

CRIMINAL PROCEDURE EXAMINATION

INSTRUCTOR: H. JOHNSON
SPRING 2016

GENERAL INSTRUCTIONS:

The exam is lengthy. Take note of the point value of each section when budgeting your time. The basis of your analysis should be Federal law with Massachusetts law included for contrast or comparison, unless otherwise specified.

IDENTIFY YOURSELF BY STUDENT IDENTIFICATION NUMBER ONLY.

RELAX AND GOOD LUCK

SECTION I: 20 POINTS

ANSWER **TWO** OF FIVE QUESTIONS. BE COMPLETE IN YOUR ANALYSIS BUT CONCISE. DO NOT NEGLECT TO NOTE THE ISSUES, DISCUSS THE RULE OF LAW, ANALYZING THE FACTS AND CONCLUDING ON THE SPECIFIC QUESTIONS RAISED.

SECTION II: 80 POINTS

FOLLOW THE FACT PATTERN ISOLATING THE ISSUES, DISCUSSING THE APPLICABLE FACTS, IDENTIFYING THE LAW, ANALYZING THE ARGUMENTS AND SUPPORTING YOUR CONCLUSIONS IN THIS CLASSIC ISSUE HYPOTHETICAL. ANSWER IN ESSAY FORM.

SECTION 1

1. Calamity is indicted for "Armed Robbery." She is arraigned on the charge and appointed an attorney, Victor. Calamity is held on bail and she is to be transported to the local jail after her arraignment. *En route* an apparent fellow prisoner, Phyllis, says, "They got me all wrong. I never stole that candy bar." Calamity says, "I'm in trouble. I did rob that guy."

Meanwhile, as Calamity is being transported to jail, Detective Diligent shows the victim, Dr. Hyde, a photographic array containing a photo of Calamity. Detective Diligent administers the photographic lineup fairly and appropriately. Dr. Hyde picks out Calamity as his robber. Victor was not notified of the photographic lineup.

It turns out that Phyllis is a police informant who was placed in the van by Detective Diligent with the instruction, "Phyllis, just listen. Don't ask questions."

Calamity faces the Armed Robbery charge.

A motion to suppress is filed by Victor on her behalf. The motion seeks to exclude the statement to Phyllis and the out-of-court photographic lineup identification. Will the motion to suppress succeed with respect to each of those two pieces of evidence? Why or why not? Any difference in Massachusetts law?

2. Officer Olaf is walking his usual beat in a quiet neighborhood on Windward Street. As Officer Olaf passes #6 Windward Street he hears what sounds like a scream of terror emanating from the house. Officer Olaf runs to the door and knocks. He hears no reply and immediately opens the unlocked door and enters the house.

Inside he finds Terry Tenor standing beside a music stand with a piece of sheet music on it. Officer Olaf asks, "Are you alright?" Terry replies, "Yes, I was just rehearsing for my new part at the Opera House."

Officer Olaf notices a mirror on the coffee table with a line of white powder he believes to be cocaine on it. Officer Olaf seizes the powder and the mirror. The powder turns out to be cocaine.

Terry Tenor is charged with "Possession of Cocaine." Terry's lawyer files a motion to suppress the cocaine and the mirror. Will the motion succeed? Why or why not?

3. Officer Ed is patrolling the high crime area of Sleepyville. Ed observes Jumpy, a known drug user, walking along the street. Ed stops the cruiser and approaches Jumpy. Jumpy observes Officer Ed and turns and runs. Officer Ed pursues Jumpy and grabs him by the shirt.

Officer Ed pats the exterior of Jumpy's clothing and feels what he believes to be a small rock of cocaine in his shirt pocket. Officer Ed reaches in and removes the rock, which is, in fact, analyzed as cocaine.

Jumpy is later charged with "Possession of Cocaine." A motion to suppress is filed on Jumpy's behalf regarding the rock of cocaine. Will it succeed? Why or why not?

4. Wayfarer owns a small pickup truck with a camper attached to it. Officer Ears has received information from named reliable persons and confidential reliable informants that Wayfarer

is selling heroin from the camper. Officer Ears sets up a surveillance and observes a number of known, local heroin users enter the camper and, after a few moments, leave the camper which is parked on the street. Officer Ears observes Wayfarer leave the camper.

Officer Ears approaches the unlocked camper and opens the rear door. Officer Ears enters the camper portion and finds a large bag of heroin in the sink. He takes the bag. He arrests Wayfarer, who is at that point outside the camper.

Wayfarer is charged with "Possession with Intent to Distribute Heroin." A motion to suppress is filed on Wayfarers' behalf regarding the heroin. Will it succeed? Why or why not?

5. Gluefoot is under arrest for "Burglary" at the Hoodwink Police Department. He is to be arraigned the next day in the District Court on the Burglary complaint. He is placed in an "interrogation room." Detective Gumshoe enters the room and reads Gluefoot his "Miranda warnings" verbatim and correctly from a card. Gluefoot says, "I want my lawyer." Detective Gumshoe returns to his office and sometime later goes back to the interrogation room. Gumshoe says, "O.K. We'll get your lawyer. But let's talk about another case; the larceny of those pink flamingos from the mayor's lawn."

Detective Gumshoe again reads Gluefoot's "Miranda warnings" verbatim and from the card. Gluefoot confesses to the theft of the plastic, attractive pink flamingos. The statement was not recorded.

A motion to suppress the statement is filed on Gluefoot's behalf in the "Larceny" case involving the pink flamingoes. Will it succeed? Why or why not?

SECTION 2

There is nothing quite like a warm, sunny, summer afternoon by the sea. The sounds of crashing waves and joyous beach goers' screams combine with the smell of salt air and sublimely frying clams to bring back wonderful childhood memories of family vacations for many. The town of Seaweed, in the state of Bliss, the fifty-first state in the Union, is a place of those memories. Ah, but even such places are not without the intrusion of the challenges of modern times.

Chief Codfish of the Seaweed Police Department has heard rumors of an increased level of illegal drug activity, as well as the source of the drugs, along the Beach Road, which traverses the beach and is lined, on the other side of the street, with small shops and food stands. The chief calls in his three detectives, Dagmar, Thor and Sven. The chief says, "It's time to end this drug business at the beach. A few citizens told me that the owners of the Seaweed Bowladrome [hereinafter the S.B.], Ink and his wife Pen, are selling cocaine at the bowling alley. Do what it takes to end it."

Dagmar, Thor and Sven take different approaches to the investigation. Dagmar is driving that evening in an unmarked car. She has decided she is going to stop as many vehicles as she can near the S.B. and attempt to find a reason to search them for drugs. Dagmar observes a red sports car. She follows the car noting the license plate sticker is partially obscured by one of those plastic frames that advertise car dealerships. There is a statute making it a minor offense to obscure a license plate in Bliss, but it is never enforced. Dagmar puts on the blue lights of her unmarked cruiser and the red sports car pulls to the right.

Dagmar approaches the red sports car. Dagmar orders the driver, Yeats, and the front passenger, Beckett from the car. Both comply. Detective Dagmar observes the passenger, Beckett, drop small bags containing white powder which she immediately recognizes as consistent with cocaine. Dagmar places Yeats in the rear of her cruiser and then Dagmar approaches Beckett and searches him. Dagmar finds a gun, for which Beckett does not have a license, in his pocket. Beckett is placed in cuffs and into the rear of the cruiser. Detective Dagmar retrieves the bags of cocaine.

Dagmar orders Yeats to step out of the cruiser. Dagmar says, "Yeats, I probably have the right to search your car right now. But, to be on the safe side, is it alright with you if I do?" Yeats shrugs and nods in the affirmative. Dagmar says, "Before I search the car, is there anything I should know?" Yeats replies, "Ya. There's a bag of cocaine in the trunk, in a tool box. I got it from Ink at the bowling alley." Dagmar searches the car and finds the large bag of cocaine in the tool box. Yeats is arrested. The red sports car is towed and later searched in accordance with department policy.

Beckett and Yeats are brought to the police station. They are placed in separate rooms. Beckett is read his "Miranda warnings" verbatim and correctly from a card by Detective Dagmar, which she later inadvertently drops. Beckett says, "I won't talk to you without my lawyer." Dagmar ceases questioning him.

Dagmar then goes down the hall to speak to Yeats. Dagmar, without the assistance of the card says, "Yeats, you don't have to say anything, but if you do it could be a problem for you later. You have a right to a lawyer, and we'll get you one for court if you're broke." Yeats nods in the affirmative. Dagmar says, "Beckett already talked. He told us you guys are working for Pen and Ink. What do you say in your own defense?" Yeats replies, "Ya. I sell the stuff for them. They keep their stash right behind the pins in Alley #5. Ink also has a stolen gun in his desk drawer."

Beckett is released by the bail commissioner. His arraignment on the district court complaint is scheduled a month from the date of his arrest, on charges of "Possession of Cocaine" and "Possession of a Handgun without a License." Yeats is held on ten million dollars cash bail by the judge the next day at his arraignment for "Possession with Intent to Distribute Cocaine," though he has no criminal record. Yeats is appointed Attorney Trifle as his counsel at arraignment.

The following day, Detective Thor puts his plan into action. Detective Thor sets up a roadblock right along the beach road. The officers conducting the roadblock are instructed to stop every vehicle and to hand out fliers detailing the dangers of illegal drugs. They are also to further detain, in a side area, any vehicle where there is evidence of illegal drugs. Babbles drives his ancient jalopy towards the

roadblock and is stopped by Detective Thor. Babbles asks, angrily, "Why have I been stopped?" "It's just routine," Detective Thor replies. Thor hands Babbles the leaflet. Thor says, "Wait about a minute. The department's drug sniffing Dog, Nostrils, is just finishing his supper." A minute passes and Nostrils approaches the car with his handler, Officer Petty. The dog walks around the car and signals that there are illegal drugs within. Detective Thor searches the car and finds a small bag of marijuana under the front seat, a misdemeanor in Bliss. Babbles is placed under arrest for "Possession of Marijuana."

