CRIMINAL PROCEDURE  
SPRING 2002  
EXAMINATION  
INSTRUCTOR: H. JOHNSON  

INSTRUCTIONS  

THE EXAM IS DIVIDED INTO THREE PARTS. I WOULD SUGGEST THAT YOU ASSESS THE RELATIVE VALUE AND LENGTH OF EACH SECTION AND BUDGET YOUR TIME ACCORDINGLY.  

PART I (20 POINTS)  
ANSWER ALL TEN QUESTIONS. A PARAGRAPH OR SO SHOULD BE SUFFICIENT.  

PART II (70 POINTS)  
THIS IS A CLASSIC ISSUE HYPOTHETICAL. USE THE "IRAAC" METHOD. BE CONCISE.  

PART III (10 POINTS)  
PICK ONE OF THE TWO CHOICES AND ANSWER IT.  

GOOD LUCK.
PART I (20 POINTS)

ANSWER ALL TEN. A PARAGRAPH OR SO SHOULD BE SUFFICIENT TO ANSWER EACH.

1. Nap was seen by Officer Wellington of the Waterloo Police Department operating his Chevy Chevette erratically, weaving about the roadway. Wellington made a motor vehicle stop, duly observed Nap attempt to perform field sobriety tests and arrested nap on probable cause to believe Nap was operating under the influence of alcohol. Waterloo had no inventory policy.

What, if any, part of the motor vehicle may be searched by Wellington? Why?

2. Are fixed sobriety checkpoints constitutional? How about roving random stops? Why or why not?

3. Officer Orrin approached Jack and Jill on the street. Orrin, without reason, searched Jill’s backpack and found cocaine. Orrin began to put the cuffs on Jill and Jack exclaimed as follows: “The coke is mine.” Jack and Jill were charged with possession of cocaine.

Will the cocaine be admissible against Jill?
Will the cocaine be admissible against Jack?
Would it matter whether or not the events occurred in Massachusetts?

4. Compare and contrast the Federal and Massachusetts standards for “probable cause” in the context of a search warrant affidavit based on information received from a “confidential reliable informant.”

5. Officer Pointer knocked on the door at 125 White Shoes Lane where Billy lived. Agatha answered the door. She was clad in pajamas, drinking coffee. Pointer asked for Billy, a person whom Pointer believed was involved in the drug trade. Agatha responded as follows: “My guy’s not home.” Pointer asked for and received consent from Agatha to search the house. Pointer found a large amount of cocaine. In fact, it was later learned that Agatha was a visiting prostitute.

Will the cocaine be admissible against Billy at his trial for possession with intent to distribute cocaine? Why or why not?

6. Define a “Terry stop”, a “Terry frisk” and an arrest. Discuss the applicable standard and scope of each.
7. Wilfred is arrested for murder. He is given “Miranda” warnings verbatim. Wilfred responds, “I want to talk to my lawyer.”

May the police inquire further? May they come back later and inquire again? How about on another crime?

8. Describe the “Doctrine of Incorporation.” What is incorporated and what is not?


10. Describe entrapment. Define the standards applied by the courts, both minority and majority.

PART II (70 POINTS)

THIS SECTION IS A CLASSIC HYPOTHETICAL. USE THE “IRAAC” METHOD. BE CONCISE.

Dalgleish, Morse and Holmes shared a recreational vehicle, which they used as a home at the Thames Trailer Park in Mysteryville, Massachusetts. They paid the manager, Maggie, a fee to keep the vehicle there and to attach to electricity and water outlets. The “RV” was of the type that resembled a bus. It had a driver’s station and wheel and an open interior plan with a kitchen, bunks and toilet facility.

Detectives James, Dexter and Doyle had concerns about how the three “RV” residents survived since none of them had a job. James called his brother-in-law, Brom, for help. Brom was employed as a mapmaker at the Mysteryville Geographic Society. Brom took James up in a small plane and used a highly advanced sighting telescope to peer through the clear plastic roof of “the greenhouse” to assist in the viewing. He also flew about twenty feet over the roof for a closer look. The greenhouse was attached to the “RV” which comprised one wall and the other three were wooden. Nothing of the interior was visible from the street. Brom, through the use of the scope, saw tiny marijuana plants. The one-inch high plants would not have been visible to the naked eye absent the use of the sighting scope. Brom told James what he saw.

