# Spring 2014

# ADVANCED CRIMINAL PROCEDURE MID-TERM QUIZ

## **Professor Rodriguez**

<b>YOUR STUDI</b>	ENT ID NUMI	BER:		59

DURING THIS EXAM YOU ARE NOT TO HAVE ANY OTHER DOCUMENT OR A CELL PHONE OR ANY OTHER DEVICE THAT CAN TRANSMIT AND/OR RETAIN INFORMATION. POSSESSION OF THE ABOVE IS A VIOLATION OF THE HONOR CODE AND WILL BE DEALT WITH ACCORDINGLY.

#### **INSTRUCTIONS:**

- 1. Do not use your own scrap paper. Instead, please take one (1) blue book, mark it as "Scrap." and use it as scrap paper. Your scrap blue book must be turned in together with the exam packet at the end of the exam.
- 2. Your **ANSWERS TO PARTS 1 & 2 MUST BE WRITTEN DIRECTLY IN THIS EXAM PACKET**, which you will turn in at the end of the exam.
- 3. Please do not identify yourself in the exam packet in any way other than by student ID. Please do not write any information that might reveal who you are.
- 4. This is a closed-book examination. Other than writing implements, you are not to have any materials on your table or at your feet. Place all books, knapsacks, briefcases, etc. at the side or front of the room.

This exam consists of [2] parts for a **total of 70 Points** and will account for **25% of your semester grade.** 

The total time for the exam is 1 hour and 15 minutes.

Part One consists of 5 true/false or fill-in questions worth 2 point each, for a total value of 10 points;

**Part Two** consists of **8** directed, short answer questions (some of which consist of two parts), for a total value of **60 points**;

I will give a **15 minute** warning, at which point no one may leave the room until the exam ends.

I will also warn you when there are **5 minutes** left and **1 minute** left. When I call time, you are to stop writing immediately.

#### **GOOD LUCK!!!**

PART ONE (Each Question in this section is worth 2 points)
1. Officer McGuinness a Boston PD plainclothes detective was observing the actions of two men on a city street corner at approximately 2:30 one the afternoon. The men acted suspiciously, walking back and forth along a particular stretch of the sidewalk peering into the window of a particular store. Fearing that the men may be armed and planning to rob the store, Officer McGuinness approached the men and identified himself as a police officer.
What level of information or standard of evidence must Officer McGuinness possess to conduct a Terry Stop and Pat Frisk?
2. Officer Santiago observed Stanley Robinson driving a 1965 vintage Cadillac Coupe DeVille down Main Street. Officer Santiago had previously interacted with Robinson four days earlier for operating a motor vehicle without a valid driver's license. Officer Santiago ran Robinson's information through the Registry of Motor Vehicles and determined that he still did not have a valid license.
What level of information or standard of evidence must Officer Santiago possess to make an arrest of Stanley Robinson?
<b>3.</b> Officers from the Lawrence Police Department received reliable and credible information that an adult male who is suffering from mental illness is carrying a firearm.
In the Commonwealth of Massachusetts what level of information or standard of evidence must the officers possess to effect a Fourth Amendment seizure of this person on the basis that it rises to a public safety issue?
<b>4.</b> If a seizure or search is found to be unreasonable, then the police contact will be found

to have violated the Fourth Amendment as well as Article 14 of the Massachusetts

Declaration of Rights.

True [ ] False [ ]

## PART TWO

The section below consists of questions in the form of hypotheticals, each of which describes a situation from which a particular criminal charge is likely to be brought and which is, therefore, governed by a specific rule of law. Each question requires that you identify the specific rule, or rules, that will control the result and requires a short answer, written in the following form:

Your answer must be a concise, proper analysis that includes: (1) Your statement of the likely result; (2) followed by an explicit statement of the governing rule of law; (3) followed by your application of that rule to the specific facts of the situation.

Limit your answer to the space provided. I will not read anything written beyond the lines provided. Pay particular attention to the call of the question

## **Question 1 (This question is worth 5 points)**

At or about 1:15 A.M. on September 10, 1988, the State police received an anonymous telephone call stating that two white males, one of whom was named Wayne, had just purchased narcotics in Chelsea and would be heading for Bridgton, Maine. The caller said they would be driving in a silver Hyundai automobile with Maine registration 440–44T. The police thereafter set up one surveillance position on the northbound side of Interstate 95, and another on Route 1 north. At about 2 A.M., A State Trooper observed two white males in a silver Hyundai with the indicated registration number pass his surveillance point on Interstate Route 95.

Where the police received their information from an anonymous tipster, the reliability of

"reasonable suspicion" in Massachusetts must be evaluated based on what two-prong tes (which was formerly used on the federal level)? Fully state the applicable rule of law i your answer and apply the ROL to the facts in your analysis.		

Question 2 (This question is worth 2 points)
While on patrol officers receive a report of a man causing malicious damage to a parked motor vehicle, an arrestable offense in this jurisdiction. When the officers arrive on scene they observe George Jefferson breaking the vehicle's windows with a crow bar and based on their observations the officers make a warrantless arrest.
According to <i>County of Riverside v. McLaughlin</i> , 111 S.Ct. 1661 (1991) under <i>Gerstein v. Pugh</i> , 420 U.S. 103 (1975), what is the federal rule regarding a prompt determination of probable cause?

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While on patrol officers receive a report of a man causing malicious damage to a parked motor vehicle, an arrestable offense in this jurisdiction. When the officers arrive on scene they observe George Jefferson breaking the vehicle's windows with a crow bar and based on their observations the officers make a warrantless arrest.

Under <i>Jenkins v. Chief Justice of the District Court</i> , 416 Mass. 221 (1993) what is the Massachusetts rule regarding a prompt determination of probable cause and what is the remedy if a <i>Jenkins</i> violation occurs?	
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Question 4 (This question is worth 5 points)  The police acting on probable cause to believe that the defendant, Japaifer Smith, had	

The police, acting on probable cause to believe that the defendant, Jennifer Smith, had committed a murder two days earlier, and without first obtaining an arrest warrant proceeded to Smith's apartment to arrest her. When they arrived at the apartment light and music were emanating from inside. There was no response to their knock. The police then broke into the apartment. Smith was found hiding underneath her bed and she was arrested.

As Smith's attorney what constitutional argument will you raise regarding Smith's arrest which took place inside of her dwelling and how is the court likely to rule on your argument? Fully state the applicable rule of law in your answer and apply the ROL the facts in your analysis.					
the facts in	your analysis	<b>).</b>			

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Question 4(a): (This question is worth 5 points)  If Smith's arrest took place in the Commonwealth of Massachusetts, under Article 1 the Massachusetts Declaration of Rights what level of information or standard of evidence is required for police who are armed with a warrant to enter a private dwell and make an arrest. In addition, what two additional requirements must the police al meet? Fully state the applicable rule of law in your answer and apply the ROL facts in your analysis.	ling so

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Question 5 (This question is worth 5 points)
State Troopers from the Massachusetts State Police Detective Unit were conducting an undercover drug operation and survielling one Alfred Amendola Jr., who they observed on numerous occasions dealing cocaine and heroin from his vehicle. The detectives followed Amendola into the parking lot of Filene's Basement located at the South Shore Mall in Braintree. When the detectives observed Amendola conducting a drug transaction they immediately converged on his vehicle and arrested him. During a subsequent search of the vehicle the detectives found a large quantity of heroin and cocaine and they charged Amendola with Possession of a Controlled Substance with the Intent to Distribute.
As Amendola's defense attorney, what rule or doctrine under Article 14 of the Massachusetts Declaration of Rights would you raise to challenge the legality of the search and seizure of the drugs and how is the court likely to rule on your argument? Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

Question 5(a) (This question is worth 4 points) Same facts as above, however, suppose Amendola had a passenger with him named John Pires who was also arrested and charged with Possession of a Controlled Substance with the Intent to Distribute.
Suppose John Pires was prosecuted in a federal district court applying the federal rule of law. As Pire's attorney could you raise the same rule or doctrine in his defense to challenge the legality of the search and seizure? Fully state the applicable rule of law ir your answer and apply the ROL to the facts in your analysis.

