CRIMINAL PROCEDURE EXAMINATION
SPRING 2006

INSTRUCTOR: HAROLD JOHNSON

GENERAL INSTRUCTIONS

The exam is lengthy. Take notice of the point value of each section as you budget your time. The basis of your analysis should be the Federal Constitutional Law with Massachusetts Constitutional Law and common law included where applicable for contrast and comparison.

IDENTIFY YOURSELF BY SOCIAL SECURITY NUMBER ONLY.

LIMIT YOUR ANSWER TO TWO BLUE BOOKS IF POSSIBLE. YOU MAY, IF YOU NEED TO, EXCEED TWO BOOKS.

RELAX AND GOOD LUCK.

INSTRUCTIONS BY SECTION

SECTION I: 30 POINTS

ANSWER ALL FIVE QUESTIONS. BE CONCISE. YOU MAY, IF YOU WISH, USE OUTLINE FORM WHERE APPROPRIATE TO ANSWER, BUT DO NOT NEGLECT TO DISCUSS THE KEY FACTS AND THE LAW AND TO CONCLUDE.

SECTION II: 70 POINTS

FOLLOW THE FACT PATTERN ISOLATING THE ISSUES, DISCUSSING THE APPLICABLE FACTS, DEFINING THE LAW AND CONCLUDING IN THIS CLASSIC ISSUE HYPOTHETICAL. ANSWER IN ESSAY FORM. REMEMBER IRAAC.
SECTION I
30 POINTS

1. A Silly City ordinance provides as follows:

“Jaywalking [which is defined as ‘the crossing of any street or way except within
designated crosswalks.’] is punishable by a fine of not more than ten dollars. The police
may arrest anyone observed committing this offense.”

Bill is observed by Officer Perfecto crossing Main Street, outside the crosswalk. Perfecto
arrests Bill. A search of Bill’s person reveals a packet of heroin. Bill is charged with
Jaywalking and Possession of Heroin.

Bill’s lawyer, Burp, brings a motion to suppress the heroin. Will he prevail? Why or why
not?

2. Agent Outre of the F.B.I. received information from Mumms, an informant. Mumms told
Outre that he was in the company of Bumper, a terror suspect, the previous evening.
Bumper, Mumms said, told him that he, Bumper, had a computer chip inserted into his
stomach which holds information concerning upcoming terror attacks, including places,
times and methods.
Agent Outre seeks a warrant to apprehend Bumper and to have the chip surgically
removed. What are the standards for such a warrant? Will Agent Outre succeed?

3. Boxy commits an armored car robbery. The police “develop” probable cause to believe
Boxy is the culprit and that Boxy is “holed up” at his friend Cally’s house.
The police go to Cally’s and knock. They hear a commotion. They then open the door
and find Boxy. They arrest Boxy and search him, finding the money from the robbery.
They see what appears to be a methamphetamine lab inside the house.
Cally is charged with manufacture of methamphetamine. Boxy is charged with armed
robbery.

Will Boxy and Cally succeed on their motions to suppress? Why or why not?


5. What is the “Doctrine of Incorporation?” What is incorporated into what? How? What is
not?
SECTION II
70 POINTS

HYPOTHETICAL

Tannucket, a quaint island situated within the territorial waters of the United States, is just offshore and part of the state of Confusion, the fifty-first state in the Union. Each summer, as if moths to a flame, tourists descend on the island seeking sun, fun and solitude at exorbitant prices. Amidst the picturesque gray shingles and squawking gulls, the islanders, like all of humanity, must deal with the misdeeds amongst them.

Tannucket Police Department, appropriately housed in a converted red brick schoolhouse, is run by the hard charging Chief Shrimp. Shrimp has admonished his officers to be aggressive and vigilant.