Meanwhile, Detective Sven takes a third approach. Sven disguises himself in a "Groucho Marx" style nose, mustache and glasses and dons a hideous wig, which resembles a cornfield following a hurricane. Sven goes to the S.B. and poses as a customer. Sven rents a pair of bowling shoes, bowls a string and then sits down at the bar beside Pen. Unbeknownst to Pen, Detective Sven is wearing a wire which transmits any conversation within its range to a remote location for recording. Sven says to Pen, "Do you know where I can get some cocaine?" Pen replies, "Sure, go upstairs and talk to my husband, Ink." On his way upstairs Detective Sven sneaks behind the bowling alleys and observes a large bag of white powder behind Alley #5. Sven enters Ink's office and searches about. Inside a drawer he observes a small handgun, which was stolen. Sven quietly leaves the premises.

Chief Codfish, after conferring with the three detectives, prepares an affidavit for a search warrant. In it the chief includes the hearsay from the "citizens," without naming them and Yeats' statement about the cocaine, but omits the reference to the gun. The chief does not disclose Yeats' identity but describes him only as a "confidential reliable informant" who is "in my opinion, credible." The chief also includes Detective Sven's downstairs observations at the S.B. of the bag of cocaine but decides not to include the observation by Sven of the handgun. The chief does include Pen's statement regarding her husband to Detective Sven.

The chief seeks the authority to "search the Seaweed Bowladrome, in the town of Seaweed," and to seize "any and all cocaine and items related to cocaine sale and distribution."

Magistrate Millie reviews the warrant. She is a longtime friend of Ink and Pen. Magistrate Millie, tears running down her cheeks, signs the warrant, checking the nighttime execution box, which permits such an execution, and refusing to check the box allowing a "No-Knock" entry.

The police arrive at midnight a few days after the warrant is signed by Magistrate Millie. Chief Codfish approaches the door. He hears running feet and a crashing sound. The chief breaks down the door to find, inside the S.B., a party of young adults, bowling. Ink and Pen are detained. Plainly visible on a table in the bowling alley area are numerous "cut-corner baggies" which are commonly used in the packaging of cocaine for sale. The bags are seized by the police. A search of the bowling alley area yields no cocaine. A search of the upstairs office yields the handgun which Sven had seen and a stolen early copy of the Declaration of Independence, behind a picture hanging on the wall which was removed during the search. Sven was aware that the copy of the great document was stolen from the Seaweed Museum. The Declaration is seized by Sven.

A search of the young adults yields one bag of marijuana, in a pocket of Duckpin. Also, finally, a large bag of cocaine is found under a bush in a field behind the house which is surrounded by a fence

with "No Trespassing" signs. Detective Sven had climbed the fence to get access to the field. The bag is found to contain the fingerprints of Pen and Ink.

Three weeks after Beckett's arrest and release Beckett is re-arrested on an old speeding warrant, which was still in the computer system as a result of a careless clerical error. Beckett had paid the fine years earlier. Detective Dagmar visits Beckett in his cell. Dagmar reads Beckett his "Miranda warnings" verbatim and correctly from the recovered card. Beckett admits that he sold cocaine for Pen and Ink.

Yeats, still in custody, is also spoken to by Detective Sven. He is read his "Miranda warnings" verbatim and correctly from a card. Yeats refuses to sign the waiver. Yeats again is questioned regarding his involvement with Ink and Pen and he recounts his statement and confirms that he sold cocaine for Ink and Pen. Trifle is not notified of the conversation in advance.

The parties are charged as follows:

- 1. Yeats: 1. Possession with Intent to Distribute Cocaine (in the toolbox); 2. Distribution of Cocaine (for Pen and Ink).**
- 2. Beckett: 1. Possession of Cocaine; 2. Possession of a Handgun without a License; 3. Distribution of Cocaine (for Pen and Ink).**
- 3. Babbles: Possession of Marijuana**
- 4. Ink and Pen: Each charged with Possession with Intent to Distribute Cocaine.**
- 5. Ink: Additional charges: 1. Possession of Stolen Property (the handgun in the desk); 2. Possession of Stolen Property (the Declaration).**
- 6. Duckpin: Possession of Marijuana.**

PLEASE DISCUSS WHAT, IF ANY, ISSUES ARE RAISED. WHAT EVIDENCE, INCLUDING STATEMENTS, WILL BE AVAILABLE OR EXCLUDED AGAINST THE PARTIES AS A RESULT? WHY OR WHY NOT? REMEMBER TO ANSWER USING FEDERAL LAW WITH MASSACHUSETTS LAW FOR CONTRAST OR COMPARISON. REMEMBER "IRAC.

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SECTION 1

1. Officer Chip has heard a rumor that Terrible Ted, a local, is involved with illegal drugs. Officer Chip observes Terrible Ted traveling at thirty-one miles per hour in a posted thirty miles per hour zone in his sports car. Officer Chip puts on his blue lights and "stops" Terrible Ted. Officer Chip approaches the car and orders Terrible Ted to step from the vehicle. As Terrible Ted does, a bag of cocaine falls from his lap onto the pavement. Terrible Ted is charged with Possession of Cocaine and Speeding.

You, as Terrible Ted's lawyer, are, of course, contemplating a motion to suppress. What are the issues? Will the motion be successful under Federal standards? Why or why not?

How about under Massachusetts standards? Why or why not?

2. Fire officials respond to 15 Platypus Place to extinguish a fire at the Platt residence. The fire, which is determined, preliminarily, to have begun in the kitchen is extinguished after about an hour. Firefighter Finn, suspicious, decides to check out the first floor study. There Firefighter Finn finds a copy of the well-known book, "How to Make your Arson Look Like a Kitchen Fire." Firefighter Finn seizes the book.

Firefighter Finn notifies Detective Drainpipe of the find. The following day Detective Drainpipe enters the Platt place and searches. He finds a gas can which he seizes as possible evidence of arson.

Mr. Phil Platt is ultimately charged with the statutory crime of Burning a Dwelling.

Phil's attorney has filed a motion to suppress the book and the gas can. What are the possible arguments? Will the motion be successful? Why or why not?

3. Officer Smoothie responds to a radio broadcast regarding a Burglary at a residence at 55 Freedonia Way. He interviews the resident, Jill, who relates that she awoke to see a person in her bedroom.

Jill describes the person as "5'10" in height and wearing an ugly, green paisley shirt with odious striped red trousers. He topped it off with a streak of orange in his hair."

Officer Smoothie runs from the house and checks the neighborhood. He sees, about a quarter of a mile away from 55 Freedonia Way, in a park, a person about 5'10". The man is shirtless but sports a pair of hideous red-striped pants. The man also has a streak of orange in his hair.

Officer Smoothie runs up to the person, one Fiddlin Fred, and says, "Halt! Police!" Fred halts. Fred is taken by Officer Smoothie to 55 Freedonia Way in the back of the cruiser. The two arrive and Jill takes a look at Fred and says, "That's him, the scoundrel."

Fiddlin Fred is charged with Burglary. His attorney has filed a motion to suppress Jill's out-of-court identification of Fred.

What are the standards? Will the motion be successful? Why or why not? How about under Massachusetts law?

4. Officer Egbert dislikes Den. Officer Egbert spots Den driving his expensive car on Main Street. Officer Egbert puts on the blue lights and "stops" Den. Officer Egbert walks up to the car. Officer Egbert opens the rear driver-side door and reaches under the back seat. There Officer Egbert finds an illegal crossbow which he could not see from outside the car.

Den and Otto, Den's front seat passenger and the only other occupant, are both charged with the crime of Possession of a Crossbow.

You are Otto's attorney. You are, naturally, contemplating a motion to suppress.

What will your arguments be? Will you succeed? Why or why not? Would an argument under Massachusetts law differ from Federal law?

SECTION 2

To paraphrase the great F. Scott Fitzgerald, the rich ain't the same as the rest of us. Some of them go to great pains in an attempt to show it.

Chauncey is rich. He resides, with his wife, Chilly, and their daughter, Chatters, at 205 Wisteria Way in a palatial home located in a development of newly constructed mini-mansions, "The Castles," located in the town of Forsythia in the State of Hysteria, the fifty-first state in the Union. Faux brickwork and imitation Tudor architecture are the order of the day. The development is patrolled by a private security force and is surrounded by a wall, reminiscent of Berlin in the late twentieth-century. There is only one entrance which is overlooked by a guard shack which is occupied at all times.

The Forsythia police chief, Chief Paddles, has always been suspicious of Chauncey and Chilly with respect to their sources of income. Chief Paddles drives to the gate at The Castles and speaks to Security Guard Bend. Bend is a retired Forsythia police officer. The chief says, "Bend, I think Chauncey and Chilly are up to something. Keep an eye on them. Find out what you can." Bend nods.

Bend later approaches one of the neighborhood kids, Max. Bend grabs Max and brings him to the security office. Bend locks Max in a room and questions him about Chauncey and Chilly. Max, who is always in a bit of trouble himself and knows who else is, tells Bend that Chauncey and Chilly are involved in selling methamphetamine and Chauncey has a lab at his house. Max also relates that he himself had purchased meth from Chauncey the previous day. Max then produces a bag containing the "crystal meth" and hands it to Bend. Bend takes the bag and unlocks the door, telling Max to tell no one of their conversation.