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Question 6 (This question is worth 5 points)
While on patrol, two Philadelphia police officers observed Harry Mimms driving an
automobile with an expired license plate. The officers stopped the vehicle for the purpose
of issuing a traffic summons. One of the officers approached and asked Mimms to step
out of the car and produce his owner's card and operator's license. Mimms alighted,
whereupon the officer noticed a large bulge under his sports jacket. Fearing that the bulge
might be a weapon, the officer frisked Mimms and discovered in his waistband a .38-
caliber revolver loaded with five rounds of ammunition. Mimms was immediately
arrested and subsequently indicted for carrying a concealed deadly weapon and for
unlawfully carrying a firearm without a license.
At a suppression hearing, Mimms' attorney files a motion to suppress the revolver
arguing that the exit order was unreasonable and thus impermissible under the Fourth
Amendment. As the Prosecutor, what constitutional argument will you raise regarding the
validity of the exit order and how is the court likely to rule on your argument? Fully state
the applicable rule of law in your answer and apply the ROL to the facts in your
analysis.

Question 6(a). (This question is worth 5 points)  Same facts as above, however suppose the arrest and charges took place in the Commonwealth of Massachusetts. What legal argument will you raise under Article 14 of the Massachusetts Declaration of Rights and how is the court likely to rule on your motion? Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

Question 7 (This question is worth 5 points)
Officer Santiago observed Stanley Robinson driving a 1965 vintage Cadillac Coupe DeVille down Main Street. Officer Santiago had previously interacted with Robinson four days earlier for operating a motor vehicle without a valid driver's license. At this time Officer Santiago made a motor vehicle stop and placed Robinson under arrest for driving without a license. Upon searching the right breast pocket of Robinson's heavy coat Officer Santiago discovered a crumpled cigarette pack which contained 14 gelatin capsules of white power which was later determined to be heroin. Over Robinson's repeated objections the Prosecution now seeks to enter into evidence the heroin seized from the search.
If you represent the Prosecution what federal constitutional argument will you raise and how is the court likely to rule on your argument? Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

Question 7(a). (This question is worth 5 points)
Same facts as above, however Stanley Robinson is arrested and charged in the Commonwealth of Massachusetts.
You represent Stanley Robinson, as his defense attorney what argument will you raise under Massachusetts General Law, Chapter 276, § 1, and how is the court likely to rule on your argument? Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

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Question 8. (This question is worth 5 points) Illinois State Trooper Daniel Gillette stopped Roy Caballes for speeding on an interstate highway. When Gillette radioed the police dispatcher to report the stop, a second trooper, Craig Graham, a member of the Illinois State Police Drug Interdiction Team, overheard the transmission and immediately headed for the scene with his narcotics-detection dog. When they arrived, Caballes' car was on the shoulder of the road and Caballes was in Gillette's vehicle. While Gillette was in the process of writing a warning ticket, Graham walked his dog around Caballes's car. The dog alerted at the trunk. Based on that alert the officers searched the trunk, found marijuana, and arrested Caballes. The entire incident lasted less than 10 minutes.
You represent Mr. Caballes in the federal district court and you file a motion to suppress the search and the seizure of the drugs found during the motor vehicle stop. What constitutional argument will you raise concerning the admissibility of the seized evidence and how is the court likely to rule on your motion? Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

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Question 8(a). (This question is worth 5 points)  Same facts as above, however suppose the arrest and charges took place in the Commonwealth of Massachusetts. What legal argument would you raise under Article 14 of the Massachusetts Declaration of Rights and how is the court likely to rule on your motion? Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

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## **Spring 2014**

#### ADVANCED CRIMINAL PROCEDURE FINAL EXAM

#### **Professor Rodriguez**

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DURING THIS EXAM YOU ARE NOT TO HAVE ANY OTHER DOCUMENT OR A CELL PHONE OR ANY OTHER DEVICE THAT CAN TRANSMIT AND/OR RETAIN INFORMATION. POSSESSION OF THE ABOVE IS A VIOLATION OF THE HONOR CODE AND WILL BE DEALT WITH ACCORDINGLY.

#### **INSTRUCTIONS:**

- 1. Do not use your own scrap paper. Instead, please take one (1) blue book, mark it as "Scrap." and use it as scrap paper. Your scrap blue book must be turned in together with the exam packet at the end of the exam.
- 2. Your ANSWERS TO ALL PARTS OF THIS EXAM MUST BE WRITTEN DIRECTLY IN THIS EXAM PACKET, which you will turn in at the end of the exam.
- 3. Please do not identify yourself in the exam packet in any way other than by student ID. Please do not write any information that might reveal who you are.
- 4. This is a closed-book examination. Other than writing implements, you are not to have any materials on your table or at your feet. Place all books, knapsacks, briefcases, etc. at the side or front of the room.

This exam consists of:

Part One: 12 questions, each worth 5 points with the exception of # 6 which is

worth 10 points;

Part Two: 1 question worth 15 points,

for a total of 80 Points and will account for 75% of your semester grade.

In addition, if you have extra time, there is a Bonus Section at the end consisting of 10 questions, each worth 2 points, with which you may supplement your score.

The total time for the exam is **3 hours**.

I will give a **15 minute** warning, at which point no one may leave the room until the exam ends.

I will also warn you when there are **5 minutes** left and **1 minute** left. When I call time, you are to stop writing immediately.

#### GOOD LUCK !!!

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## PART ONE (each question in this section is worth 5 points)

## **Question** # 1 (5 points)

James was the Principal of a High School in Massachusetts at which Sam, a 17 year-old, was a senior. One day, James called Sam to his office to discuss his absenteeism from school. A month earlier James had found Sam in possession of marijuana while at school. During the meeting to discuss Sam's absenteeism James smelled a strong odor of marijuana coming from Sam. James asked Sam if he had been smoking marijuana, which Sam denied. James then searched Sam's clothing but, finding nothing, sent Sam back to class.

While Sam was in class, James went to Sam's locker and found a lock on the handle. James obtained some bolt cutters from a storage room and cut the lock. Upon opening the locker, James saw a handgun and several large, clear, plastic bags containing what appeared to be marijuana on the floor of the locker. James called Sam down to his office and without imparting Miranda warnings James began to question him about the drugs and the handgun. Sam initially denied having any knowledge or involvement with the drugs and the handgun, but then James began to scream at Sam. Becoming afraid, Sam told James that he had received everything from a guy named Mark who lived a block from the High School. James then called the police who took Sam into custody for Possession with Intent to Distribute a Class D Substance (marijuana) and illegal possession of a firearm.

As Defense counsel for Sam you file a motion in the district court seeking to suppress all statements made by Sam to James arguing a violation of his Article 12 Massachusetts Declaration of Rights and his Fifth Amendment right under the United States Constitution. How will the Court likely rule on the motion and why?

your analysis.						
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## **Question #2 (5 points)**

Detectives from the Massachusetts State Police Criminal Investigations Unit asked Patrick Murphy to come in for an interview to speak with them about the death of his wife. Murphy voluntarily went to the state police barracks to speak with the Detectives. Two detectives escorted him to an interview room that measured 8 feet by 12 feet with a table and three chairs in it. Murphy was seated at one side of a round table and the detectives on the other and the door to the room was closed. Prior to questioning Murphy the detectives never told him that he was free to leave; however, they also never told him that he couldn't leave. At the end of the interview Murphy made several incriminating statements which provided the detectives with probable cause to arrest Murphy for the murder of his wife.

As defense counsel for Murphy what constitutional and Massachusetts Declaration of Rights argument will you raise on behalf of your client? As the Prosecution what constitutional and Massachusetts Declaration or Rights argument will you make in opposition to defense counsel's motion and how will the court likely rule on the motion.

Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

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## **Question #3 (5 points)**

At approximately 12:30am officers from the Holyoke Police department were dispatched to 123 Buzzards Drive on a report of murder that had just taken place inside of a dwelling. Responding officers were given a name and a detailed description of the suspect who was reported to have fled the scene on foot and was still at-large in the area.

Officers located a subject who matched the description of the assailant 3 blocks away from the scene of the murder. Upon questioning the subject and learning his name (which matched the name previously given) as well as making certain observations of blood on his clothing, Officers arrested Felix Unger at 1:00am for the murder of his roommate Oscar Madison. Unger was subsequently booked and processed which included his right pursuant to G.L. c. 276 § 33A to a telephone call at 2:00 a.m.