James armed with the information from the “flyover” visited Millie Magistrate. James wrote the affidavit. He embellished, writing that Dalgleish was seen from the plane dressed in overalls and tending the infant marijuana plants. Millie, who before her appointment as a magistrate was a police officer and James’ partner, read the affidavit and issued the search warrant. She checked the “no knock” and “nighttime execution” provisions of the warrant.

Dalgleish, who was home at the time of the “flyover” became concerned. Over the evening meal of “Hamburger Helper,” Dalgleish said the following to Morse and Holmes: “We better get outta here. I’ll take the bus. Morse, you head out on foot.
Holmes you take the ‘bug’ and we’ll meet at the pub later.” The “bug” referred to a small German-made automobile that was parked in the driveway at the “RV” site.

Detectives Dexter and Doyle sat in a car across from the trailer park maintaining surveillance. Morse was observed walking from the trailer park onto the street. Dexter followed him and yelled “halt.” Morse stopped. Dexter approached him and asked “got any grass on you?” Morse responded in the negative. Dexter reached up and patted the outside of Morse’s clothing. He immediately recognized a hard bulge under the coat as a handgun. He reached in and took out what turned out to be a .38 caliber pistol. Dexter arrested Morse.

Doyle followed Holmes who was driving the “bug”. He observed Holmes travel at thirty-one miles per hour in a posted thirty zone. Doyle put on the blue light, concealed in his front grille, and stopped Holmes. He approached Holmes and immediately ordered him out of the vehicle. Doyle then asked him “were you wearing your seat belt?” Holmes replied “Nah, never do.” Pursuant to a Mysteryville ordinance permitting arrest, Doyle arrested Holmes for “failure to wear a seatbelt”. If convicted Holmes could receive a ten dollar fine.

Meanwhile, Dalgleish disengaged the greenhouse and removed the water and electricity hookups from the “RV”. Dalgleish got behind the wheel, started the engine and moved the “RV” about three inches. James, at that very instant, midnight, pulled in front of the “RV”, blocking its path. James ordered Dalgleish out of the “RV” and told him to remain there. James thoroughly searched the “RV” and found "baggies" and a scale, which are tools of the marijuana distribution trade. He seized them.

James, Dalgleish obediently immobile, then searched the greenhouse. He seized the baby marijuana plants. James then went and searched the garden shed, some ten feet from the “RV” in a fenced area that enclosed it. Upon opening the door James found the body of Selden with one bullet hole visible between the eyes. A later ballistc test revealed that the bullet came from the pistol found on the person of Morse. Dalgleish was arrested.

Back at the police station, Dexter questioned Morse. Before questioning Dexter said as follows: “You have the right to remain silent; what you say can and will be used against you; you have the right to a lawyer and if you can’t get up the money for one, we’ll get you one. Do you understand?” Morse replied “Ya, but maybe I need a lawyer.” Dexter asked about the marijuana. Morse admitted his involvement in the drug distribution scheme. Morse added, “I took Selden out, too.”

Holmes was arraigned on the seatbelt charge. He was represented by his attorney, Watson. Following the arraignment, Doyle approached Holmes at a quilting bee and asked about the murder. Holmes admitted to hiding the body but added that Morse “pulled the trigger.” Doyle arrested Holmes.

Dalgleish, Holmes and Morse were charged with possession with intent to distribute marijuana. Morse faced the additional charge of murder. Holmes was charged, in addition to the seatbelt matter, as an accessory after the fact of murder, for hiding the body of Selden.

What evidence will be admitted and why? Discuss the Federal standards. Include the Massachusetts standards where they differ.
PART III (10 POINTS)

PICK ONE OF TWO AND ANSWER IT.

A. DISCUSS THE FOURTH AMENDMENT, INCLUDING THE DEFINITIONS OF SEARCH, SEIZURE AND STANDING. USE EXAMPLES TO ILLUSTRATE THE DEFINITIONS IN DEPTH.

OR

B. DISCUSS THE CONSTITUTIONAL LIMITATIONS ON LAW ENFORCEMENT IMPOSED BY THE FIFTH AND SIXTH AMENDMENTS.