Bend calls Chief Paddles and describes what Max had told him and given him. Bend does not relate the circumstances of the encounter. The chief decides to act. The chief contacts a local, television helicopter traffic reporter, Whirlie. Chief Paddles persuades Whirlie to permit him to ride along in Whirlie's chopper. At the chief's urging, Whirlie takes a low pass over 205 Wisteria Way. The chief, using binoculars, peers into an upstairs window which is mostly covered by a dark curtain. The chief observes the telltale canisters and containers of chemicals emblematic of a methamphetamine lab.

But the chief, a cautious fellow, wants to be sure. He borrows a large electronic listening device, reminiscent in appearance of a satellite dish. Chief Paddles sets up the device just outside the wall behind 205 Wisteria Way. The chief points the device at the residence and puts on the headphones. The chief overhears a male voice say, "We gotta get this meth moving. Our mortgage is coming due and we need to keep our large, ostentatious house." The chief dismantles the device and leaves the area.

Chief Paddles, based on the information from Bend, regarding Max's statement and the bag, which Bend had turned over to the chief, goes to the Castles to arrest Max. The chief spots Max on the street, after passing through the gate, and screams, "Halt, Maxie." Max runs from the chief for all he is worth. Max retrieves a small bag from his pocket as he runs. Max throws the bag behind a bush. The

bag, which is later picked up by the chief, contains crack cocaine. The chief grabs Max. The chief pats the exterior of Max's clothes and feels a slight bulge in his jacket pocket. The chief thinks the bulge is also a bagged rock of crack cocaine. The chief manipulates the bulge and is convinced it is a bag of crack. He reaches in and retrieves the bag, which, in fact, is crack cocaine.

Max is placed under arrest for Possession of Cocaine. Max is brought back to Forsythia Police Headquarters. Max is placed in one of those rooms with a two-way mirror. The chief says the following to Max: "Max, look, you don't have to say anything but if you do it could come back to haunt you. If you want a lawyer you can get one and we'll try to get one for you if you can't afford one. Alright?" Max says nothing but looks down dejectedly. The chief asks Max, repeatedly, about the methamphetamine. Max does not respond. After about an hour of this, Max says, "I think I need a lawyer." The chief responds, "You don't really need a lawyer, do you?"

At that very instant, the Forsythia dispatcher texts Chief Paddles indicating that Max's longtime lawyer, Ramshackle, is in the lobby asking to see Max and requesting that his client be advised to say nothing. The chief ignores the text.

Max, at that point, sighs and then repeats the same statement he had given to Bend. Max is then placed in a cell. The chief had not, at any point, turned on the recording device in the interrogation room. Ramshackle leaves in a huff.

Chief Paddles begins the preparation of an affidavit to search the Chauncey and Chilly residence. In the affidavit, he includes the statement he received from Max. He also includes the fact that the bag of crystal meth was obtained from Max by Bend and Max's statement to Bend. The chief does not refer to Max by name in the affidavit but only describes him as a confidential, reliable informant; "CRI." The chief indicates that he believes the contents of the bag to be crystal methamphetamine, based on his "training and experience." In fact, though the chief had seen pictures of crystal meth in the police academy, he had never actually seen the substance itself. The chief had also only seen photos of meth labs.

The chief includes, in the affidavit, the observations from the helicopter and its circumstances, describing his observations through the curtain as, "consistent with a methamphetamine lab, based on my training and experience." The chief does not include the conversation overheard via the "electronic ear."

The chief seeks out Magistrate Marbles at his usual spot, the Rose Tavern. Magistrate Marbles is actually the magistrate in a nearby court, not Forsythia District Court. Magistrate Marbles reads the affidavit and accompanying documents. The proposed warrant requests permission to "search the large Tudor style mansion located at 206 Wisteria Way." The items sought to be seized are listed as, "all chemicals for the manufacture of methamphetamine." Magistrate Marbles, who has clearly been at the Rose for some time, signs the warrant. Magistrate Marbles also checks the boxes allowing nighttime execution and no-knock execution. Magistrate Marbles then returns to his gin and tonic.

The chief and a band of Forsythia officers arrive at The Castles. Bend, after being shown the warrant, opens the gate. The police arrive at 205 Wisteria and approach the house. Chief Paddles knocks on the door. Chilly opens it. The chief states, "We're here to search your house." Chilly responds, "Come on in." Chilly appears to be under the influence of some drug. At that moment, Chauncey bounds down the ornate staircase and exclaims, "Get out of my house. You may not come in." The police ignore him and a number of officers fan out throughout the house. The remaining officers detain Chilly and Chauncey in the entrance foyer.

The police seize a small bag of cocaine on a coffee table in the living room. The police also seize a locked safe in the kitchen. Chief Paddles and other officers proceed to the second floor. As they arrive there, they approach the room they believe to contain the lab. The chief smells smoke. The chief breaks down the door, knowing that meth labs can explode. In the room, the police observe Chatters smoking crack cocaine. Chatters is arrested and the crack pipe, its contents and the meth chemicals are seized. Chilly and Chauncey are also arrested.

Chatters is arraigned on a Possession of Cocaine only before Judge Jellybean and released from custody on bail. She is appointed counsel, Attorney Pillbox. Attorney Pillbox gives Detective Finepoint, who is present at the arraignment, instructions not to speak to his client. However, Detective Finepoint later speaks to Chatters at a local malt shop. Detective Finepoint reads Chatters her "Miranda warnings" verbatim from a card. Chatters says, "I understand." Detective Finepoint asks, "How long have you had the crack habit?" "Oh, about six months," replies Chatters. Detective Finepoint then says, "Chatty, there's a bunch of kids in your neighborhood. I'd hate to see any chemicals you have over there explode and hurt someone." Chatters responds, "the garden shed." Detective Finepoint immediately goes to the residence and searches the garden shed. There he retrieves dangerous chemicals used in the manufacture of methamphetamine.

Back at the station, Chief Paddles pries open the safe. Inside he finds fifty-thousand dollars in United States Currency. It is placed in evidence.

Max is charged with Possession of Methamphetamine and Possession of Cocaine(both bags).

Chauncey and Chilly are charged with Manufacturing Methamphetamine.

Chatters is charged with the Possession of Cocaine and later Manufacturing Methamphetamine.

PLEASE DISCUSS WHAT, IF ANY, ISSUES ARE RAISED. WHAT EVIDENCE WILL BE AVAILABLE OR EXCLUDED AS AGAINST THE PARTIES AS A RESULT? WHY OR WHY NOT? REMEMBER TO ANSWER THE QUESTION USING FEDERAL LAW WITH MASSACHUSETTS LAW FOR CONTRAST OR COMPARISON. REMEMBER "IRAC."

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PART I: ANSWER TWO OF FOUR

1. Trooper Jacked, a veteran of the Winterbottom State Police Department, thinks a local tough, Benbow, may be involved in illegal gun running. He has heard rumors to such effect. Jacked spies Benbow driving his cherry-red, Italian sports car. The vehicle, Jacked observes, has a taillight out, a traffic violation in Winterbottom. Trooper Jacked puts on his blue lights and Benbow immediately pulls his vehicle to a stop. Trooper Jacked orders Benbow from the vehicle and, as he gets out, an illegal handgun falls from his waistband. Jacked picks up the gun and charges Benbow with "Driving with a Defective Taillight" and "Possession of an Illegal Handgun."

A motion to suppress the motor vehicle stop and the handgun is filed by Benbow's lawyer. Will it succeed? Why or why not? In Massachusetts? Why or why not?

2. Officer Pratfall, a member of the Washington D.C. police force, is walking a beat in a leafy, trendy neighborhood of brownstones. He looks, from the sidewalk, through a window and sees into one of the residences. He observes what appears to be a woman striking a man with a hatchet. "Blood" is spurting from the man's forehead.

Officer Pratfall runs to the door, breaks it down and enters the room in question where he is met by two stunned occupants eyeing him quizzically.

Bob and Brenda Blabber, two well-known actors, explain that they had been rehearsing a scene from their upcoming play, "Give 'em the Axe," scheduled to open within days. The "blood" is simply red liquid, continually spurting from a flesh colored bag over Bob's eye as the discussion proceeds.

Officer Pratfall, taken aback, starts to leave the premises when he observes a razor blade and a quantity of white powder which he, based on his training and experience, thinks is cocaine. He takes the items and the Blabbers are later charged with "Possession of Cocaine."

The Blabbers' lawyers file motions to suppress the drugs in the Washington D.C. Superior Court. Will the motions be successful? Why or why not? (note: Since the hypothetical takes place in the District of Columbia discuss only Federal law.)

3. Discuss *Dickerson v. United States*, 530 U.S. 428 (2000).

What was the substance of the legislation in question?

What did the court rule with respect to the legislation's constitutionality?

What was the court's reasoning?

4. During the course of a sleepy evening in the rural town of Bumpkinville in the state of Dread, the fifty first state in the Union, Sergeant Storm sits sleepily before his computer screen at the Bumpkinville Police Department.

At precisely 8:19 P.M., Cackles enters the police station and exclaims, "I need to get something off my chest." Sergeant Storm, stunned, immediately picks up his "Miranda card" and reads the warnings verbatim and completely to Cackles. Cackles says, "I understand, but I killed Martin and buried him under the old fishing lodge. He's up there stiff as a mackerel." The police later find the body.

Storm arrests Cackles and Cackles is ultimately charged with Murder.