At approximately 7:05am detectives from the Holyoke Police and the Massachusetts State Police administered valid Miranda warnings to Unger and began questioning him about the murder. Three hours into the interview, Unger gave both a verbal and written confession detailing his role and the manner in which he killed his roommate.

As defense counsel for Felix Unger you file a motion in the district court seeking to suppress the statements he made to the police. How is the court likely to rule on your motion and why?

Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

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## **Question #4 (5 points)**

After discovering that a gun and bullets had been stolen from his gun shop, the shop's owner immediately called the police. The gun shop owner gave the police a detailed description of the perpetrator. Officers combed the area searching for the person who met the description furnished by the owner. Approximately two hours after the theft, James emerged from a children's movie theatre and, because James closely fit the description of the person who robbed the gun shop, Officer Smith approached James with his gun drawn. James froze when he saw Officer Smith approach, and he placed his hands behind the back of his head. Officer Smith then asked James, "Where's the gun?" to which James replied, "I'm not answering any questions. I know my rights." Officer Smith responded, "Come on; there are kids inside that movie theatre." James then immediately said "Okay, I'll show you where the gun is," and he lead Officer Smith to the gun which he had taped to the underside of a seat in the theatre.

As Defense counsel for James you file a pre-trial motion seeking to suppress all statements made by James to Officer Smith. As the Prosecution what constitutional and Massachusetts Declaration of Rights argument will you make in response to defense counsel's motion and how is the court likely to rule on the motion and why?

Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

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## Question # 5 (5 points)

Federal Customs Agents received information that Winston Hezekiah was going to transport a large quantity of narcotics aboard a United States airline flying from Columbia to the United States. Based on the information, Customs Agents searched the plane and discovered five packages containing large amounts of cocaine. Hezekiah and several others, including a man named Kurt Olson, were charged with possession of narcotics aboard a United States vessel. During his arraignment Hezekiah retained a lawyer, pleaded not guilty, and was released on bail together with Olson. Several days later Olson, secretly cooperating with the federal agents, prearranged a meeting with Hezekiah at Olson's home. While the federal agents were listening in on the conversation through electronic listening devices Olson engaged Hezekiah in a conversation where he deliberately elicited responses from Hezekiah. Hezekiah made several incriminating statements during the course of the conversation.

As defense Counsel for Hezekiah what constitutional argument will you raise to suppress the incriminating statements, and how is the court likely to rule on your motion and why?

Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

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## Question # 6 (10 points)

On September 27, 2010, a Worcester County grand jury indicted the defendant, Jim Kearns, charging him with the May 8, 2010 murder of fourteen year old Nathan Watson and the wounding of fifteen year old Jerome Flanders, in the Burcoat section of Worcester. The defendant was known to be associated with the K-Block gang (K-Block), which was engaged in a feud with the Beet Street gang (Beet Street), on whose turf the shooting took place.

The Commonwealth believed that K-Block and Beet Street were highly organized and disciplined groups engaged in the supply and sale of illegal goods in adjoining neighborhoods in Worcester, and that the murder was committed in connection with K-Block's criminal activities. Consequently, during the course of the investigation, it sought to record conversations of those H-Block members whose involvement in the murder was

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suspected. A cooperating witness consented to the recording of his conversations with Kearns and other K-Block members, and subsequently wore a wire and recorded his conversation with the defendant in which Kearns admitted to the killing. One conversation was recorded in the defendant's automobile and a second conversation was recorded in the defendant's home.

As defense counsel for Kearns, what Massachusetts statutory argument will you raise to suppress the recorded conversations? For the Prosecution what statutory argument will you raise in response to defense counsel's motion and how will the court likely rule on the motion and why?

Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.


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## Question # 7 (5 points)

When he was interviewed by detectives from the Oxford Police Department in connection with the death of a sailor, Sammy Davis initially waived his rights to remain silent and to counsel. About an hour and a half into the interview, he said, "Maybe I should talk to a lawyer." The police continued to question Davis who later gave a written confession fully describing the events of the murder.

Davis moved to suppress the written confession, and at the subsequent suppression hearing argues that his Fifth Amendment right to counsel had been violated when police failed to stop questioning him once he stated, "Maybe I should talk to a lawyer."

Applying the federal rule of law how should the motion judge rule on Davis' motion and why?

Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

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Question # 8 (5 points)
Same set of facts as Question 8 above: however, here, Applying the Massachusetts rule of law how should the motion judge rule on Davis' motion and why?
Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

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# Question #9 (5 points)

Officer Smith validly arrested Marie and correctly gave her the Miranda warnings, to which Marie replied, "I want my lawyer." The police then allowed Marie to call her attorney, who was out of the office, and, therefore, unable to take the call. Marie then turned to Officer Smith and said, "You know, I heard confession is good for the soul. I think, I'd like to make a statement after all." Officer Smith then read Marie her Miranda warnings again, after which Marie confessed.

At trial Marie's attorney files a motion to suppress her confession, arguing that her Fifth Amendment rights had been violated. How is the Judge likely to rule on the motion and why?

Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

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# Question # 10 (5 points)

In South Boston on St. Patrick's Day evening, 1993, snow and misty rain covered the roads with a dark sheen of ice. At approximately 10:30 P.M., Tommy O'Sullivan was operating his four-wheel drive Jeep Wagoneer on North Street. He was bringing a corned beef sandwich from Donnelly's Tavern to his invalid mother, who he had been visiting. While waiting for the food to be prepared O'Sullivan had ordered at least two beers. Once the food was ready, O'Sullivan left the Tavern to bring the sandwich to his mother. While traveling at an excessive rate of speed, O'Sullivan rammed the rear of a vehicle being driven by Paul Eagan. Neither driver was physically injured. Eagan's car was, however, inoperable. O'Sullivan got out of his car and staggered toward Eagan's car. Eagan observed that O'Sullivan was unsteady on his feet, nervous, and agitated in an angry manner. O'Sullivan was also speaking in so slurred a fashion that Eagan could not understand him. Eagan quickly concluded that O'Sullivan was drunk. Concerned that his mother's corn beef sandwich was getting cold O'Sullivan got back in his car and drove his passenger and himself home.

Shortly after O'Sullivan's departure the police arrived on scene to investigate the accident which procedure lasted for approximately one hour. Officer Huckleberry then traveled to O'Sullivan's apartment to speak with him concerning the accident. Officer Huckleberry knocked on O'Sullivan's door several times, however he did not receive a response from anyone inside the apartment. Officer Huckleberry could hear the television inside the apartment and saw lights on inside the apartment from the street. Frustrated that O'Sullivan would not open the door Officer Huckleberry forced his way into the apartment and subsequently arrested O'Sullivan for Operating Under the Influence of an Intoxicating Liquor.

After being booked and advised of his rights, O'Sullivan elected to take a breathalyzer test. The test yielded two reliable readings of 0.15, well above the blood alcohol level that leads to license suspension. During the booking and testing procedure, two officers watched O'Sullivan for more than twenty minutes and noted the strong odor of alcohol on his breath, the unsteadiness of his gait, and the glassy redness of his eyes.

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At O'Sullivan's trial the Government sought to enter into evidence Officer Huckleberry's observations and conversations with O'Sullivan after his illegal entry into O'Sullivan's apartment. The Government also sought to enter into evidence the results of the breathalyzer test and the observations made by the two police officers at the station. O'Sullivan's trial counsel never filed a motion to suppress the evidence nor did he object to the testimony or the physical evidence being admitted into evidence.

You are hired as new counsel to represent O'Sullivan in a post-conviction collateral proceeding. What federal constitutional argument will you raise and what must you show under the federal rule to raise a successful claim?

Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.				


