Instructions: This examination consists of four (4) questions of equal weight. Question 1 is a ten part question. Please answer each part and number each response in your exam book. Questions 2, 3 & 4 are essay questions requiring you to write out your answers. Please note the following: a) do not repeat the fact pattern in your answer; b) do write legibly; c) do set down as many issues as you are able to identify in the fact pattern; d) do arrive at a final conclusion or opinion in your answer; e) do be concise and to the point.

Remember: quality, not quantity is what counts. Good luck!
QUESTION ONE

Directions. For each of the following ten statements about criminal procedure, indicate whether it is true or false. Do not add any explanation or qualification.

(1) Under G.L. c. 218, § 26A and the Rules of Criminal Procedure for the District and Boston Municipal Court departments, at the arraignment the court is required to issue an “order of discovery” at the request of the defendant or on its own motion requiring that the defendant be permitted to discover, inspect and copy any material and relevant in the possession custody or control of the prosecutor. True or False?

(2) Under G.L. c. 277, § 70C, at the request of the defendant and with the approval of the court, a misdemeanor may be converted from a criminal offense to a civil infraction so long as the defendant has no prior criminal convictions. True or False?

(3) When a person has been arrested and is brought to the police station for booking, the Massachusetts Constitution requires that they must be brought to court for arraignment within 24 hours of their arrest. True or False?

(4) The defendant has been arraigned before the Superior Court on an indictment charging him with Assault with Intent to Commit Murder and released on $25,000 cash bail with a bail warning. Thereafter, the defendant is arrested and charged in the District Court with violation of a restraining order involving the same victim as in the Superior Court case. Under G.L. c. 276, § 58, the District Court judge has the authority to revoke a defendant’s Superior Court bail and order the defendant held without bail under G.L. c. 276, § 58 if a finding is made that there is probable cause and that the defendant is a danger to the community or to a particular individual. True or False?

(5) Following the arraignment, the trial judge is authorized to dismiss a complaint for lack of probable cause provided that the defendant files a motion and an affidavit in compliance with Mass. R. Crim. 13 and the Commonwealth is afforded an opportunity to be heard. True or False?

(6) An admission to sufficient facts and a continuance without a finding is not available in felony cases. True or False?

(7) A defendant has the right to appeal an adverse decision by a district court judge with respect to bail under G.L. c. 276, § 58 to the Superior Court where a new hearing will take place that could result in the same bail order, a lower or higher bail, or release on personal recognizance. True or False?

(8) If in support of a motion for a new trial based on ineffective assistance of counsel, defense counsel establishes that the conduct of the defendant’s trial counsel was measurably below that of the ordinary fallible lawyer because he failed to file a pretrial motion to suppress statements he made to the police at the scene of the offense without good cause, the defendant is
entitled to relief without regard to whether there was actual prejudice. True or False?

(9) It is error for a trial judge to decline to accept a defendant's plea or admission when there is an agreed recommendation and it is the result of a knowing, intelligent and voluntary waiver of rights. True or False?

(10) A district court sentence to the House of Correction may be accompanied by an order that the sentence be served under electronic monitoring provided that the sentencing judge makes written findings that such a sentence is in the interests of justice. True or False?
QUESTION TWO

You represent Mary Lou Rude, the lead singer for a band known as the TechnoBombs. You’ve represented Mary Lou for several years in a variety of civil matters involving contracts and license arrangements concerning her band. You were introduced to Mary Lou several years ago by a friend who happened to be her cousin. You’ve never represented her in a criminal matter.

Last night (actually it was 3:45 a.m.) you received a telephone call from your friend who told you that Mary Lou was in the custody of the state police and under arrest for motor vehicle homicide. Your friend tells you that he happened to be at the Jack Knife Club where TechnoBombs was performing last night. He was there from about 9:30 p.m. Until closing time which was 2:00 a.m. Mary Lou’s band performed three sets during the evening and got rave reviews from a packed house. Your friend says that he was very happy for Mary Lou because she’s been in a deep depression over the last 3 months following the suicide of her college roommate. Mary Lou was surrounded by fans between each set. Your friend met Mary Lou after the last set about 1:00 a.m. He had a few beers but Mary Lou was drinking cranberry juice and club soda. She said she was staying away from alcohol because of the medicine she was taking. Mary Lou seemed fine. The bar was very smoky and there had been a lot of drinking and drugging going on.

After the last set, your friend, Mary Lou and the other members of the band hung out for a while in their van in the parking lot of the Jack Knife. Mary Lou had one beer, but only drank about half the bottle. About 2:45, Mary Lou said “I’m out of here; I’m going to drive down to the beach tonight and crash. See you later.” At this point, Mary Lou got on her Harley Davidson motorcycle and roared out of the parking lot. Suddenly, there was a loud crash. Everyone rushed around the corner. Mary Lou was off her bike and lying in the roadway. Another person also was lying in the roadway and the door of a parked car appeared to have been struck by the motor cycle which then crashed into another parked car. Mary Lou had cuts and abrasions and was wobbly. The other person suffered massive head injuries and was dead.