At the motion to suppress hearing, the sole mental health professional, Doctor Yes, testifies that Cackles suffered from delusions and that at the time of his confession he heard the voice of an angel in his head urging him to tell the police everything. He had been actively psychotic for close to a month preceding the statement.

Will the confession be admissible at trial against Cackles? Why or why not? What are the issues and standards? How about in Massachusetts? Why or why not? What are the issues and standards?

PART II

The sleepy little town of Radishville in the state of Confusion, the fifty-first state in the Union, is nothing if not picturesque. The lush, green town common is bordered by the obligatory white-steepled church set amidst beautifully maintained colonial era homes.

But, sleepy Radishville shines brightest on summer Saturday afternoons. It is then that the Radishville Common comes alive with the patrons and vendors of the Farmer's Market. Canvas canopies magically appear and shelter straw-hat sporting sellers who show each beet or tomato in a matter reminiscent of the display of the British Crown Jewels at the Tower of London. The townsfolk circle, like wasps, eyeing veggies, sipping cider and chomping on hot dogs. All in all, an innocuous day which leaves the participants in a trance-like bank of blissful, nostalgic fog.

The local police chief, Chief Magpie, however, sees trouble mixed in with the veggies. One of the permitted booths is operated by Longhair, a person who the chief knows from his past troubles with the law, including a conviction for marijuana sales. In addition, Longhair's customers, the chief himself has observed on a number of Saturdays, comprise a who's who of local, known drug users. The chief has also noticed that following their "vegetable" purchases the buyers often disappear and then reappear on the Common a little later. They often appear, on reappearance, to be high.

Chief Magpie devises a plan. The chief speaks to a friend, Wingman. Wingman is a model airplane enthusiast who spends each weekend flying his small, remote-controlled airplane above his backyard to the considerable annoyance of his neighbors. Wingman agrees to attach a little security-type camera, commonly used in "baby-monitors," to his "plane" and to fly it over the Longhair property on the outskirts of Radishville to look for any evidence of marijuana cultivation.

The flight is a success. The camera transmits the view from above to a computer screen. Observed, through a small hole in the roof of the greenhouse, is a marijuana patch within the greenhouse. The model airplane flight took it to about one foot above the greenhouse during this observation. Wingman then circles the property and flies the model airplane through the open door of the greenhouse and gets a close-up view of the marijuana plants. The plane then is flown out the same way.

Encouraged by the flight, the chief decides to go a little further. The chief speaks to his longtime informant, Brittle. Brittle tells the chief, in fact, that he is a friend of Longhair. Brittle says he is willing to help in the investigation.

Brittle visits the Longhair residence, on 12 Twit Drive. Brittle knocks on the door and Longhair answers. Longhair says, "Britt, it's been a while old chum. Come in." Brittle enters and says to Longhair, "Long, old sport, listen. I'd like to buy a couple of bags of marijuana from you." Longhair replies, "See you at the Farmer's Market on Saturday." During his brief visit, Brittle observes six boxes of small plastic bags piled in the kitchen. Brittle leaves 12 Twit. Unbeknownst to Chief Magpie, Brittle was wearing a "wire," a listening device which recorded the entire conversation. Brittle wanted to be sure he described the conversation accurately to the chief.

Brittle, the same day, relates the conversation to the chief and describes his observations of the plastic bags. Chief Magpie, based on training and experience, believes the plastic bags are a type commonly used to package illegal marijuana for sale.

The chief decides to act. He organizes a "Checkpoint" on Main Street for the following evening, Wednesday. The scene had been the location of a tragic accident the previous week in which Farmer Phil was killed while driving his tractor, regrettably, into a tree. The evidence from the tests at autopsy revealed that Farmer Phil was intoxicated and had marijuana in his bloodstream at the time of death. The officers at the checkpoint, the chief wrote in the guidelines, are to stop all vehicles and ask the drivers if they know where Farmer Phil might have gotten marijuana. The officers are then to hand out

a leaflet describing the ills of illegal drug use. Absent any sign of illegal activity, the drivers are then to be sent on their way.

The beginning of the roadblock goes off without a hitch. About an hour in, though, the police observe a van approach their position and accelerate through the roadblock. Officer Runnymede puts on the blue lights and gives chase in her cruiser. Officer Runnymede observes the driver of the van, Rattled, throw a handgun from the window. After about a mile, Rattled stops the van. Officer Runnymede arrests Rattled for "Failure to Stop for a Police Officer" and places him in the cruiser. "Failure to Stop for a Police Officer" carries a maximum fine of one-hundred dollars. Officer Runnymede then goes back to the approximate area of the gun toss and retrieves the gun. She then returns to the van and conducts a thorough search of it. Inside she finds an orange baseball cap with a depiction of a deer on the front of it. Officer Runnymede immediately recognizes that the baseball cap fits the description of one worn by the knife-wielding robber of the Radishville National Bank. The robbery had taken place during the previous week. She takes the hat and the van is towed to the police station for inventorying.

Rattled is also taken to the police station. There he is interviewed by Detective Drill. Detective Drill says, "Rattled, you don't need to talk, but if you do it could go wrong for you. You can get yourself a lawyer if you want and if you can't afford one something will get done that way. You understand?" Rattled then grunts, "Um."

Detective Drill then says, "The bank job with the knife." Rattled says nothing. After a pause, Rattled says, "I think I need my lawyer." Drill then says, "The gun." Rattled then nods in the affirmative. Following the interview the police learn that the tossed gun was stolen. At that point, they add "Possession of a Stolen Gun" as a charge.

The following day Rattled is taken before Judge Jumpin and arraigned on the "Failure to Stop for a Police Officer" and the "Possession of a Stolen Gun" charges. Rattled is appointed an attorney, Mumbler. Rattled is held on a twenty-thousand dollar cash bail, though he had no previous record and is a lifelong resident of Radishville.

During transportation to the jail, Detective Drill says, "That teller was pretty shaken up." Rattled says, "Ya, I felt bad about it. But, I needed the money to buy marijuana from Longhair. He's got a greenhouse full of the stuff."

At that very instant, Officer Runnymede approaches Eagle-Eye, at the bank who was working as the teller at the time of the robbery and was the victim. Eagle-Eye, besides his work as a bank teller, has established a nationwide reputation for the ability to recall every detail of every person he meets. Officer Runnymede shows Eagle-Eye Rattled's booking photo. Eagle-Eye immediately exclaims, "By Jove, I am one-hundred percent certain that that is the person who robbed me. Notice the slight downward facial wrinkle beneath the right cheek and the distinctive eyebrow shape."

Chief Magpie prepares an affidavit. The affidavit sets out Brittle's conversation with Longhair and his observations at 12 Twit Drive. It also includes the chief's own observations of the customers of Longhair at the Farmer's Market, including their later states of intoxication.

Brittle is not named in the affidavit, but only described as a "confidential-reliable informant who has on one previous occasion given this affiant information which led to the seizure of an endangered tree frog, the species of which is included on the Confusion State Endangered Species List."

The chief includes, in his affidavit, the model airplane flight information, but only those camera recordings from outside the greenhouse. The chief did not believe the internal greenhouse flight should be included. The conversation between Brittle and Longhair, as described to the chief by Brittle, is also included, as is the statement from Rattled regarding the greenhouse at Longhair's and its contents.

The chief visits Judge Jumpin in his home. The chief perceives a strong odor of an alcoholic beverage emanating from the judge and observes him to be swaying slightly when he answers the door.

Judge Jumpin reads the affidavit along with the accompanying documents. Judge Jumpin, unbeknownst to the chief, has a longstanding hatred of Longhair, the result of Longhair's legendary dexterity with a polo mallet, which resulted in a disputed goal and a loss by Jumpin's polo club.

Judge Jumpin signs the warrant, which permits the search of "the residence at 12 Twit Street, Radishville and a greenhouse adjacent thereto on the premises." The warrant also permits the seizure of "marijuana plants and any items used in their cultivation." Judge Jumpin checks the boxes permitting nighttime execution and a "no-knock" entry, mindful of police safety due to the polo mallet skills of Longhair.

As the Farmer's Market gets going, Chief Magpie, with other officers, approaches 12 Twit Drive. The chief goes to the front door, knocks and hears no reply. The chief shoulders in the door a few seconds later. The chief enters the kitchen and takes the pile of plastic bag boxes. He also observes,

lying on the kitchen floor, the body of Brittle. The apparent cause of death is blunt trauma to the head resulting from an injury inflicted using a polo mallet lying beside the body as a weapon. The mallet is covered in blood. The mallet, marijuana plants and the plastic bags are quickly seized.

Chief Magpie radios fellow Radishville officers as follows: "Now hear this. Longhair is a murderer! Arrest the evildoer." Officer Runnymede and Detective Drill head, with appropriate haste, to the Common and approach Longhair's vegetable stand. Longhair runs from the stand and into the nearby house of Parson Periwinkle, near the church. The police surround the house and, after about thirty minutes, ascertain that Longhair is unarmed and alone. The police then enter the Periwinkle residence and arrest Longhair. Once inside, they observe a small glass container which holds about ten endangered tree frogs. The police take the container and the frogs.

A search of the vegetables at the Longhair fruit and vegetable stand on the common reveals little bags of marijuana neatly tucked in the tomatoes and lettuce.

Longhair is charged as follows: Illegal Cultivation of Marijuana; Possession with Intent to Sell Marijuana(at the stand); Murder(Brittle).

Rattled is charged as follows: Failure to Stop for a Police Officer; Possession of a Stolen Gun; Armed Robbery.