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# Question # 11 (5 points)

Same set of facts as in Question #11 above: what must you show under the Massachusetts rule to raise a successful claim?
Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

Question # 12 (5 points)
Officers from the Randolph Police Department went to a local small grocery store in thei city to investigate a report that the owner may have threatened one of his customers with a shotgun. While in the workplace, police also detected a strong odor of marijuana in his office. After arresting and handcuffing him police asked him where the marijuana was. He told them that it was in the drawer of his desk. The police then seized it.
As defense counsel for the store owner what constitutional arguments would you raise in a motion to suppress and how is the court likely to rule on the motion?
Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

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( PLEASE LEAVE THIS SPACE BLANK AND GO ON TO THE NEXT QUESTION )

## PART TWO (this question is worth 15 points)

#### Question # 13.

Late in the evening of July 3, 1994, the defendant, Joyce Magee and her boyfriend, Roger Marquet, began a heated and emotional discussion that lasted into the morning hours. In the course of the argument, Joyce became upset and sobbed repeatedly. She told Marquet that "she needed help" and that, if Marquet knew "what she had done, he would not want to be with her." Marquet assumed that Joyce was referring to the death of her twenty-eight day old son in 1988, which she referred to on occasion. At about 4 A.M. on July 4, the two decided to go to the police station in Dracut to get help in having her committed to a mental health facility.

When they arrived at the police station at approximately 5 A.M., Marquet told Dracut police Captain Smokey the Bear (Captain) that Joyce needed help and needed to talk to someone about the death of her baby in 1988. Marquet told the police that at the time it had been ruled a SIDS death, but there may have been more to it.

Captain asked Joyce if she wanted to talk to which she nodded her head. Captain brought her to a small office in the police station where, at her request, Marquet joined them. Captain read Joyce her *Miranda* rights and she orally agreed to waive them. When advised of her right to have an attorney present, Joyce responded that she did not know any attorney to call or how to get one to the police station at that hour. Captain responded by stating that she could call anyone she wished.

Captain then questioned Joyce. During the interview, she repeatedly asked for help and to be committed. Captain understood her to be asking for the help of a trained mental health professional. In response to these requests, Captain told Joyce that she would get help if she explained what she needed and what the problem was. In the course of the questioning, she spoke about the circumstances leading up to the death of her son in 1988, and she indicated that it may not have been caused by SIDS. When pressed for the details of her involvement in the child's death, Joyce repeatedly refused to answer Captain's questions. She said that if she told the police what she thought had happened they would arrest her. Throughout the interview with Captain, Joyce was exhausted, emotionally distraught, and disheveled, and her responses to questions were interrupted by periods of sobbing and shaking.

At approximately 5:50 A.M., Dracut Detective Steve Austin arrived to continue the questioning. He was informed that Joyce was seeking help and that she was upset about the death of her son in 1988. Austin administered a second set of *Miranda* warnings at about 6 A.M.; at that time, Joyce signed a form acknowledging that she waived her rights. Austin conducted his interview of Joyce in the same room where Captain's interview had occurred. Present were Joyce, Marquet, Captain, and Austin. Austin's questioning focused on her role in her son's death. Joyce continued to refuse to answer questions about her direct involvement. She also continued to ask for help in being

involuntarily committed to a mental health facility. She continued to look distraught and disheveled, with periods of sobbing and shaking.

After about twenty-five more minutes of questioning, Captain and Austin told Joyce they had called for assistance, and asked her and Marquet to wait until the additional people arrived. She and Marquet were offered food and coffee, and accepted coffee. At about 9 A.M., State Trooper Anthony Vincenzo Baretta arrived, along with an assistant district attorney. Baretta was briefed by Captain and Austin about the morning's events and Joyce's statements regarding the death of her son and her request for help.

During the next two hours, Baretta questioned Joyce regarding the death of her son. The questioning took place in the same office as the prior interviews, with Marquet, Captain, and Austin present. In response to the Joyce's requests for help, Baretta said he would help with her problem, but that he needed more information before he could do so. During the interview with Baretta, Joyce was tense and distraught, although her forceful crying had stopped.

Miranda warnings were administered at some time after Baretta began questioning her. During the questioning, she eventually stated that "she believed she had suffocated her child." Baretta typed the substance of the statement onto his computer and printed it out for her to sign. She looked over the three pages, made minor corrections and then signed the statement. By then it was noon. After Joyce signed the statement, she was told that arrangements had been made for a mental health evaluation at Solomon Mental Health Center in Lowell (Solomon). Marquet then drove Joyce to Solomon, with police following.

The duty nurse at Solomon noted that Joyce was distraught and disheveled on arrival, that her eyes were red, indicating prolonged crying, that she was crying forcefully at times, and was suffering from lack of sleep. She told the nurse that she had no memory of actually asphyxiating her son but that she felt responsible for his death. Based on the Joyce 's extreme level of distress and her suicidal ideation, she was involuntarily committed to Anna Jacques Hospital in Newburyport. A few days later, Dracut police arrested her there, charging her with the murder of her son.

As Defense counsel for Joyce Magee what constitutional and Massachusetts Declaration of Rights arguments will you raise regarding the validity of the Miranda waiver and what Massachusetts rule or procedure will you use as part of your argument. How is the court likely to rule on your arguments and why?

Fully state the applicable rule of law in your answer and apply the ROL to the facts in your analysis.

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#### **BONUS POINTS** (each bonus question is worth 2 points)

## **Bonus Question #1**

To be voluntary the waiver of Miranda must be voluntarily, knowingly and intelligently given.

[ ] True or [ ] False

## **Bonus Question #2**

In <u>Commonwealth v. McNulty</u> the SJC held that police are obligated to "appraise the defendant of a specific communication from his attorney that bore directly on the right to counsel."

[ ] True or [ ] False

#### **Bonus Question #3**

In <u>Commonwealth v. Mavredakis</u> the SJC held "We established a bright line rule, providing that police whenever practical should stop questioning and inform the suspect immediately of attempts of an attorney identifying himself or herself as counsel acting on the suspect's behalf to contact the suspect."

[ ] True or [ ] False

#### **Bonus Question #4**

In <u>Commonwealth v. Rosario</u> the SJC held "It is important to recognize that . . . The period of safe harbor questioning commences upon formerly booking the defendant and concludes six hours later without regard to when court is in session."

[ ] True or [ ] False

#### **Bonus Question #5**

In *Montejo v. Louisiana* the USSC held "police may initiate questioning toward a suspect even where that suspect had been appointed counsel by the court. It will be up to the defendant to either waive the Miranda rights or invoke his or her right to counsel under the circumstances."

(GO ON TO THE NEXT PAGE)

## **Bonus Question #6**

You arrest a male for burglary and read him his rights, but he refuses to talk to you. He is booked and placed in a cell. A short while later, while you are filling in as the booking officer, another officer brings in your neighbor on a suspended license charge. Your neighbor is an upstanding member of the community with no other criminal history. He did not know his license had been suspended for failing to pay an out-of-state parking ticket. You tell this gentleman that he will be released when the magistrate arrives but that he will have to be placed in a cell. He is concerned about his safety and you explain that he will be okay but placed in a cell next to a guy charged with burglary. You mention that this burglar is probably responsible for other crimes in the community but that he will not talk to you. Later, when your neighbor is taken from the cell to be released by the magistrate he tells you the guy in the next cell, the burglar, was saying how dumb the cops are and bragged about all the B&Es he had committed and where he

had hidden the stolen goods. The information provided by your neighbor is so good you are able to obtain a search warrant for the location where you find a lot of stolen goods. You are able to also solve several past B&Es.

Counsel for the burglar files a motion to suppress all evidence because it was unlawfully obtained. The motion will likely be:

- A. Approved, because the burglar was coerced.
- B. Approved, because you used your neighbor as an agent of the state
- C. Denied, because the information to establish probable cause came from a known witness
- D. Denied, because you gave the burglar his Miranda warnings

#### **Bonus Question #7**

At twelve noon on Saturday, Plymouth police effected the arrest of "Sonny Black" for an armed robbery of a pawn shop that occurred the day before. During the armed robbery, "Sonny Black" stole a rare painting of President William Jefferson Clinton and his personal secretary. Sonny was brought to the station and photographed, fingerprinted, and booked. At approximately 7:00 p.m., on Saturday, police detectives administered the Miranda warnings to him for the first time. He stated that he understood the Miranda warnings and effected a knowing and intelligent waiver of those rights. He then made various incriminating statements to police detectives concerning this rare painting.