Detective Flex Flounder has taken the chief’s words to heart. Flounder, off duty and in plain clothes, slides up to the bar at the Cozy Clam Pub, a suspected center of drug trafficking on the island. Flounder has a small cassette recorder tucked in his pocket and turns it to record just as he sits down beside Mudhen, a person whose reputation among police is that of a drug dealer. Flounder introduces himself as J.S. Buck, a lightning rod salesman who is on vacation. Flounder tells Mudhen that he is “looking to score” some cocaine. Mudhen, highly intoxicated, responds, “Sure, pal. Meet me on Lighthouse Beach tomorrow night at midnight. I keep my stash in my boat, the “High on Life,” over at the Tannucket Boatyard.” The two shake hands and part company.

Flounder, impatient to know whether or not a full investigation will be a waste of time, decides to act. Flounder drives to the Tannucket Boatyard, which is a fenced-in affair and contains about one-hundred boats in cradles awaiting Spring launch. The proprietor of the Boatyard, Captain Kook, maintains a small office just inside the gate. Kook retains the right, via the storage contracts, to board each boat without reason as he sees fit. Flounder climbs the fence and once inside searches for about one half hour before finding the “High on Life.” The High on Life is in darkness and is not hooked up to either electricity or water. Flounder, using a ladder, with the aid of a flashlight, peers into the boat’s windows. There he sees a scale, packaging materials and a large bag of white powder lying on the galley table. Flounder retreats to the station.

Detective Flounder prepares a search warrant application. In his affidavit, Flounder describes his conversation with Mudhen in detail. Flounder also describes the subsequent search by Prudence, a town employee, of the Town Clerk’s records which indicate that Mudhen does indeed have a boat, “High on Life,” registered to him and that its location is the Tannucket Boatyard. Flounder describes Prudence only as a confidential-reliable informant in the affidavit in an effort to prevent any retaliation.

Chief Shrimp and Detective Flounder then visit Jumpin Jack, the local judge. Jack invites the two in and reviews the warrant application and affidavit. The application seeks “the search of the vessel High Life located at the Tannucket Boatyard and the seizure of any and all things connected with the drug trade.” Jack says, “Geez, fellas, I don’t think there’s enough here. This guy could be lying about his stash.” Chief Shrimp responds, “C’mon, Jack. This town doesn’t need guys like Mudhen. We’ve got a nice place here.” Jack reviews the warrant again and signs it. Jack also permits a nighttime execution but does not check the no-knock box.
Chief Shrimp, Detective Flounder and Detective Sponge drive to the Boatyard. En route they hear a general broadcast on the radio: “Be on the lookout for a white male, 5’7”, gray beard, glasses, slightly overweight, wearing a red shirt. Subject just used a knife to rob the Supershop on Main Street. As the cruiser pulls into the Boatyard parking lot the officers observe a person fitting the broadcast description run into a lovely colonial home across the street. Shrimp, Sponge and Flounder run to the house, open the door and find the person, later identified as Salty Sam, hiding in his bedroom. Sponge pats the outer clothing of Salty and finds a knife and removes it from Salty’s waistband. Sponge also feels what he believes to be a wad of cash and reaches in and takes it from Salty’s pocket. The money was stolen in the Supershop robbery. Sponge cuffs Salty.

Shrimp, also present says, “Salty, you don’t have to talk to us. If you do say something it can be used against you. You can have a lawyer and we’ll get you one if you’re broke. Do you get this?” Salty replies, “Ya, but I may need to speak to my lawyer, Webby Daniels.” Shrimp responds, “What do you need a lawyer for? You know we’ve got you.” Salty says, “I’m keepin’ my mouth shut.” Salty is placed in the cruiser by the chief. Meanwhile, Detectives Sponge and Flounder look around the house. In the basement the detectives find the body of Long John Summer, a local street person. The apparent cause of death is a bullet wound between the eyes.

The officers bring Salty into the police station. Simultaneously, Attorney Daniels arrives and asks to speak to Salty. The desk officer refuses Daniels entry into the station. Chief Shrimp reads Salty his “Miranda” rights verbatim from a card. Shrimp asks, “Do you understand?” Salty does not answer but says, “I robbed the Supershop, but Mudhen killed Summer. Summer knew too much about Mudhen’s drug operation. Mudhen shot him, put him in the trunk of his Mercedes, with the gun. I just hid the body.” Salty Sam is placed in a cell.