Police and ambulance personnel arrived simultaneously. Mary Lou was up and walking about, but seemed dazed. Your friend heard her speaking with a police officer. He heard her say “I think I’m going to be sick; I need a doctor.” A police officer was heard to say, “Listen lady, we’ve got a dead person here; you’re not going anywhere until I find out what happened.” At this point the officer escorted Mary Lou to a marked police cruiser and put her in the rear seat. After some further investigation, the police officer returned to his vehicle and drove away. Your friend was told by another officer that Mary Lou was under arrest for motor vehicle homicide by reason of operating under the influence of alcohol and would be in custody until her arraignment the next day in Andover District Court.

Fifteen minutes later, you also get a telephone call from Mary Lou’s mother and father asking you to represent her.
Assuming that you agree to represent her, what, if anything, will you do before the next morning and why? Assume that Mary Lou is brought into the Andover District Court the next morning for her arraignment and that the prosecutor indicates that she will ask for bail in the amount of $50,000, describe each of the steps you will take to protect her rights, including any inquires you will make and any motions you will file.
Question 3:

Owen Corning is a 24 year old Portsmouth, NH resident and high school dropout who has had a number of prior brushes with the law. Owen has had significant problems with drugs, alcohol and domestic abuse since he was 15 years old. His prior criminal record in Massachusetts dates back over six years and involves drug, motor vehicle and violence against the person cases.

On Friday afternoon at 3:00 pm, before a three day holiday, Owen was arrested by Lynn Police and charged with violation of a 209A abuse prevention order, attempted arson, trespassing and resisting arrest. It is alleged that in a fit of rage over his girlfriend Pam’s cheating, Owen traveled to Lynn from New Hampshire and doused the exit to Pam’s apartment building with gasoline. Pam has had a restraining order against Owen for about six weeks. Before Owen could set the gasoline on fire, a pizza delivery person happened onto the scene. Owen immediately fled, dropping a lighter, getting into his car and racing away at high speed. The police were called and a car matching the description of Owen’s was stopped by the Lynn Police three blocks from Pam’s apartment. Upon police approaching the car, Owen began to exit the vehicle and tried to run. He struggled with the police and he was finally subdued, handcuffed, taken to the police station, booked and put in a cell. He remained in the cell until 8:30 am on Tuesday, when he was taken into Lynn District Court to be arraigned.

The police claim that he “confessed to everything” to them while locked up over the weekend. At his arraignment. Owen appeared angry, confused and dazed. He was glassy eyed and continued to mumble to himself in the dock.

Owen’s attorney, Howie Cheetham, attempted to speak to Owen downstairs in the court house lock up but, little was exchanged between them.

Taking information from the police report, Attorney Cheetham tried to cobble together a bail argument for Owen. At the arraignment Judge Ima Fairone listened to both sides. Howie argued for Owen’s release on either high personal recognizance or low cash bail, citing a lack of defaults on Owen’s record.

Prosecutor Les Putemaway argued that Owen was a danger to the public and asked Judge Fairone for a second call prior to hearing the Commonwealth’s motion under G.L. Ch. 276, s. 58A. Not one to be impressed by lawyers who quote statutory cites, Judge Fairone announced from the bench: “I know he’s entitled to a lawyer and that’s why I appointed one for him”. The judge then set bail on Owen at $3 million and ordered the parties to appear for pre trial hearing in three months.

The next day, Attorney Cheetham hit the lottery for $25 million, closed his law office and moved to Aruba, a country that has no extradition treaty with the United States. Owen’s case has now been assigned to you as successor counsel by the court.

Please review the facts of Owen’s case as set out above and identify each issue you intend to deal with on Owen’s behalf and how you intend to do so.
Question 4:

Zerconda Poincier is a 34 year old leader of a local artist colony. She is a native of Quebec. Zerconda has been an intravenous drug user since she was 17 years old and has a history of bipolar disorder. In 1992 Zerconda admitted sufficient facts to a complaint in the Concord District Court charging her with the following counts:

1. Possession of Cl. B controlled substance with intent to distribute
2. Narcotics school zone violation
3. Possession of Cl. D controlled substance
4. Possession of a firearm in violation of G.L. Ch. 269, s. 10A (a pellet gun)
5. Marked lanes violation

The plea was being taken by Judge Bias on a Friday afternoon at 5:00 pm after a particularly busy day. Zerconda had been arraigned three days before and was held on bail. Judge Bias asked Zerconda and her court appointed lawyer if they understood the charges. The lawyer answered yes. Zerconda, who said nothing, nodded and looked at her lawyer. She appeared fidgety and was then sentenced to 2 years in the house of correction on count 2, from and after 6 months committed on count 1.

Counts 3 and 4 were placed on file by the judge and on count 5 the judge made a finding of guilty and sentenced Zerconda to 10 days committed concurrent.

Zerconda served her sentence and was released. Last month, Zerconda, was convicted in United States District Court for New Hampshire of trafficking in crack cocaine. Because of her prior record, under federal sentencing guidelines, Zerconda faces a mandatory life term in federal prison unless it can be established that her prior record as presented to the federal sentencing judge by the United States Attorney is incorrect.

As a new attorney assigned to Zerconda’s case by the Massachusetts Defenders’ Committee, is there anything you can suggest to help Zerconda?