If his attorney files a motion objecting to the admissibility of the statement as a violation of the safe harbor rule, the motion will most likely be:

- A. Granted, because "Sonny Black" had already been formally charged in Plymouth
- B. Granted, as a violation of the defendant's Fifth Amendment Right to Remain Silent
- C. Denied, if the police also imparted and received a written or recorded waiver from the defendant of his right to prompt presentment
- D. Denied, since the police received a knowing and intelligent waiver from the defendant concerning his Miranda rights

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## **Bonus Question #8**

Weymouth police are conducting an intensive investigation concerning the murder of two females whose bodies were discovered on an abandoned road. Subsequently, Detective MacGillicutty of the Weymouth, police department effects the arrest of one "Sonny Red" for the double homicide. During the arraignment the following morning in the District Court an attorney is appointed to represent "Sonny Red". The attorney informs him not to speak with anyone regarding the charges. After a bail hearing, "Sonny Red" is transported to the county house of correction to await trial. The next day, Weymouth and Hingham Detectives go to the House of Correction and question "Sonny Red" about an unrelated larceny that had occurred a year earlier in Hingham. After informing him of the Miranda warnings, he makes a number of incriminating admissions concerning the larceny. According to the laws of the Commonwealth of Massachusetts, which of the following is true concerning the admissions made by "Sonny Red" concerning the unrelated larceny:

- A. since "Sonny Red" was arraigned in the District Court, his subsequent statements concerning the unrelated larceny will be inadmissible without the presence of counsel
- B. the statements concerning the unrelated larceny will be inadmissible since "Sonny Red" had already been formally charged
- C. the statements concerning the unrelated larceny will be inadmissible since the police initiated the questioning
- D. the statements concerning the unrelated larceny will be admissible since the prohibition against police interrogation under the circumstances is "offense specific"

#### **Bonus Question #9**

According to the law of the Commonwealth of Massachusetts, when does the right to an attorney attach pursuant to the  $6^{th}$  Amendment for a non-corporeal identification:

- A. at the arraignment
- B. at the time of arrest
- C. during the booking procedure
- D. there is no 6th Amendment Right to Counsel for a non-corporeal identification

(GO ON TO THE NEXT QUESTION)

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## **Bonus Question # 10**

Eddie is placed under arrest for a past burglary. After being booked, Eddie is administered the Miranda warnings. Eddie imparts a knowing, intelligent and valid waiver. During the subsequent interrogation an attorney telephones the police department and states that she represents Eddie. The attorney explains that she desires to talk to Eddie immediately.

Given the fact that Eddie has already waived his 5<sup>th</sup> Amendment Right to Counsel, what duty, if any, would the police have under these circumstances?

- A. police must immediately cease the interrogation until the arrival of the attorney at police headquarters
- B. police have a duty to immediately cease the interrogation and notify Eddie that the attorney is on the telephone
- C. the police now have a duty not to discuss the matter any further with the defendant without the presence of counsel
- D. since the attorney has invoked the right to counsel in behalf of this client, police have a duty to refrain from further interrogation

#### Spring 2016

#### ADVANCED CRIMINAL PROCEDURE FINAL EXAM

#### **Professor Rodriguez**

DURING THIS EXAM YOU ARE NOT TO HAVE ANY OTHER DOCUMENT OR A CELL PHONE OR ANY	

OTHER DEVICE THAT CAN TRANSMIT AND/OR RETAIN INFORMATION. POSSESSION OF THE ABOVE IS A VIOLATION OF THE HONOR CODE AND WILL BE DEALT WITH ACCORDINGLY.

#### **INSTRUCTIONS:**

YOUR STUDENT ID NUMBER:

- 1. Do not use your own scrap paper. Instead, take one (1) blue book, mark it as "Scrap." and use it as scrap paper. At the end of the exam turn in **your exam packet** and your scrap blue book.
- 2. **ANSWERS TO ALL QUESTIONS MUST BE WRITTEN DIRECTLY IN THIS EXAM PACKET**, which you will turn in at the end of the exam.
- 3. Do not identify yourself in the exam packet in any way other than by student ID. Do not write any information that might reveal who you are.
- 4. This is a closed-book examination. Other than writing implements, you are not to have any materials on your table or at your feet. Place all books, knapsacks, briefcases, etc. at the side or front of the room.

This exam consists of three parts for a **total of 205 Points** and will account for **80% of your semester grade.** The total time for the exam is **three hours**.

Part One consists of a 10 Multiple Choice worth 2 points each for a total value of 20 points;

Part Two consists of one essay question worth 40 points;

**Part Three** consists of a 18 directed, short answer questions. The point value for each question is noted following the hypothetical. The total value of this section is: **145 points**;

I will give a 15 minute warning at which point no one may leave the room until the exam ends.

I will also warn you when there are **5 minutes** left and **1 minute** left. When I call time, you are to stop writing immediately.

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<u>PART ONE</u> – CONSISTS of 10 MULTIPLE CHOICE Questions (Circle the letter of the best answer choice. Each questions is worth 2 points. Suggested time for completion of this section is 30 minutes)

1. While on patrol you observe a Pontiac Grand Am spinning its tires as it pulls away from a stop sign. You activate your blue lights and signal the driver to pull over, which he does. You ask for his license and registration and he produces both items. You then return to your cruiser and write a citation for excessive noise. When you return to the stopped vehicle you ask the operator if he has any drugs in the vehicle. When he replies "no," you ask for his consent to search the vehicle. He agrees and you start searching the inside of the vehicle where you locate two morphine pills on the floor under the passenger seat. Upon showing them to the driver he mutters, "Damn, I forgot about them." You then arrest him.

His lawyer files a motion to suppress the pills. The motion will be:

- A. denied, because he gave you consent to search;
- B. approved, because you cited him for the wrong violation;
- C. denied, because you found the pills in plain view;
- D. approved, because the stop was for a CMVI, the citation was written and there was no reason to further the delay.
- 2. Eddie is placed under arrest for a past burglary. After being booked, Eddie is administered the Miranda warnings. Eddie imparts a knowing, intelligent and valid waiver. During the subsequent interrogation an attorney telephones the police department and states that she represents Eddie. The attorney explains that she desires to talk to Eddie immediately.

Given the fact that Eddie has already waived his 5<sup>th</sup> Amendment Right to Counsel, what duty, if any, would the police have under these circumstances?

- A. police must immediately cease the interrogation until the arrival of the attorney at police headquarters
- B. police have a duty to immediately cease the interrogation and notify Eddie that the attorney is on the telephone
- C. the police now have a duty not to discuss the matter any further with the defendant without the presence of counsel
- D. since the attorney has invoked the right to counsel in behalf of this client, police have a duty to refrain from further interrogation

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- 2. According to the laws of the Commonwealth of Massachusetts, when does the right to an attorney attach pursuant to the  $6^{th}$  Amendment for a non-corporeal identification:
  - A. at the arraignment;
  - B. at the time of arrest;
  - C. during the booking procedure;
  - D. there is no 6<sup>th</sup> Amendment Right to Counsel for non-corporeal identification.
- 3. You are walking an assigned route in your town at 3:15am. You suddenly hear a loud sound, as if glass is breaking, emanating from an alley-way. There have been a number of recent breaks reported in this area. You go to the alley and see a young male running toward your location. You tell him to stop and he complies with your order. You ask him his name, address, and where he is going. He refuses to answer saying, "look, am I under arrest or not?" You tell him that he is not under arrest but he is not free to leave until such time as you assure yourself that nothing is amiss in the alley, and that rear doors and windows of businesses need to be checked by yourself and other responding officers. He states to you that he is not going to stay and begins to walk away from you and two other officers who have come to assist you.

## In this situation you:

- A. could lawfully use reasonable force (not deadly force) to keep the male at the scene, even to the extent of using handcuffs;
- B. have no right to hold the male at the scene against his will, since the action would amount to an arrest; an arrest made by you without the requisite of probable cause:
- C. could hold the male at the scene, but not search, nor frisk, his clothing in any way, since such an action would be unreasonable given the circumstances prevailing at the time:
- D. could lawfully place the male under arrest for "being abroad in the nighttime and not giving you a good account of himself."
- 4. At ll:00pm two police officers on patrol receive a radio broadcast instructing them to be on alert for a blue Chevy hatchback with a Caucasian driver and registration plate 735-KLW. The driver is reported to have pointed a handgun, possibly an automatic, at a group of people at Main and Elm Street in their town.
  - Within minutes, a Chevy with a Caucasian driver, and the reported license plate number comes into the officers' view for the direction of Main and Elm Streets. Using backup cruisers for assistance, the officers force the Chevy to the side of the road by blocking it

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front and rear. With guns drawn, the officers approach the driver and order him out of the vehicle. The officers see an automatic weapon on the floor of the car and the driver is placed under arrest.