Parson Periwinkle is charged as follows: Wildlife Law Violation (possession of the tree frogs)

PLEASE DISCUSS WHAT, IF ANY, ISSUES ARE RAISED. WHAT EVIDENCE WILL BE AVAILABLE OR EXCLUDED AS AGAINST THE PARTIES AS A RESULT? WHY OR WHY NOT?

REMEMBER TO ANSWER THE QUESTION USING FEDERAL LAW WITH MASSACHUSETTS LAW FOR CONTRAST OR COMPARISON. REMEMBER "IRAC."

CRIMINAL PROCEDURE EXAMINATION

INSTRUCTOR: H. JOHNSON

SPRING 2013

GENERAL INSTRUCTIONS:

The exam is lengthy. Take note of the point value of each section when budgeting your time. The basis of your analysis should be Federal law with Massachusetts law included for contrast or comparison.

IDENTIFY YOURSELF BY STUDENT IDENTIFICATION NUMBER ONLY.

RELAX AND GOOD LUCK

SECTION I: 20 POINTS

ANSWER **ONE** OF TWO QUESTIONS. BE COMPLETE IN YOUR ANALYSIS BUT CONCISE. DO NOT NEGLECT TO NOTE THE ISSUES, DISCUSS THE RULES OF LAW, ANALYZING THE FACTS AND CONCLUDING ON THE SPECIFIC QUESTIONS.

SECTION II: 10 POINTS

ANSWER **ONE** OF THREE QUESTIONS. BE CONCISE. YOU MAY, IF YOU WISH, USE OUTLINE FORM WHERE APPROPRIATE TO ANSWER, BUT DO NOT NEGLECT TO NOTE THE ISSUES, DISCUSS THE RULES OF LAW, ANALYZING THE FACTS AND CONCLUDING ON THE SPECIFIC QUESTIONS.

SECTION III: 70 POINTS

FOLLOW THE FACT PATTERN ISOLATING THE ISSUES, DISCUSSING THE APPLICABLE FACTS, IDENTIFYING THE LAW AND ANALYZING TO SUPPORT YOUR CONCLUSIONS IN THIS CLASSIC ISSUE HYPOTHETICAL. ANSWER IN ESSAY FORM.

PART I: ANSWER ONE OF TWO

1. Ben has been arrested for robbery. Ben is arraigned on the charge and is appointed an attorney, Slackjaw. Ben is being transported, without Slackjaw, to the Rooster County Jail for holding. One of the guards, Newsbag, says to Ben, "The money that was stolen from that guy in the robbery was a donation to the Rooster County Orphanage. I hope you're happy." Ben says, "I didn't know. I would not have done it."

Once at the jail, Ben is placed with five other people in a six person lineup by Detective Dill. The witness, Peepers, despite the fact that all of the lineup participants look pretty much the same and there is no suggestiveness as to the identity of the robber, immediately picks out Ben as the robber.

Meanwhile, Detective Still shows a six photograph array (lineup) to another witness, Hawkeye. The array of photos depicts very similar persons and there is no suggestiveness. Hawkeye, too, immediately identifies Ben as the robber.

Will the words of Ben be admitted at trial? Why or why not?

Will the result of the in-person lineup be admitted at trial? Why or why not?

Will the result of the photographic array identification procedure be admitted trial?
Why or why not?

2. Earwig, the local state police dispatcher, receives a telephone call. The caller, a male, states, "There is a red sports car, license plate iii, driving down Mill Street in Tough Town. The passenger has a gun." The caller hangs up. Earwig sends out a call over the radio which is heard by Trooper Tailspin. Tailspin spies the car and puts on the blue lights. The car immediately speeds up and Trooper Tailspin pursues it. While in pursuit, Tailspin observes a handgun being thrown by the passenger from the vehicle. The vehicle ultimately stops, the handgun is retrieved and the passenger, Pitcher, is charged with unlawful handgun possession.

Will the gun be admissible against Pitcher? Why or why not? How about in Massachusetts? Why or why not?

PART II: ANSWER ONE OF THREE

1. The Sunshine City Police Department is concerned with street gang activity, including weapons and drug possession and sales, particularly in the Northtown neighborhood. Chief Warmup establishes a "roadblock" on Smoothie Street, the main thoroughfare through Northtown.

Chief Warmup has established written guidelines instructing that all cars be stopped and that a leaflet outlining the perils of gang membership be handed to each driver. If officers observe drugs or weapons or anyone in the vehicle is wearing gang "colors" the vehicle is to be directed to a side area for further questioning in the case of "colors" or a full search in the case of weapon or drug sightings.

Your client, Hapless, is stopped at the roadblock. Hapless is returning from his cousin Ingmar's wedding and had imbibed in a number of celebratory toasts. Hapless is removed from the car and, following a singularly poor performance on field sobriety tests, is arrested for driving under the influence of alcoholic beverages.

What will your argument be on behalf of Hapless regarding the initial stop at the roadblock? What is the rationale? Will you succeed? Why or why not?

2. Barney, wearing a cap, scarf flying to the rear, drives his convertible sports car past a "speed trap." Barney is traveling at eighty-six miles per hour in a posted speed limit zone of fifty-five. Trooper Claw puts on the blue lights and "stops" Barney

Claw orders Barney to get out of the car. A small white package falls to the ground as Barney gets out which Trooper Claw recognizes as cocaine. Claw arrests Barney.

Will the cocaine be admissible against Barney? Why or why not? How about in Massachusetts? Why or why not?

3. Dreadnought is in lawful custody for a burglary charge. He is also under investigation for a robbery in which a note was handed a teller in a bank by a masked robber who also said, "Put all the money in the bag or you're a dead man." The police want to ask Dreadnought to write out a similar note and to speak the same words as the robber into a recording device.

Must the police give Dreadnought *Miranda* warnings? Why or why not?

PART III

Cliff University, a renowned institute of higher learning, sits atop Cliff Hill, on the outskirts of the small, quaint, New England style town of Cliffville, which is located in Confusion, the fifty-first state in the Union. The students, who are from all over the world, have one thing in common: the size of their parents' bank accounts. Cliff U. is touted as prestigious, but the fact is that the university will accept anyone who can pay the tuition which accounts for the high percentage of dunderheads in the student body.

President Pomp runs the place, with the able assistance of his wife Pam. Pomp appears to live rather too well, even considering his inflated salary. His residence, Hedge House, is filled with antiques, artwork, china and silver. Once a month he throws a party for the trustees that rivals Newport's Gilded Age. Students Sales, Sue and Monty assist at the parties and keep the residence clean. All this has caught the attention of Chief Pipeline of the local Cliffville Police Department. He feels a duty to investigate.

Chief Pipeline enlists a longtime board of trustee member, Sputtering Sam, who is an amateur antiques buff, to assist. Sputtering Sam, an old friend of the chief's, had assisted him by providing information in the past which led to the conviction of local polo club officials in a horse-doping investigation. Pipeline says, "SS, old bean, the next time you are over at Hedge House take a look around and let me know how much all that stuff is worth. I'd love to know what records Pomp keeps."

At the next trustee party, Sputtering Sam is greeted at the door by Pam. Pam says, "Come in Sput, our house is your home." Sputtering Sam surveys the living and dining rooms and estimates the value of the china, silver, antiques and artwork, including a landscape by the noted artist Renwood, to be in excess of three-million dollars. Sputtering Sam then slips into Pomp's study and reviews papers on his desk. Bank account reports indicate that Pomp had been withdrawing large sums from the college and depositing them in his own account. Sputtering Sam meets the chief under the cover of darkness on the local town common and tells him all.

The next day, Chief Pipeline calls in Detectives Stopper and Geezer. The chief says, "I want more information on President Pomp. Arrest some of the kids who work in Hedge House. We'll see if they talk."

Detective Stopper travels to Dullard House, an off campus residence not affiliated with the University. Stopper brings his drug sniffing dog, Snout, along. Stopper and Snout enter the lobby and Stopper asks the clerk if they can search Room 819, where Sales and Sue reside. Clem, the clerk, says, "Sure, search the whole place." Stopper and Snout ride the elevator from the lobby to the eighth floor. Snout sniffs outside Room 819 and raises his paw signaling that drugs are in the room. Detective Stopper then gets on the floor and peers under the door. He sees what he thinks might be a marijuana leaf on the floor. He then, using a micro-camera on the end of a wire, slips the camera under the door. He then sees a number of marijuana plants via the camera viewer. He withdraws the camera. It is a crime to possess marijuana in Confusion.

Detective Stopper knocks on the door and says, "Police. I'd like to talk to you." Sales opens the door, slightly. Stopper says, "Sales, I know you've got marijuana in there. Let me in. Sales says, "Come in." As Stopper is about to enter, Sue emerges from the bedroom and exclaims, "You can't come in." Stopper enters and seizes the marijuana and also some cocaine found in Sue's room. He arrests the two.

Detective Stopper interviews Sue upon arrival at the police station. Stopper says, "Sue, you don't have to say a word, but if you do it could be bad for you. If you want a lawyer you can get one and if you can't afford one, we'll figure something out to get you one. You okay with all that?" Sue says nothing. Stopper says, "We're after Pomp." Sue responds, "Pomp's been stealing the college blind for years. We all know it. He tucks cash in hollowed-out books in his study. He gave me the cocaine, too." Sue is placed in a cell.

