have between now and then you have an exam next week alright so probably I don't hear from anybody until like Saturday of next week and then everybody starts thinking about crim but let me know it has been a pleasure I really appreciate it this is just been a very very very hard year and you guys should be really proud of yourselves for getting through it I still have former students who are here now as third and second years who reach out to me and ask me questions or looking for jobs and those kind of things you're welcome to do that I'm always available by email so it's been a pleasure good luck on all your exams anybody got any questions I do OK I know that you'd spoke previously about knowing the difference between like the statue of limitations versus the speedy trial versus the due process an I am very unclear about that I don't I don't know if it's like my notes from that class didn't make sense to me and I still kind of don't I know that like you said it was the statue of limitations goes from the Commission to the arrest speech are goes from the arrest to the indictment to the end of the trial and then what does the due process go tord like 2 so the due process is pre indictment delay or pre accusation delay but in other words a statue of limitations is not just an on off switch just because you've met the statue of limitations isn't the only inquiry there's also a due process test so you could be you know for example in murder there is no statute of limitations for first degree murder in Tennessee that doesn't mean if they charge you 50 years after the murder you have no constitutional rights you still have a due process test in the cases that we read hold that I think the notes are confusing because at the end of that I said you guys need to go figure out when the timeline applies I think I did not say that yeah and it's pretty clear if you read the cases where it is I mean those cases are like three they overlap but their specific time periods and they're not it's not like always you only have one usually ones the best answer if somebody calls you up and says I'm charged with a misdemeanor and it happened 5 days ago do you think they can still charge me I suppose you could try and engage in a speedy trial analysis but it would be really stupid 'cause there isn't one you could also think about due process but really what they're asking you is is it legal for them to charge me what's the statute of limitations right if somebody says I've been sitting in jail I got charged six years ago hey lawyer as I got charged six years ago and they have not yet taken me to trial they kind of forgot about me did not stop problem with the statute of limitations I would say what do you been in Jennifer with this case I mean I got arrested OK it's not a statute of limitations problem is probably a speedy trial problem what about there is no statue of limitations on child rate but they're saying I raped a child 50 years ago I'm going to know who the child is there's no such limitations but you have a due process problem and there's a way to analyze that under state and federal court that's how it works call me now what if somebody says do I have a statute of limitations issue it's been five years and I'm charged with a D felony you might they might be able to charge you depending on when they charged you and how all that stuff tolls maybe but in any event even if we're wrong let's say it's a B felony in the statutes longer than that you might have a due process issue that's still a problem that they wait five years to charge you with a crime follow me whoever you are yes Sir thank you anybody else professor frog yeah oh can you would you mind sharing the breakdown of the exam format like is it going to be essays multiple choice I want something I'm toying with you well it's going to look like the midterm kinda mostly you may or may not have an essay I think I here's my problem just I'm sharing with you so you'll know not that it helps you but I want to give you an essay 'cause we talk so much about them and we think they're important and we yell about it in Iraq and Oh my God we just pull our hair out trying to say right right right right right but the problem is 1 it slows me way down in grading and two you'll never know you'll never know unless you come back and look at it whether you did right or just furthered your bad habits so that's what I'm struggling with you will either have a bunch of multiple choices an essay or you will not so no I mean that's that's exactly what I'm struggling with 'cause I don't want to I don't know I feel like a lot of times the folks who are going to come get their exam really think about it Oh my God I want to be a better writer I want to do this right I want to get the comments those folks don't need it the folks who need it or like whoo first year in the rearview mirror baby I'm done thinking about that nonsense and I will never ever try to be better I'm trying to just get out of here as fast as possible and I'm with you I'm down with that you are valid human and we love you but it makes me think like men given an essay it's I'm going to spend time commenting and thinking and all that and the people who read it are mostly the ones who don't need it and the people who don't need it so that's what I'm thinking about I have a question in the class the question is time frame? A class. Anybody else professor frog yes I know there was some miscommunication about what time the exam starts I believe some people said that it started at 6:30 others believe it started at the time that our class normally starts do you have an idea I'm unaware of any miscommunication I'm not responsible for it I don't know I've been told 6:30 I've not been told anything else now last week some people asked me to start this week earlier and I said no because I've started I've done that on a whim and gone yeah the students want it we must do what they want and then I get a call from being Coke saying why did you do that someone's on this strict medical regimen and they have to get dropped off and so I don't do that anymore but maybe somebody confused that there's a schedule posted I'm told I don't know where things are posted but but as I understand it it's the 6th right is that correct at 6:30 but you gotta be present anybody else alright well that's it then thanks you guys and good luck and let me know if you have any questions home I got somebody is recording this by the way I don't know who**