The defendant sought to suppress the confiscation of the weapon, arguing that the officers' conduct - - - in forcing him off the road, blocking his car and approaching him at gunpoint - - - constituted an arrest, not a mere threshold inquiry, under *Terry v. Ohio*, and that the officers did not have probable cause to arrest him at the moment of the stop.

In view of the facts:

- A. the officers' conduct was reasonably necessary to effect an investigatory detention under *Terry v. Ohio*;
- B. the offices' conduct "was not proportional to the degree of suspicion, which prompted the intrusion", therefore it was improper;
- C. The officers' conduct was improper because it involved an excessive display of force, amounting to an arrest;
- D. It is a well-established rule of law that whenever a police officer stops a vehicle by boxing it in and approaching the driver at gunpoint, said officer has automatically made an arrest of the person by virtue of the amount of force used.
- 5. While approaching a motor vehicle that Officer Smith stopped for speeding, she observes the lone operator bend down as if to retrieve from or to place something under his seat. Officer Smith walks up to the operator and requests his license and registration. After checking these documents to see that they are in order, Officer Smith decides not to cite the operator and returns both the license and registration to the operator. However, still concerned that the operator may be armed with a weapon from under the front seat, Officer Smith orders the operator out from his vehicle. As the operator is exiting from the vehicle, Smith observes a small bag of cocaine on the seat. The operator is immediately arrested. A Board of Probation check confirms that the defendant has been convicted of trafficking in Class A and B substances in the past. Officer Smith then conducts a search of the trunk and discovers a large amount of heroin.

The discovery of the cocaine after the operator was given the exit order will be:

- A. permissible because of the initial observations made by Smith of the operator;
- B. permissible because of the results of the Board of Probation (BOP) check;
- C. impermissible since Smith's exit order followed the justifiable threshold inquiry;
- D. impermissible because Smith exit order preceded the justifiable threshold inquiry.

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- 6. Using the same facts as #6 above, the discovery of the heroin in the trunk under these circumstances will be:
  - A. permissible since the discovery of the cocaine coupled with the results of the Board of Probation (BOP) check provide the requisite justification to lawfully search the trunk;
  - B. permissible because Smith had probable cause to lawfully effect the trunk search;
  - C. impermissible since the discovery of the cocaine coupled with the results of the Board of Probation (BOP) check did not amount to probable cause;
  - D. impermissible under the Fruit of the Poisonous Tree Doctrine.
- 7. While on patrol you observe a motor vehicle, occupied by two males, parked in front of a fire hydrant. Without putting your emergency lights on you park behind the vehicle and approach it from the passenger side. The driver is smoking a cigar and both occupants are very nervous. You can detect a faint odor of marijuana so you order both the passenger and operator from the vehicle. You ask both if they have anything on them. The passenger says they smoked a joint a little while ago but that he has a "little crack for myself." He produces a very small bag that appears to contain crack cocaine. You arrest him and charge him under 94C. If a motion is filed to suppress the cocaine it will likely be."
  - A. denied, because the smell of marijuana gave you probable cause to search under the automobile exception doctrine;
  - B. approved because pulling your cruiser in back of the vehicle amounted to a stop;
  - C. approved because your probable cause indicated the presence of marijuana, but you only found cocaine;
  - D. approved because you had no reason to order the occupants from the vehicle.

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- 8. According to the laws of the Commonwealth of Massachusetts, which of the following is true concerning the activation of a police cruiser's emergency lights:
  - A. police officer may only engage the overhead emergency lights if probable cause exists:
  - B. a police officer may only engage the overhead emergency lights if reasonable suspicion exists concerning a crime;
  - C. Whenever a police officer engages an occupied vehicle by activating the overhead emergency lights, the 4<sup>th</sup> Amendment will require some level of reasonableness;
  - D. a police officer may only activate the overhead emergency lights during a public emergency.
- 9. The police receive a report of a disturbance concerning a certain apartment located on Third Street. When the police arrive they overhear a very loud party going on. Police then knock and announce their presence. The door is opened by one of the party goers. Police immediately observe four persons seated at a table doing lines of cocaine. These four persons immediately look up and observe the officers at the threshold. The table is on the other side of the room from the threshold. Police immediately move in and effect an arrest of all four persons for possession of cocaine. If the suspects file a motion to suppress, the motion will most likely be:
  - A. granted, since the initial call concerned a disturbance.
  - B. granted, since the police did not have valid consent to effect entry under the circumstances.
  - C. denied, since the police had probable cause that a crime was being committed prior to knocking on the door.
  - D. denied, since the police had exigent circumstances under the circumstances.

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# <u>PART TWO</u> – ESSAY QUESTION (This question is worth 40 points. Suggested time for completion is 36 minutes)

Part Two consists of one essay question in the form of a hypothetical which describes a situation from which particular procedural issues arise and which are, therefore, governed by specific criminal procedural rules. The questions require that you identify the specific rule, or rules, that will control the result and requires a clear, concise and complete answer, written in the following form:

Your answer must be a concise, proper analysis that includes: (1) Your statement of the likely result; (2) followed by an explicit statement of the governing rule of law; (3) followed by your application of that rule to the specific facts of the situation.

Limit your answer to procedural questions and to the space provided. I will not read anything written beyond the lines provided. Pay particular attention to the call of the question.

#### **QUESTION 1**:

Belinda lived in a two—apartment brownstone. She never trusted her neighbor Ben, who lived in the other apartment and who hosted rambunctious parties and left beer bottles and garbage all over their shared backyard. Last Friday, after she arrived home from work, Belinda heard loud banging and a commotion from Ben's house. A few minutes later, she looked out into their backyard and saw Ben wheeling a cart across the lawn with an upside down human leg sticking out of the cart, He appeared to dump the leg into their joint dumpster. She called the police and told them what she had seen.

When the police arrived, they spoke to Belinda who let them into the backyard to search. The police upon looking into the dumpster discovered a severed human leg which they seized. The police also found the cart and observed what appeared to be blood droplets. The blood from the cart and the leg found in the dumpster was later tested and found to be from the victim, later identified as Priscilla.

The police then forced their way into Ben's apartment with their weapons drawn, and found Ben in his kitchen, holding a knife, and standing over Priscilla's dismembered body. Ben dropped the knife and ran. The officers tackled and handcuffed him. All the while Ben was mumbling that he was sorry and that he had "taken all kinds of pills." The police read Ben his *Miranda* rights and arrested him. Because Ben claimed to have taken all kinds of pills, the officers took him to the hospital prior to booking him to conduct a blood test, which showed no medication in Ben's system.

At the police station, and after being read his *Miranda* rights a second time, Ben told the police that he met Priscilla and her boyfriend, Bob at a bar that afternoon. Bob and Priscilla went

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with Ben back to Ben's apartment to continue drinking. Ben said he passed out, and when he woke up he saw that Priscilla was dead and he was only tying to "clean up the mess." The Prosecution intends to use as part of its case-in-chief all of the statements Ben made to the police.
When questioned by the police the next day, Bob denied having anything to do with Priscilla's death, but admitted that he and Priscilla planned to wait until Ben was passed out and then rob him. Bob was arrested, and when searched, the police found a large hunting knife. Bob said he "always carries the knife with him."
What motions will defense counsel for Ben and defense counsel for Bob file and how is the court likely to rule? (Be certain, as explained in the instruction above, to include in your answer the analysis that support your conclusions.)

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## PART THREE - DIRECTED, SHORT-ANSWER QUESTIONS

Part Three consists of 18 questions in the form of hypotheticals each of which describes a situation from which particular procedural issues arise and which are, therefore, governed by specific criminal procedural rules. Each question requires that you identify the specific rule, or rules, that will control the result and requires a short answer, written in the following form:

Your answer must be a concise, proper analysis that includes: (1) Your statement of the likely result; (2) followed by an explicit statement of the governing rule of law; (3) followed by your application of that rule to the specific facts of the situation.

Limit your answer to procedural questions and to the space provided. I will not read anything written beyond the lines provided. Pay particular attention to the call of the question.