Meanwhile, at that instant, Monty is driving his red pickup truck down Main Street. Officer Geezer, with the assistance of his radar gun, establishes the truck's speed as thirty-two miles per hour in a posted thirty miles per hour zone. Geezer puts on the blue lights of his cruiser and the pickup pulls over. Geezer approaches the truck and asks for a license and registration. Monty says, "Here's my reg., but my license is suspended." Geezer orders Monty from the truck and places handcuffs on him. Geezer places Monty against the cruiser and searches the passenger compartment of the truck. Geezer finds a gun, with its serial number filed off, under the passenger seat. It is a felony to possess a gun with a defaced serial number. Monty, at that moment, takes flight. Monty runs into his nearby house, breaking through the door, and Geezer follows. Geezer apprehends Monty in the living room. He observes three additional guns, similarly defaced, on the coffee table. He takes the guns. Geezer says, "Monty, any other guns?" Monty replies, "The closet." A search of the closet reveals a sawed off

shotgun, the possession of which is also a felony. Geezer, Monty with him, then goes through the house and finds another sawed-off shotgun in the upstairs bathroom.

Monty is taken to the police station and placed in an interrogation room. After being given his *Miranda* warnings, verbatim, Monty indicates he understands them. Monty's lawyer, Jabber, at that instant, is outside in the lobby and asks to see Monty. The desk officer ignores him. Monty, a few moments later says, "I might need a lawyer." Officer Geezer responds, "Why?" Monty then admits all the guns are his. After another moment, Monty says, "I want my lawyer." Geezer says, "How about President Pomp?" Monty says, "That, too! Ya, I helped him steal the money from the school."

Chief Pipeline, who has all the information, prepares a search warrant application and affidavit for Hedge House, which he describes in detail but mistakenly lists the address as 4, not 3, Waddle Lane. Pipeline includes the statements of Sputtering Sam describing his observations of Hedge House's valuable contents and the estimates of their worth. Pipeline does not include the observations of the records in the study or the entry into that part of the house. Chief Pipeline does not include Sputtering Sam's identity but describes him as a confidential informant. He also includes Sam's role in the horse-doping case. He describes Sam as "an antiques expert." Chief Pipeline includes the statements of Sue and Monty as well, naming them. The proposed warrant seeks permission to take "money and anything else that could be connected to the theft of money from Cliff University." Chief Pipeline reads over the documents and believes that there is probable cause to search Hedge House presented. Chief Pipeline also thinks that some cocaine will probably be found in Hedge House.

Chief Pipeline visits Judge Jumpin, the local judge. Judge Jumpin reads the affidavit and attendant documents and is doubtful, but has harbored a grudge against Pomp for many years as a result of a disputed croquet score. Judge Jumpin signs the warrant and checks the boxes permitting nighttime execution and no-knock entry.

Chief Pipeline, Detective Stopper and Officer Geezer then arrive at Hedge House. They break down the door. They observe Pam, dead on the floor, a knife protruding from her abdomen. President Pomp is placed in handcuffs. Pomp says, "I was directed to kill Pam by my neighbor's parrot, so I did so." A search of the residence yields large sums of cash, bank records and a number of gold coins, which were later determined to be stolen from the Cliff University Museum. In addition, a large amount of cocaine is found tucked in a drawer in Pomp's study.

The charges are as follows

Sales: Cultivating Marijuana, Possession of Marijuana.

Sue: Cultivating Marijuana, Possession of Marijuana, Possession of Cocaine.

Monty: Possession of a Handgun, Serial Number Defaced (4 Counts), Possession of a Sawed-Off Shotgun (2 Counts), Theft.

Pomp: Murder, Theft, Receiving Stole Goods (Gold Coins), Distribution of Cocaine (to Sue), Possession of Cocaine with Intent to Distribute (in Hedge House).

PLEASE DISCUSS WHAT, IF ANY, ISSUES ARE RAISED. WHAT EVIDENCE WIL BE AVAILABLE OR EXCLUDED AS AGAINST THE PARTIES AS A RESULT? WHY OR WHY NOT?

REMEMBER TO ANSWER THE QUESTION USING FEDERAL LAW WITH MASSACHUSETTS LAW FOR CONTRAST OR COMPARISON. REMEMBER "IRAC."

CRIMINAL PROCEDURE EXAMINATION

INSTRUCTOR: H. JOHNSON

SPRING 2014

GENERAL INSTRUCTIONS:

The exam is lengthy. Take note of the point value of each section when budgeting your time. The basis of your analysis should be Federal law with Massachusetts law included for contrast or comparison.

IDENTIFY YOURSELF BY STUDENT IDENTIFICATION NUMBER ONLY.

RELAX AND GOOD LUCK

SECTION I: 20 POINTS

ANSWER TWO OF FOUR QUESTIONS. BE COMPLETE IN YOUR ANALYSIS BUT CONCISE. DO NOT NEGLECT TO NOTE THE ISSUES, DISCUSS THE RULE OF LAW, ANALYZING THE FACTS AND CONCLUDING ON THE SPECIFIC QUESTIONS RAISED. ALSO, IF YOU SELECT QUESTION 3, DO NOT NEGLECT TO ANSWER THE SPECIFIC QUESTIONS ASKED AND TO DETAIL THE MAJOR POINTS OF THE COURT'S REASONING.

SECTION II: 80 POINTS

FOLLOW THE FACT PATTERN ISOLATING THE ISSUES, DISCUSSING THE APPLICABLE FACTS, IDENTIFYING THE LAW, ANALYZING THE ARGUMENTS AND SUPPORTING YOUR CONCLUSIONS IN THIS CLASSIC ISSUE HYPOTHETICAL. ANSWER IN ESSAY FORM.

PART I: ANSWER TWO OF FOUR

1. Trooper Jacked, a veteran of the Winterbottom State Police Department, thinks a local tough, Benbow, may be involved in illegal gun running. He has heard rumors to such effect. Jacked spies Benbow driving his cherry-red, Italian sports car. The vehicle, Jacked observes, has a taillight out, a traffic violation in Winterbottom. Trooper Jacked puts on his blue lights and Benbow immediately pulls his vehicle to a stop. Trooper Jacked orders Benbow from the vehicle and, as he gets out, an illegal handgun falls from his waistband. Jacked picks up the gun and charges Benbow with "Driving with a Defective Taillight" and "Possession of an Illegal Handgun."

A motion to suppress the motor vehicle stop and the handgun is filed by Benbow's lawyer. Will it succeed? Why or why not? In Massachusetts? Why or why not?

2. Officer Pratfall, a member of the Washington D.C. police force, is walking a beat in a leafy, trendy neighborhood of brownstones. He looks, from the sidewalk, through a window and sees into one of the residences. He observes what appears to be a woman striking a man with a hatchet. "Blood" is spurting from the man's forehead.

Officer Pratfall runs to the door, breaks it down and enters the room in question where he is met by two stunned occupants eyeing him quizzically.

Bob and Brenda Blabber, two well-known actors, explain that they had been rehearsing a scene from their upcoming play, "Give 'em the Axe," scheduled to open within days. The "blood" is simply red liquid, continually spurting from a flesh colored bag over Bob's eye as the discussion proceeds.

Officer Pratfall, taken aback, starts to leave the premises when he observes a razor blade and a quantity of white powder which he, based on his training and experience, thinks is cocaine. He takes the items and the Blabbers are later charged with "Possession of Cocaine."

The Blabbers' lawyers file motions to suppress the drugs in the Washington D.C. Superior Court. Will the motions be successful? Why or why not? (note: Since the hypothetical takes place in the District of Columbia discuss only Federal law.)

3. Discuss *Dickerson v. United States*, 530 U.S. 428 (2000).

What was the substance of the legislation in question?

What did the court rule with respect to the legislation's constitutionality?

What was the court's reasoning?

4. During the course of a sleepy evening in the rural town of Bumpkinville in the state of Dread, the fifty first state in the Union, Sergeant Storm sits sleepily before his computer screen at the Bumpkinville Police Department.

At precisely 8:19 P.M., Cackles enters the police station and exclaims, "I need to get something off my chest." Sergeant Storm, stunned, immediately picks up his "Miranda card" and reads the warnings verbatim and completely to Cackles. Cackles says, "I understand, but I killed Martin and buried him under the old fishing lodge. He's up there stiff as a mackerel." The police later find the body.

Storm arrests Cackles and Cackles is ultimately charged with Murder.

At the motion to suppress hearing, the sole mental health professional, Doctor Yes, testifies that Cackles suffered from delusions and that at the time of his confession he heard the voice of an angel in his head urging him to tell the police everything. He had been actively psychotic for close to a month preceding the statement.

Will the confession be admissible at trial against Cackles? Why or why not? What are the issues and standards? How about in Massachusetts? Why or why not? What are the issues and standards?

PART II

The sleepy little town of Radishville in the state of Confusion, the fifty-first state in the Union, is nothing if not picturesque. The lush, green town common is bordered by the obligatory white-steepled church set amidst beautifully maintained colonial era homes.

But, sleepy Radishville shines brightest on summer Saturday afternoons. It is then that the Radishville Common comes alive with the patrons and vendors of the Farmer's Market. Canvas canopies magically appear and shelter straw-hat sporting sellers who show each beet or tomato in a matter reminiscent of the display of the British Crown Jewels at the Tower of London. The townsfolk circle, like wasps, eyeing veggies, sipping cider and chomping on hot dogs. All in all, an innocuous day which leaves the participants in a trance-like bank of blissful, nostalgic fog.

The local police chief, Chief Magpie, however, sees trouble mixed in with the veggies. One of the permitted booths is operated by Longhair, a person who the chief knows from his past troubles with the law, including a conviction for marijuana sales. In addition, Longhair's customers, the chief himself has observed on a number of Saturdays, comprise a who's who of local, known drug users. The chief has also noticed that following their "vegetable" purchases the buyers often disappear and then reappear on the Common a little later. They often appear, on reappearance, to be high.

