

1) You authored two excellent exams, particularly Q1. Don't forget to clearly state the law when you are pressed for time  
===== Start of Answer #1 (1849 words) =====

85

Question #1

This is very long "rule" section without context to any facts

The 4th Amendment: The 4th Amendment of the U.S. Constitution and applied to the states by the 14th Amendment serves to protect citizens from unreasonable searches and seizures by government officials/agents in respect to their person, house, papers, and effects. Additionally the protection of one's house extends to the curtilage, which is the immediate area surrounding the house intended and used for domestic use.

In addition to the protections stated supra, the 4th Amendment expressly states that no warrant shall be issued but upon a showing of probable cause, supported in a sworn/oath of affidavit and which describes in particularity the places to be searched and the items to be seized. Typically to arrest someone in their house or to search their house requires such a warrant.

However, the Supreme Court has made several exceptions to the warrant requirement and which allows a warrantless search of seizure. The courts have taken a more literal interpretation of what is reasonable under the 4th Amendment and have continuously balanced governmental intrusions with public safety. Many of the following expectation have been developed for that reason. There are permissive warrantless searches and seizures in the following circumstance; Exigency, Search Incident to a Custodial Arrest, Consent, Automobile Exception, Plain View, Inventory

(Special. What is this?)

Needs and Terry "Stop and Frisks".

In order for an individual to challenge a unlawful search of seizure, they must have "Standing". Standing varies from based upon the situation, however, is always the individual's right to challenge the authority of the government who violated the 4th, 5th, or 6th Amendment. In order to have standing, a person must have a reasonable expectation of privacy in the place search or the item seized and that society must recognize this expectation of privacy to be both legitimate and reasonable.

Exclusionary Rule: The Exclusionary Rule is a judicially created mechanism developed to exclude unlawfully seized evidence by governmental official for purposes of criminal proceedings against the defendant. It's intent to deter police misconduct and to ensure only lawfully seized evidence is introduced against the person in criminal proceedings.

Seizure of Sal's Poster

① Was the seizure of Sal's poster legal?

Paul is a paid police officer, which is a government agent for 4th Amendment purposes. Sal requested a online print be made of the poster which was dated July 4, just three days prior to it's submission to the print shop. The photo displayed a male in "tactical gear" and "carrying assault weapons". The email address was also suspicious in nature as it had a indication that perhaps the owner of the email was a hit man.

*good use of facts.*

(Sal@thehitman.com) was certainly suspicious given the depiction in the photo. The clerk was "frightened" by this image and called Paul out of concern.

The photo was given to Paul along with the email address. Chance, the clerk, was not acting out of police direction and therefore was not an agent of the police. Chance merely saw the suspicious email address, saw the photo, was frightened and contacted law enforcement. The facts state Chance gave Paul the email address and photo and Paul did not direct or ask for them. Sal likely would not have a reasonable expectation of privacy with regard to his photo or email because he voluntarily provided them for processing at a public store. Society would like say Sal has no reasonable expectation of privacy and thus the seizure of the photo and email address would not fall under the 4th Amendment and would likely not be able to be suppressed at trial. Only if Sal had a recognized REP in the photo and email address would the possible warrant exceptions be applied.

*excellent discussion.*

*Didn't really consider these issues here.*

\* Exception: Public Safety Exception. Under the Public Safety Exception, if Paul felt based upon the nature of the email address, and the recent date on the photo, combined with the image of a man dressed in tactical gear and holding assault rifles, Paul could argue that Sal was an immediate threat to public safety and that the seizure of the photo and email address was needed without a warrant to further the investigation.

\* Exception: Plain View Exception. Paul has legal positioning, recognizes the assault weapons in the photos are illegal and the photo and email

address are evidence to the crime of possession of weapons, and he can access the photo and email address. The evidence may come in under that exception.

Cures: If suppressed, Perhaps the information coming from the store clerk could be considered a independent source. *define + state the rule*

② The search and seizure of Sal's home address from the ISP

Facts state, Paul was a officer and he did not have a warrant.

*Does Sal have standing in 3d party business records?*

*You tagged this as ISP, but we are discussing the case.*

However, based on the facts supra, Paul would argue that there were sufficient facts; date of photo, the email address, and assault weapons, to develop probable cause to obtain a warrant to search Sal's house for the illegal assault rifles. These facts would be sufficient to place in a affidavit for probable cause and detail Sal's house to seize the weapons. Acting on the basis that he could obtain a warrant, he could have seized the information.