Shrimp, Flounder and Sponge return to the Boatyard at midnight. The officers use bolt cutters to cut the chain securing the fence gate. Once inside, they smell marijuana smoke and see a light coming from the Boatyard office. Detective Sponge knocks on the door and Captain and Ms. Kook answer together. Sponge, through a smoky haze, asks permission to enter. Captain Kook says, “Ya, sure.” Ms. Kook says, “Not without a warrant.” Sponge enters and sees a bag of marijuana on a desk where Captain Kook is now sitting. Sponge arrests the Kooks. A search of the desk reveals documents ultimately implicating Captain Kook in a boat insurance fraud scam.

Meanwhile, Detective Flounder and Chief Shrimp climb the ladder, open the hatch and enter the cabin of the “High on Life.” Inside they seize scales, packaging materials and white powder. They also take a note from the Reverend Pitter Patter, the pastor of the local Allswell Church, located on a hill near the harbor. The note reads, “Mudhen, the gun is in the spire. Come and get it if you want it. (Signed) Pitter.”

While en route to the station with the Kooks and the evidence, the officers spot Mudhen driving his Mercedes down Main Street. Mudhen makes a right turn but does not signal. Chief Shrimp puts on the blue lights and Mudhen pulls his vehicle to a stop. Flounder approaches Mudhen and orders him out of the car. A search of Mudhen yields a marijuana cigarette. Flounder searches the car and finds blood and hair in the trunk. As Flounder is cuffing Mudhen, Flounder says, “I hope your gun doesn’t cause any more problems. Sunday school is about to start at Allswell. All those kids.” Mudhen says, “Pitter has the gun. He was going to try to blackmail me after I killed Summer.” Mudhen is taken to the station, the car impounded.

Chief Shrimp, along with Flounder and Sponge speed to the Allswell Church. Shrimp, somewhat of a technology geek, uses his new x-ray goggles to look through the walls of the Allswell Church. Shrimp sees no human activity. Shrimp enters the church, climbs the stairs
to the spire and opens the trap door. The steeple, rigged with dynamite, explodes killing the
chief.

Sponge and Flounder, upon seeing this, run to the parsonage and enter the house. They
arrest Pitter and Winnie, who they find in a separate room forging Pitter’s name on church
checks. Winnie is in her nightgown.

On arrival, back at the station, Pitter, Mudhen, Winnie, Salty and the Kooks all complete
the booking process.

The following day, Salty Sam is arraigned on the robbery charge and is represented by
Webby Daniels. Salty is held on one-hundred thousand cash bail. After the arraignment,
Detective Urchin puts Salty’s booking photograph together with six other photos. The photos,
depicting thin men without facial hair other than Salty, are taken and shown to the robbery
victim, Bullseye. Bullseye picks out Salty as the robber and says, “That’s him. He’s been in
the store a thousand times.”

The following charges are brought:

Mudhen: Possession of Cocaine with intent to distribute
Murder (Long John Summer)
Possession of Marijuana

Salty Sam: Armed robbery
Accessory after the fact of Murder(assisting Mudhen in hiding Summer’s
body)

Captain Kook: Possession of Marijuana
Insurance Fraud

Ms. Kook: Possession of Marijuana

Rev. Pitter Patter: Murder (Chief Shrimp)
Extortion

Winnie: Forgery

PLEASE DISCUSS WHAT, IF ANY, CONSTITUTIONAL ISSUES ARE RAISED.
WHAT EVIDENCE WILL BE EXCLUDED OR AVAILABLE AS AGAINST THE
PARTIES? WHY? THE BASIS OF YOUR ANSWER SHOULD BE FEDERAL LAW
USING MASSACHUSETTS LAW FOR CONTRAST AND COMPARISON.
REMEMBER IRAAC.