Chief Magpie devises a plan. The chief speaks to a friend, Wingman. Wingman is a model airplane enthusiast who spends each weekend flying his small, remote-controlled airplane above his backyard to the considerable annoyance of his neighbors. Wingman agrees to attach a little security-type camera, commonly used in "baby-monitors," to his "plane" and to fly it over the Longhair property on the outskirts of Radishville to look for any evidence of marijuana cultivation.

The flight is a success. The camera transmits the view from above to a computer screen. Observed, through a small hole in the roof of the greenhouse, is a marijuana patch within the greenhouse. The model airplane flight took it to about one foot above the greenhouse during this observation. Wingman then circles the property and flies the model airplane through the open door of the greenhouse and gets a close-up view of the marijuana plants. The plane then is flown out the same way.

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Brittle, the same day, relates the conversation to the chief and describes his observations of the plastic bags. Chief Magpie, based on training and experience, believes the plastic bags are a type commonly used to package illegal marijuana for sale.

The chief decides to act. He organizes a "Checkpoint" on Main Street for the following evening, Wednesday. The scene had been the location of a tragic accident the previous week in which Farmer Phil was killed while driving his tractor, regrettably, into a tree. The evidence from the tests at autopsy revealed that Farmer Phil was intoxicated and had marijuana in his bloodstream at the time of death. The officers at the checkpoint, the chief wrote in the guidelines, are to stop all vehicles and ask the drivers if they know where Farmer Phil might have gotten marijuana. The officers are then to hand out

a leaflet describing the ills of illegal drug use. Absent any sign of illegal activity, the drivers are then to be sent on their way.

The beginning of the roadblock goes off without a hitch. About an hour in, though, the police observe a van approach their position and accelerate through the roadblock. Officer Runnymede puts on the blue lights and gives chase in her cruiser. Officer Runnymede observes the driver of the van, Rattled, throw a handgun from the window. After about a mile, Rattled stops the van. Officer Runnymede arrests Rattled for "Failure to Stop for a Police Officer" and places him in the cruiser. "Failure to Stop for a Police Officer" carries a maximum fine of one-hundred dollars. Officer Runnymede then goes back to the approximate area of the gun toss and retrieves the gun. She then returns to the van and conducts a thorough search of it. Inside she finds an orange baseball cap with a depiction of a deer on the front of it. Officer Runnymede immediately recognizes that the baseball cap fits the description of one worn by the knife-wielding robber of the Radishville National Bank. The robbery had taken place during the previous week. She takes the hat and the van is towed to the police station for inventorying.

Rattled is also taken to the police station. There he is interviewed by Detective Drill. Detective Drill says, "Rattled, you don't need to talk, but if you do it could go wrong for you. You can get yourself a lawyer if you want and if you can't afford one something will get done that way. You understand?" Rattled then grunts, "Um."

Detective Drill then says, "The bank job with the knife." Rattled says nothing. After a pause, Rattled says, "I think I need my lawyer." Drill then says, "The gun." Rattled then nods in the affirmative. Following the interview the police learn that the tossed gun was stolen. At that point, they add "Possession of a Stolen Gun" as a charge.

The following day Rattled is taken before Judge Jumpin and arraigned on the "Failure to Stop for a Police Officer" and the "Possession of a Stolen Gun" charges. Rattled is appointed an attorney, Mumbler. Rattled is held on a twenty-thousand dollar cash bail, though he had no previous record and is a lifelong resident of Radishville.

During transportation to the jail, Detective Drill says, "That teller was pretty shaken up." Rattled says, "Ya, I felt bad about it. But, I needed the money to buy marijuana from Longhair. He's got a greenhouse full of the stuff."

At that very instant, Officer Runnymede approaches Eagle-Eye, at the bank who was working as the teller at the time of the robbery and was the victim. Eagle-Eye, besides his work as a bank teller, has established a nationwide reputation for the ability to recall every detail of every person he meets. Officer Runnymede shows Eagle-Eye Rattled's booking photo. Eagle-Eye immediately exclaims, "By Jove, I am one-hundred percent certain that that is the person who robbed me. Notice the slight downward facial wrinkle beneath the right cheek and the distinctive eyebrow shape."

Chief Magpie prepares an affidavit. The affidavit sets out Brittle's conversation with Longhair and his observations at 12 Twit Drive. It also includes the chief's own observations of the customers of Longhair at the Farmer's Market, including their later states of intoxication.

Brittle is not named in the affidavit, but only described as a "confidential-reliable informant who has on one previous occasion given this affiant information which led to the seizure of an endangered tree frog, the species of which is included on the Confusion State Endangered Species List."

The chief includes, in his affidavit, the model airplane flight information, but only those camera recordings from outside the greenhouse. The chief did not believe the internal greenhouse flight should be included. The conversation between Brittle and Longhair, as described to the chief by Brittle, is also included, as is the statement from Rattled regarding the greenhouse at Longhair's and its contents.

The chief visits Judge Jumpin in his home. The chief perceives a strong odor of an alcoholic beverage emanating from the judge and observes him to be swaying slightly when he answers the door.

Judge Jumpin reads the affidavit along with the accompanying documents. Judge Jumpin, unbeknownst to the chief, has a longstanding hatred of Longhair, the result of Longhair's legendary dexterity with a polo mallet, which resulted in a disputed goal and a loss by Jumpin's polo club.

Judge Jumpin signs the warrant, which permits the search of "the residence at 12 Twit Street, Radishville and a greenhouse adjacent thereto on the premises." The warrant also permits the seizure of "marijuana plants and any items used in their cultivation." Judge Jumpin checks the boxes permitting nighttime execution and a "no-knock" entry, mindful of police safety due to the polo mallet skills of Longhair.

As the Farmer's Market gets going, Chief Magpie, with other officers, approaches 12 Twit Drive. The chief goes to the front door, knocks and hears no reply. The chief shoulders in the door a few seconds later. The chief enters the kitchen and takes the pile of plastic bag boxes. He also observes,

lying on the kitchen floor, the body of Brittle. The apparent cause of death is blunt trauma to the head resulting from an injury inflicted using a polo mallet lying beside the body as a weapon. The mallet is covered in blood. The mallet, marijuana plants and the plastic bags are quickly seized.

Chief Magpie radios fellow Radishville officers as follows: "Now hear this. Longhair is a murderer! Arrest the evildoer." Officer Runnymede and Detective Drill head, with appropriate haste, to the Common and approach Longhair's vegetable stand. Longhair runs from the stand and into the nearby house of Parson Periwinkle, near the church. The police surround the house and, after about thirty minutes, ascertain that Longhair is unarmed and alone. The police then enter the Periwinkle residence and arrest Longhair. Once inside, they observe a small glass container which holds about ten endangered tree frogs. The police take the container and the frogs.

A search of the vegetables at the Longhair fruit and vegetable stand on the common reveals little bags of marijuana neatly tucked in the tomatoes and lettuce.

Longhair is charged as follows: Illegal Cultivation of Marijuana; Possession with Intent to Sell Marijuana(at the stand); Murder(Brittle).

Rattled is charged as follows: Failure to Stop for a Police Officer; Possession of a Stolen Gun; Armed Robbery.

Parson Periwinkle is charged as follows: Wildlife Law Violation (possession of the tree frogs)

PLEASE DISCUSS WHAT, IF ANY, ISSUES ARE RAISED. WHAT EVIDENCE WILL BE AVAILABLE OR EXCLUDED AS AGAINST THE PARTIES AS A RESULT? WHY OR WHY NOT?

REMEMBER TO ANSWER THE QUESTION USING FEDERAL LAW WITH MASSACHUSETTS LAW FOR CONTRAST OR COMPARISON. REMEMBER "IRAC."

CRIMINAL PROCEDURE EXAMINATION

INSTRUCTOR: H. JOHNSON

SPRING 2013

GENERAL INSTRUCTIONS:

The exam is lengthy. Take note of the point value of each section when budgeting your time. The basis of your analysis should be Federal law with Massachusetts law included for contrast or comparison.

IDENTIFY YOURSELF BY STUDENT IDENTIFICATION NUMBER ONLY.

RELAX AND GOOD LUCK

SECTION I: 20 POINTS

ANSWER ONE OF TWO QUESTIONS. BE COMPLETE IN YOUR ANALYSIS BUT CONCISE. DO NOT NEGLECT TO NOTE THE ISSUES, DISCUSS THE RULES OF LAW, ANALYZING THE FACTS AND CONCLUDING ON THE SPECIFIC QUESTIONS.

SECTION II: 10 POINTS

ANSWER ONE OF THREE QUESTIONS. BE CONCISE. YOU MAY, IF YOU WISH, USE OUTLINE FORM WHERE APPROPRIATE TO ANSWER, BUT DO NOT NEGLECT TO NOTE THE ISSUES, DISCUSS THE RULES OF LAW, ANALYZING THE FACTS AND CONCLUDING ON THE SPECIFIC QUESTIONS.

SECTION III: 70 POINTS

FOLLOW THE FACT PATTERN ISOLATING THE ISSUES, DISCUSSING THE APPLICABLE FACTS, IDENTIFYING THE LAW AND ANALYZING TO SUPPORT YOUR CONCLUSIONS IN THIS CLASSIC ISSUE HYPOTHETICAL. ANSWER IN ESSAY FORM.