Exception: The only exception to the warrant requirement that would allow Paul to obtain the address of Sal from the ISP would be the Public Safety Exception. Based upon the facts supra, if Paul believed obtaining the information without delay was needed for public safety, which he could argue based upon the factors above, then the search and seizure of the records would be lawful.

③ The Search and Seizure in Sal's front yard of the package.

Sal enjoys a REP in his front curtilage, which is used for domestic use. *domestic? Define w/ Dunn facts.* It will be argued that even the UPS driver could not access through the "locked" front gate and that he had to throw packages over the gate. Paul, acting again as a government agent, despite being in a unmarked car, conducted lawful surveillance and was able to document the several UPS deliveries in Plain View. Sal had no REP to Paul's observations of this activity because Paul was in a public place.

When Paul "hopped" over the locked gate, Paul did not have a warrant and there were no exceptions to the warrant requirement that Paul could argue *★?* at that time.

*Exceptions* Perhaps, *★?* Paul could argue against the Public Safety Exception, if he believed it was needed to inspect the packages based upon the reasonable articulable facts that they were a public safety hazard/risk. When Paul further manipulated the packages, he did so with out a warrant and this constituted a seizure of the packages. If Paul had been in a legal position to see the packages and their labels and content from the street, he would have been legally able to move further.

When Paul read the packaging, saw it was addressed to Sal, and then saw the return labels, this was a intrusion by a governmental agent.

Paul will try to argue that the hopping of the fence and the manipulating of the boxes was needed for public safety. The further seizure of the box, leaking the grey matter know to him as gun powder was even more support that the exigency existed.

Sal will argue this was a warrantless search of his front yard where he had a REP and Paul acted without a warrant and with no valid exception to the warrant.

The evidence could potentially be suppressed; however may be saved under inevitable discovery. Paul had sufficient information to support a search warrant could have seized the items then. Arguability, this may save the evidence.

Statements of 3rdParty neighbor arguably will be admitted. NO REP to other person's statement and no standing by Sal to challenge. *Issue here is really the reliability of Nellie as an informant.*

④ Arrest of Sal

Sal was arrested without a warrant.

When Paul recognizied Sal, he had already known that Sal was the person in the photo who had been carrying weapons, mainly assault weapons. Paul developed several detention factors, including the fact Sal was in front of the federal building, he knew previously from the neighbor that Sal was an anti-government, he was seen carrying a large suitcase, he

was  pacing nervously, he had  explosive material delivered to his residence, <sup>at</sup> he was recognized to be in the  photo which depicted the carrying  assault rifles.  Sal ran when he saw Paul in uniform.

Paul had  sufficient articulable reasonable suspicious to  detain Sal for criminal activity, and likely based on the facts,  probable cause to  arrest Sal.

? Sal was seized when Paul came up to the  taxi and  ordered him out of the back seat. The reasonable person would  not think they were free to leave under those circumstances. The  Terry Stop of Sal based upon his conduct was <sup>based on</sup>  sufficient reasonable articulable facts to believe Sal was involved in some criminal activity. Furthermore, the fact Paul knew Sal  may carry weapons and had seen explosives at his home, warranted a  Terry Frisk because he could think Sal was armed and dangerous. Thus the locating of the  Tear Gas and the removing of the tear gas was a intrusion, but may be cured if Paul would have conducted a <sup>new P</sup>  search incident to arrest anyways. <sup>Seizure of the</sup> The  Body Armor was lawful under  Terry because Paul did not exceed the scope of the search, it was his outer clothing and person and he immediate it recognize the  Body Armor as contraband, as Sal could not legally possess it.

←  timing @ ff?

Sal was  then placed under  custodial arrest.

Paul could legally search the  taxi under  Belton and get wingspan within the  passenger area.

Standing in the taxi?  
The seizure of the  brief case from the  trunk without a warrant could have occurred as well.

The seizure could have been done based upon the Probable Cause Exception, if Paul believed the suitcase also contained evidence or contraband based upon what he had known and what he had found on Sal. Arguably this would be an exception to any warrant requirement.

Additionally, the public safety exception might allow a permissive search of the trunk and suitcase if Paul can argue he believes it to contain material dangerous to the public.

The illegal firearms will likely not be suppressed under the above exceptions to the warrant requirement.

*Need to draw some conclusion, even if brief, re: what evidence at the end will be excluded.*  
The statement of Sal

FBI Agent is a govt agent. Sal made a confession and was convicted. Sal will argue his confession was coerced by the FBI Agent in violation of the 14th Amendment Due Process and thus should not come in against him. He will argue the statement the FBI Agent made saying "what should we do with a person who wants to kill innocents" was threatening in nature and

that his response and confession should be suppressed. *What effect does Sal's mental health status have?*

Sal's 5th Amendment violation may be raised when he stated you can ask my lawyer these questions, which he will state was his intention to invoke his right to counsel. The FBI agent will likely attempt to say this was ambiguous and he continued to question Sal. Sal will also state that the FBI making the statement that a man in your position should get psychiatric

*need to state the law*



help, could either be construed as another threat or a promise of treatment  
in lieu of incarceration.

