YOUR STUDENT ID NUMBER: ___ ___ ___ ___ ___ ___ -- 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.

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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 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?

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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?

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3. 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?

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4. 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 [    ]

5. Finish the following statement of law: The courts in Massachusetts require that ________________ be based on ________________ to believe that the suspect __________, __________, or __________, to commit a crime.
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 test (which was formerly used on the federal level)? Fully state the applicable rule of law in 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 County of Riverside v. McLaughlin, 111 S.Ct. 1661 (1991) under Gerstein v. Pugh, 420 U.S. 103 (1975), what is the federal rule regarding a prompt determination of probable cause?
Question 3 (This question is worth 4 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.

Under Jenkins v. Chief Justice of the District Court, 416 Mass. 221 (1993) what is the Massachusetts rule regarding a prompt determination of probable cause and what is the remedy if a Jenkins 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, 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.

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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 14 of 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 dwelling and make an arrest. In addition, what two additional requirements must the police also meet? **Fully state the applicable rule of law in your answer and apply the ROL the facts in your analysis.**
Question 5 (This question is worth 5 points)

State Troopers from the Massachusetts State Police Detective Unit were conducting an undercover drug operation and surveilling 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 in your answer and apply the ROL to the facts in your analysis.**
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.**
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.**
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.
Spring 2014
ADVANCED CRIMINAL PROCEDURE FINAL EXAM
Professor Rodriguez

YOUR STUDENT ID NUMBER: ___ ___ ___ ___ ___ -- 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.

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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.

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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 !!!
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?

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

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Question # 12 (5 points)
Officers from the Randolph Police Department went to a local small grocery store in their 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.
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.
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 Commonwealth v. McNulty 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 Commonwealth v. Mavredakis 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 Commonwealth v. Rosario 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.” [   ] True or [    ] False

( 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
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 6th 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 )
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 5th 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