#### **QUESTION 1:**

While on cruiser patrol, an officer from the Canton Police Department observes a motor vehicle fail to come to a complete stop at a posted stop sign. The officer activates her emergency lights and stops the vehicle. When the officer approaches the driver's side window she smells the strong freshly burnt odor of marijuana emanating from inside the vehicle. The officer issues an exit order to the defendant and then conducts an evidentiary type search of the defendant's person. Finding no drugs on the defendant's person the officer turns her attention to the interior of the motor vehicle and begins searching the interior compartment of the vehicle for marijuana. In a backpack on the back seat the officer discovers "about an ounce" of marijuana and she subsequently arrests and charges the defendant with the unlawful possession of a class D substance.

After being newly sworn in as an attorney in the Commonwealth of Massachusetts you land a job as an associate attorney in a small criminal practice. The owner of firm assigns the defendant's case to you and instructs you to draft the appropriate motion(s) to suppress the evidence seized by the police. What constitutional and Massachusetts Declaration of Rights violations will you allege in your motion(s) and how should the court rule on these motion(s) and why? (This Question is Worth 10 Points)


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## **QUESTION 2:**

Officer Maverick from the Beverly Police Department was performing a privately paid police detail for Bank of America which had recently been the victim of a number of armed robberies. During the detail, Officer Maverick noticed the defendant pacing nervously back and forth in front of the bank while at the same time peering into the bank window. Suspicious, Ofc. Maverick approached the defendant, spun him around and conducted a protective pat frisk. During the frisk for weapons, Ofc. Maverick felt a bundle of small packages he recognized as small bundles of heroin. Ofc. Maverick seized the heroin and charged the defendant with the unlawful possession of a Class A substance.

The defendant's attorney moves to suppress the drugs claiming his client's Article 14 ights were violated when the police exceeded the scope of the pat frisk. How should the courule on the motion and why? (This Question is Worth 10 Points)

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## **QUESTION 3:**

A Lawrence police officer observes a motorist travel through a red light without coming to a full and complete stop. The officer activates his emergency lights and stops the vehicle for the civil motor vehicle infraction. The officer approaches the driver of the vehicle and requests her driver's license and the vehicle registration. The operator of the vehicle produces both documents and the officer returns to his vehicle to write the operator a Massachusetts Uniform Citation for the civil motor vehicle infraction. Prior to handing the operator her license and registration back the officer summons a K9 drug sniffing dog to the scene. When the K9 officer arrives on the scene the officer takes the dog out of the police vehicle and walks the dog around the operator's vehicle. The K9 reacts to the rear passenger side door and when the officers oper the rear passenger door the K9 reacts to the interior door panel. The officers manage to remove the panel and discover a large quantity of cocaine secreted inside the door panel. The defendant's attorney files a motion to suppress the cocaine how should the court rule on the motion and why? (This Question is Worth 5 Points)

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## **QUESTION 4:**

Two uniformed police officers pull up in a marked police vehicle, exit and start to approach the defendant, Robert Stoute to speak with him concerning a recent breaking and entering he's suspected of committing. Stoute, upon seeing the officers approaching him starts to look up and down the street. The officers, suspecting that Stoute may flee, begin to run towards him causing Stoute to then run from the police on foot. The officers chase Stoute for several blocks and eventually apprehend him. Police immediately conduct a protective pat frisk of Stoute and discover a loaded firearm for which Stoute is not properly licensed.

If Stoute's attorney files a motion to suppress the firearm based on an unlawful search and seizure under Article 14 of the Massachusetts Declaration of Rights how should the court rule on the motion and why? (This Question is Worth <b>10 Points</b> )			

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QUESTION 5:
Applying the same set of facts from Question # 5, if this case were tried in the Federal District Court applying the applicable federal rule of law how would the court rule on the motion and why? (This Question is Worth <b>5 Points</b> )

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ID NUMBER:
QUESTION 6:
While two police officers were on patrol they were approaching a small car. A group of youths huddled around the car saw the officers approaching and took off running. Suspicious, the officers gave chase. Just as one of the officers caught up with one of the fleeing youths, named Houdini D., Houdini D. tossed to the ground a bag of crack cocaine that he had been carrying. Houdini D. then attempted to climb over a 6 foot tall chain link fence; however the pursuing officer, who at all times during the foot pursuit had been yelling "Stop! Police!, Stop! Police!" managed to catch and to tackle Houdini D. just before he went over the fence. The officer then arrested Houdini D. and subsequently charged him with possession of a controlled substance.
If Houdini D. files a motion to suppress the cocaine how should the court rule on his motion and why? (This Question is Worth 10 Points)

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# **QUESTION 8:**

Boston police officers were dispatched to a convenience store in the South End for a
report of a robbery that just occurred. When the initial responding officers arrived on scene they
found multiple witness who were talking to each other and sharing their descriptions of the
suspect with each other. The officers somehow managed to get a physical description of the
suspect which they broadcasted to all area patrols. Several blocks away officers stopped a black
male who they believed matched the description given. The officers brought the suspect back to
the scene where they had one of the eyewitnesses positively ID the suspect without giving any
type of instructions or warnings to the witness prior to the identification. The officers then had a
second eyewitness who was believed to have overheard the first eyewitness ID of the suspect,
positively ID the suspect as well. The suspect was later arrested and charged with the robbery of
the convenience store. The defendant now brings a motion to suppress all of the eyewitness
identification procedures as well as any statements made by the witnesses in conjunction with the
ID procedures. How should the court rule on the defendant's motion and why? (This Question is
Worth 10 Points)

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## **QUESTION 9:**

The Principal at Leominster High School was looking out his office window just after school had begun and observed the defendant, a Leominster High School student, make a hand-to-hand drug transaction with another student behind a shed. The defendant is known to have dealt drugs on school grounds in the past, and he has twice previously been arrested for similar offenses. The Principal observed the defendant enter the school and proceed to his school locker where he removed a number of items from his pant and jacket pockets and placed them inside the locker.

The Principal went back to her office and retrieved the master list of locker combinations and opened the defendant's locker where she discovered 20 individually wrapped bags of marijuana, \$1500 in cash and a loaded firearm. The Principal contacted the Leominster Police Department who dispatched officers to the high school who subsequently arrested and charged the defendant with the various crimes.

The defendant, through his attorney, files a motion to suppress the evidence found in his
locker claiming that his Fourth Amendment and Article 14 rights had been violated. How should
the court rule on the motion and why? (This Question is Worth 5 Points)

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## **QUESTION 10**:

After arresting and booking the defendant for the murder of his wife, Detectives from the Boston Police Department bring the defendant into the interrogation room to question him about the details of the murder. After the Detectives read the defendant his *Miranda* rights he invoked his right to remain silent, at which point the police ceased all questioning. May the police go back and reinitiate the earlier attempt to speak with the defendant about the murder?

YES or NO

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#### **QUESTION 11**:

Officer Holcroft was traveling on main street in his marked police cruiser when the defendant, Eric Jewell, pulled out of the parking lot of Lucky's Tavern and almost struck Officer Holcroft's police cruiser. Officer Holcroft followed Jewell and observed his vehicle cross the double yellow solid line twice, fail to keep right, and almost strike a parked vehicle. Officer Holcroft activated his emergency lights and followed Jewell for quite some distance. At no point in time did Jewell ever stop and pull his vehicle over after Officer Holcroft had activated his emergency lights. Holcroft continued to follow Jewell with his emergency lights activated down a couple of small side streets and eventually into a small private driveway. Jewell drove into the driveway and then opened the garage door with the remote control. Jewell pulled into the garage and Officer Holcroft exited his police cruiser and began verbally issuing exit orders to Jewell. When Officer Holcroft entered the garage Jewell exited his vehicle and engaged Officer Holcroft in a physical confrontation. Officer Holcroft was able to subdue and arrest Jewell and charged him with Operating to Endanger, Operating Under the Influence of an Intoxicating Liquor, Failure to Stop for a Police Officer and various other moving violations. Jewell hired a lawyer who filed a motion to dismiss Jewell's arrest arguing that the police made a warrantless entry into Jewell's garage and a warrantless arrest of Jewell. Was Officer Holcroft's entry into the garage and subsequent arrest of Jewell lawful or unlawful?