80

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===== End of Answer #1 =====

2)

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===== Start of Answer #2 (1187 words) =====

~~4th Am <sup>endment</sup> protects against unlawful search and seizure of a person or place. The 14th~~

Am<sup>admitted</sup> Due Process Clause makes the 4th Am<sup>admitted</sup> applicable to the states. A person has standing (a right to object to their constitutional rights being violated) when they have a reasonable expectation of privacy that society is willing to recognize. (Katz)

*mic*  
*IP*  
Spider is an informant. Informants can give police probable cause for arrest under the Gates "totality of the circumstances test" that includes factors from the Spinelli-Angular test that an informant <sup>is</sup> known to be reliable somehow (usually with a past history of successful tips) and the informant has a way of knowing what that the suspect has committed a crime. These factors can be weighed with independent law enforcement investigation, especially if the tip is able to predict future criminal conduct, to show probable cause. The fact that Spider is paid for his information does not violate due process as being unconscionable, even if he was paid more for his tips leading to convictions. In this case Spider would be a known reliable informant.

There is government action with Ike preparing the photo line-up/investigating the murder.

Does the photo line up violate Gabby's right to have an attorney present?

Prior to the photo-line up Gabby was arrested, arraigned, released under probation <sup>and</sup> officer supervision. Arraignments are critical stage of criminal adversarial proceedings <sup>is the 6th A offense specific?</sup> and so if this was a live line-up she would have had the right to an attorney. Photo line-ups do not require an attorney present, but can potentially be so suggestive that they violate the due process rights of the accused.

At first Ike used a newer picture of Gabby from her recent arrest, then when Spider could not identify Gabby he replaced the picture of Gabby with an older picture and Ike was able to instantly recognized her. There is a possibility this would violate her due process rights because two pictures of Gabby were shown, and only one photo of the other suspects were shown, it definitely seemed that Ike wanted to unduly influence Spider's photo selection.

Am right to counsel.

Were Gaby's Due Process rights violated when she was interrogated?

Due Process protects against police conditions that are designed to forcibly draw out a confession against the free-will of the individual by deplorable conditions, deprivation of food and water, etc...

Ike at first is fair to Gabby, he tries to track down her attorneys, but ends up running into the prosecution instead who states the grand jury had handed down an indictment for first degree murder. At this point he makes a comment saying its too late for her and he can't help her, which is not unusually cruel or trying to pressure her into confessing. The totality of the circumstances would not find this violating due process because she is not being treated poorly to induce a confession that is against her free will.

Was Gaby's right to an attorney violated?

Once formal proceedings have begun then under Massiah Gaby has the right to an attorney and no interrogation can take place without the presence of an attorney.

Here, she had just been indicted by the grand jury, which means she was entitled to have an attorney. The question was she really being interrogated when I made his comments? He did not ask her any questions and although his comments would have been discouraging to most people, it is unlikely they will be found to make up an interrogation. Gaby will argue that her right to an attorney was violated, but will not succeed.

Was Gaby not properly Mirandized?

Miranda applies to suspects in custody or <sup>if</sup> their freedom is suspended; custody is determined by if a reasonable person would think they are in custody. They have to be

interrogated and this can be explicitly done or implicitly implied by actions or words designed to illicit incriminating statements.

Ike reads Gaby her Miranda rights. Gaby is in custody (she is in a cell in jail), but is she being interrogated? She will argue that Ike's actions and statements were implicitly designed to illicit incriminating remarks from her. Ike will argue that he did not ask her any explicit questions of her. Also it is important to figure out if she invoked her right to an attorney since she says I want to talk to my lawyer first if I'm going to be charged. It is easier to waive Miranda rights than to invoke them; to waive them it has to be freely and intelligently done. Gaby makes a conditional statement, that technically means Ike doesn't have to give her an attorney unless she is going to be charged. It may be argued that once he knows she is indicted that he needs to get her an attorney and she will argue that she invoked her right to an attorney.

Gaby will probably lose because Miranda has been continually shrunken over the years and the húsk that it is will likely not find her asserting her right to an attorney and even if it was found it will most likely be found that Ike was not interrogating her.

Gaby disregards Abe's advice and testifies which is her legal right to do.

==== End of Answer #2 =====