LAWFUL or UNLAWFUL

In the space provided below recite the applicable rule of law and apply it to the facts to support the conclusion you reached in your answer. (This Part of the Question is Worth 5 Points						

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### **QUESTION 12:**

Cambridge police officers arrested William White Jr., on two (2) outstanding warrants, one for a previous restraining order violation, and the second for a previous, unrelated, drug offense. When the officers brought White Jr., into the booking room they advised the Officer-in-Charge (OIC) that White Jr. had a number of pills in various containers on his person at the time of his arrest. When the OIC asked what the pills were the officers shrugged their shoulders and stated they didn't know. An officer who was not directly involved in the booking of White Jr., took the pills with him to the report room and conducted a Google internet search of the pills by using the imprinted code on the pills. The internet search indicated that the pills where methadone, a Class B substance in the Commonwealth of Massachusetts, for which a valid prescription is required to lawfully possess the pills. When White Jr. was asked if he had such a prescription he laughed and stated, "no, I get that shit on the street for half price." The arresting officer charged White Jr. with the unlawful possession of a Class B substance in addition to the two out-standing warrants. If White Jr.'s lawyer files a motion to suppress the pills which were identified during the booking room inventory policy how should the court rule on the motion?

#### DENY THE MOTION or GRANT THE MOTION

In the space provided below recite the applicable rule of law and apply it to the facts to support the conclusion you reached in your answer. (This Part of the Question is Worth 5 Points						

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#### **QUESTION 13**:

Saugus police officers arrested Mr. Siebert on murder charges and brought him directly to police headquarters to be booked and processed. After Mr. Siebert had been booked and processed detectives took Mr. Seibert into the interrogation room where, before questioning him, they obtained a valid Miranda waiver. Three teams of detectives then took turns for the next 36 hours interrogating Mr. Seibert and holding him incommunicado during the entire time. Mr. Seibert was given one bathroom break, however, he was never given food nor water during the entire 36 hours that he was held by the police; nor was he permitted to rest or take any additional breaks. At the conclusion of the 36 hours Mr. Seibert gave a written confession detailing his involvement in the murder of his wife. The Prosecution now seeks to use the written confession against Mr. Seibert as part of their case-in-chief. Is the written confession admissible?

YES or NO

In the space provided below recite the applicable rule of law and apply it to support the conclusion you reached in your answer. (This Part of the Question is Wo						

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#### **QUESTION 14**:

Beverly police officers arrested the defendant for the murder of her estranged boyfriend. The defendant was brought back to police headquarters where she was later questioned by the police about her involvement in the murder of her boyfriend. Attorney Raymond Buso contacted the Beverly Police Department and identified himself as the defendant's attorney. Attorney Buso instructed the officer who answered the phone to relay the following messages to both his client and the police detectives:

- (1) he represented the defendant
- (2) he wanted to speak to the defendant
- (3) the police were to tell the defendant that "he, [Buso] said not to talk to the police," and;
- (4) [Buso] would be at the station shortly.

After the officer hung up the phone with Attorney Buso he stated, "hey asshole, I don't work for you, deliver your own damn messages!" and never relayed the messages to either the defendant or the detectives.

An hour later, prior to Attorney Buso's arrival, the defendant gave a number or incriminating statements to the police regarding her role in the murder of her boyfriend.

Are the incriminating statements made after Attorney Buso's phone call to the police station admissible as part of the Prosecution's case-in-chief?

YES or NO

In the space provided below recite the applicable Massachusetts rule of law and apply it to the facts to support the conclusion you reached in your answer. (This Part of the Question is				
Worth 5 Points)				

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QUESTION 14: PART TWO
Applying the facts from Question 14 above in the space provided below recite the applicable Federal rule of law and apply it to support your conclusion. (This Part of the Question is Worth <b>5 Points</b> )

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#### **QUESTION 15:**

Dartmouth police officers were dispatched to the Dartmouth Mall for a report of two male subjects being detained by loss prevention for shoplifting. When the officers arrived at the mall they questioned the two male suspects as to how they got to the mall. One of the suspects (Vinton) stated that he drove his girlfriend's 1966 vintage Chevy Monte Carlo to the mall and parked it legally in the lot. The officers then advised both suspects that they were under arrest and that the Monte Carlo was to be impounded and towed off of the mall's property. Vinton pleaded with the officers to not impound the vehicle and to allow him to contact his girlfriend who lives in town to come down and drive the car off the lot. The officers refused Vinton's request and pursuant to the Dartmouth Police Department's motor vehicle inventory policy the officers conducted an inventory search of the vehicle and discovered a loaded firearm in the glovebox for which neither suspect possessed a valid Massachusetts Class (A) License to Carry the firearm. Both suspects were subsequently charged with the Unlawful Possession of a Firearm in addition to the shoplifting charges.

According to the laws of the Commonwealth of Massachusetts if the defendant's file motion to suppress the firearm discovered during the inventory search how should the court ru					
on the motion and why? (This Question is Worth 10 points)					

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#### **QUESTION 16:**

Officer Jones from the Malden Police Department observed the defendant fail to come to a full and complete stop at a posted stop sign at the intersection of Main and Day Street. Officer Jones activated his emergency lights and sirens and pulled the defendant over for the civil motor vehicle infraction. As Officer Jones approached the vehicle, he observed the defendant lower his shoulders when bending down and disappear out of his line of sight as if he was either placing something under the seat or picking something up. Officer Jones issued an exit order to the defendant and immediately conducted a protective pat frisk of the defendant, however the defendant did not have a weapon on him. Officer Jones then performed a check of the defendant's license and discovered that the defendant's license had been suspended due to failure to pay child support.

Officer Jones placed the defendant under arrest and then conducted a search of the defendant's person discovering 17 bundles of heroin in the defendant's front pant pocket along with \$3,000 in cash.

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constitutional	argumen	ts should	be raised	l? (This Que	estion is W	orth 15	S Poin <sup>®</sup>	ts)	

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#### **QUESTION 17**:

Plain clothes detectives from the Concord Massachusetts Police Department have been conducting a two-week undercover surveillance operation of a suspected drug dealer in their community. The detectives have been unable to capture the dealer with drugs on his person because he manages to allude the police before they can arrest him. During the undercover operation the detectives observe the defendant make a hand-to-hand drug transaction. To prevent the defendant from leaving the area the detectives converge on the defendant and conduct an evidentiary type search of the defendant to confirm the presence of drugs on his person. When the detectives confirm that he, in fact, has drugs on his person they then arrest him and charge him with the possession of a controlled substance with the intent to distribute.

As the Lawyer for the Day for the Committee for Public Counsel Services (CPCS) you are assigned the defendant's case. You later file a motion claiming the police violated your client's Fourth Amendment and Article Fourteen rights when they unlawfully stopped, seized and searched your client.

What counter-argument is the Prosecution likely to make in response to your motion and how should the court rule on the motion and why? (This Question is Worth <b>5 Points</b> )			

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#### **QUESTION 18:**

Police were called to the home of Mr. & Mrs. Smith for a report of a domestic disturbance. Mrs. Smith told the police that she and her husband were having marital problems primarily due to finances as well as her husband's continued use of cocaine. Mr. Smith explained to the police that he had recently lost his job when the company he worked at for more than 10 years had relocated to another state. Mr. Smith also denied that he used cocaine and countered that it was his wife who abused drugs and alcohol. One of the officers, Sergeant Murray, went to speak with Mrs. Smith, and, when they returned, she not only renewed her complaints about her husband's drug use, but also volunteered that there were "'items of drug evidence'" in the house. Sergeant Murray asked Mr. Smith for permission to search the house, which he unequivocally refused.

The sergeant turned to Mrs. Smith for consent to search, which she readily gave. She led the officer upstairs to a bedroom that she identified as Mr. Smith's, where the sergeant noticed a section of a drinking straw with a powdery residue he suspected was cocaine. He then left the house to get an evidence bag from his car and to call the district attorney's office, which instructed him to stop the search and apply for a warrant. When Sergeant Murray returned to the house, Mrs. Smith withdrew her consent.

The police took the straw to the police station along with the Smiths. After getting a search warrant they returned to the house and seized further evidence of drug use on the basis of which Mr. Smith was indicted for possession of cocaine.

If Mr. Smith's attorney files a motion to suppress the evidence found inside the home
how should the Judge rule on the motion and why? (This Question is worth 5 Points) Lim
your answer to the space provided.

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