PART I: ANSWER ONE OF TWO

1. Ben has been arrested for robbery. Ben is arraigned on the charge and is appointed an attorney, Slackjaw. Ben is being transported, without Slackjaw, to the Rooster County Jail for holding. One of the guards, Newsbag, says to Ben, "The money that was stolen from that guy in the robbery was a donation to the Rooster County Orphanage. I hope you're happy." Ben says, "I didn't know. I would not have done it."

Once at the jail, Ben is placed with five other people in a six person lineup by Detective Dill. The witness, Peepers, despite the fact that all of the lineup participants look pretty much the same and there is no suggestiveness as to the identity of the robber, immediately picks out Ben as the robber.

Meanwhile, Detective Still shows a six photograph array (lineup) to another witness, Hawkeye. The array of photos depicts very similar persons and there is no suggestiveness. Hawkeye, too, immediately identifies Ben as the robber.

Will the words of Ben be admitted at trial? Why or why not?

Will the result of the in-person lineup be admitted at trial? Why or why not?

Will the result of the photographic array identification procedure be admitted trial?
Why or why not?

2. Earwig, the local state police dispatcher, receives a telephone call. The caller, a male, states, "There is a red sports car, license plate iii, driving down Mill Street in Tough Town. The passenger has a gun." The caller hangs up. Earwig sends out a call over the radio which is heard by Trooper Tailspin. Tailspin spies the car and puts on the blue lights. The car immediately speeds up and Trooper Tailspin pursues it. While in pursuit, Tailspin observes a handgun being thrown by the passenger from the vehicle. The vehicle ultimately stops, the handgun is retrieved and the passenger, Pitcher, is charged with unlawful handgun possession.

Will the gun be admissible against Pitcher? Why or why not? How about in Massachusetts? Why or why not?

PART II: ANSWER ONE OF THREE

1. The Sunshine City Police Department is concerned with street gang activity, including weapons and drug possession and sales, particularly in the Northtown neighborhood. Chief Warmup establishes a "roadblock" on Smoothie Street, the main thoroughfare through Northtown.

Chief Warmup has established written guidelines instructing that all cars be stopped and that a leaflet outlining the perils of gang membership be handed to each driver. If officers observe drugs or weapons or anyone in the vehicle is wearing gang "colors" the vehicle is to be directed to a side area for further questioning in the case of "colors" or a full search in the case of weapon or drug sightings.

Your client, Hapless, is stopped at the roadblock. Hapless is returning from his cousin Ingmar's wedding and had imbibed in a number of celebratory toasts. Hapless is removed from the car and, following a singularly poor performance on field sobriety tests, is arrested for driving under the influence of alcoholic beverages.

What will your argument be on behalf of Hapless regarding the initial stop at the roadblock? What is the rationale? Will you succeed? Why or why not?

2. Barney, wearing a cap, scarf flying to the rear, drives his convertible sports car past a "speed trap." Barney is traveling at eighty-six miles per hour in a posted speed limit zone of fifty-five. Trooper Claw puts on the blue lights and "stops" Barney

Claw orders Barney to get out of the car. A small white package falls to the ground as Barney gets out which Trooper Claw recognizes as cocaine. Claw arrests Barney.

Will the cocaine be admissible against Barney? Why or why not? How about in Massachusetts? Why or why not?

3. Dreadnought is in lawful custody for a burglary charge. He is also under investigation for a robbery in which a note was handed a teller in a bank by a masked robber who also said, "Put all the money in the bag or you're a dead man." The police want to ask Dreadnought to write out a similar note and to speak the same words as the robber into a recording device.

Must the police give Dreadnought *Miranda* warnings? Why or why not?

PART III

Cliff University, a renowned institute of higher learning, sits atop Cliff Hill, on the outskirts of the small, quaint, New England style town of Cliffville, which is located in Confusion, the fifty-first state in the Union. The students, who are from all over the world, have one thing in common: the size of their parents' bank accounts. Cliff U. is touted as prestigious, but the fact is that the university will accept anyone who can pay the tuition which accounts for the high percentage of dunderheads in the student body.

President Pomp runs the place, with the able assistance of his wife Pam. Pomp appears to live rather too well, even considering his inflated salary. His residence, Hedge House, is filled with antiques, artwork, china and silver. Once a month he throws a party for the trustees that rivals Newport's Gilded Age. Students Sales, Sue and Monty assist at the parties and keep the residence clean. All this has caught the attention of Chief Pipeline of the local Cliffville Police Department. He feels a duty to investigate.

Chief Pipeline enlists a longtime board of trustee member, Sputtering Sam, who is an amateur antiques buff, to assist. Sputtering Sam, an old friend of the chief's, had assisted him by providing information in the past which led to the conviction of local polo club officials in a horse-doping investigation. Pipeline says, "SS, old bean, the next time you are over at Hedge House take a look around and let me know how much all that stuff is worth. I'd love to know what records Pomp keeps."

At the next trustee party, Sputtering Sam is greeted at the door by Pam. Pam says, "Come in Sput, our house is your home." Sputtering Sam surveys the living and dining rooms and estimates the value of the china, silver, antiques and artwork, including a landscape by the noted artist Renwood, to be in excess of three-million dollars. Sputtering Sam then slips into Pomp's study and reviews papers on his desk. Bank account reports indicate that Pomp had been withdrawing large sums from the college and depositing them in his own account. Sputtering Sam meets the chief under the cover of darkness on the local town common and tells him all.

The next day, Chief Pipeline calls in Detectives Stopper and Geezer. The chief says, "I want more information on President Pomp. Arrest some of the kids who work in Hedge House.- We'll see if they talk."

Detective Stopper travels to Dullard House, an off campus residence not affiliated with the University. Stopper brings his drug sniffing dog, Snout, along. Stopper and Snout enter the lobby and Stopper asks the clerk if they can search Room 819, where Sales and Sue reside. Clem, the clerk, says, "Sure, search the whole place." Stopper and Snout ride the elevator from the lobby to the eighth floor. Snout sniffs outside Room 819 and raises his paw signaling that drugs are in the room. Detective Stopper then gets on the floor and peers under the door. He sees what he thinks might be a marijuana leaf on the floor. He then, using a micro-camera on the end of a wire, slips the camera under the door. He then sees a number of marijuana plants via the camera viewer. He withdraws the camera. It is a crime to possess marijuana in Confusion.

Detective Stopper knocks on the door and says, "Police. I'd like to talk to you." Sales opens the door, slightly. Stopper says, "Sales, I know you've got marijuana in there. Let me in. Sales says, "Come in." As Stopper is about to enter, Sue emerges from the bedroom and exclaims, "You can't come in." Stopper enters and seizes the marijuana and also some cocaine found in Sue's room. He arrests the two.

Detective Stopper interviews Sue upon arrival at the police station. Stopper says, "Sue, you don't have to say a word, but if you do it could be bad for you. If you want a lawyer you can get one and if you can't afford one, we'll figure something out to get you one. You okay with all that?" Sue says nothing. Stopper says, "We're after Pomp." Sue responds, "Pomp's been stealing the college blind for years. We all know it. He tucks cash in hollowed-out books in his study. He gave me the cocaine, too." Sue is placed in a cell.

Meanwhile, at that instant, Monty is driving his red pickup truck down Main Street. Officer Geezer, with the assistance of his radar gun, establishes the truck's speed as thirty-two miles per hour in a posted thirty miles per hour zone. Geezer puts on the blue lights of his cruiser and the pickup pulls over. Geezer approaches the truck and asks for a license and registration. Monty says, "Here's my reg., but my license is suspended." Geezer orders Monty from the truck and places handcuffs on him. Geezer places Monty against the cruiser and searches the passenger compartment of the truck. Geezer finds a gun, with its serial number filed off, under the passenger seat. It is a felony to possess a gun with a defaced serial number. Monty, at that moment, takes flight. Monty runs into his nearby house, breaking through the door, and Geezer follows. Geezer apprehends Monty in the living room. He observes three additional guns, similarly defaced, on the coffee table. He takes the guns. Geezer says, "Monty, any other guns?" Monty replies, "The closet." A search of the closet reveals a sawed off

shotgun, the possession of which is also a felony. Geezer, Monty with him, then goes through the house and finds another sawed-off shotgun in the upstairs bathroom.

Monty is taken to the police station and placed in an interrogation room. After being given his *Miranda* warnings, verbatim, Monty indicates he understands them. Monty's lawyer, Jabber, at that instant, is outside in the lobby and asks to see Monty. The desk officer ignores him. Monty, a few moments later says, "I might need a lawyer." Officer Geezer responds, "Why?" Monty then admits all the guns are his. After another moment, Monty says, "I want my lawyer." Geezer says, "How about President Pomp?" Monty says, "That, too! Ya, I helped him steal the money from the school."

Chief Pipeline, who has all the information, prepares a search warrant application and affidavit for Hedge House, which he describes in detail but mistakenly lists the address as 4, not 3, Waddle Lane. Pipeline includes the statements of Sputtering Sam describing his observations of Hedge House's valuable contents and the estimates of their worth. Pipeline does not include the observations of the records in the study or the entry into that part of the house. Chief Pipeline does not include Sputtering Sam's identity but describes him as a confidential informant. He also includes Sam's role in the horse-doping case. He describes Sam as "an antiques expert." Chief Pipeline includes the statements of Sue and Monty as well, naming them. The proposed warrant seeks permission to take "money and anything else that could be connected to the theft of money from Cliff University." Chief Pipeline reads over the documents and believes that there is probable cause to search Hedge House presented. Chief Pipeline also thinks that some cocaine will probably be found in Hedge House.

Chief Pipeline visits Judge Jumpin, the local judge. Judge Jumpin reads the affidavit and attendant documents and is doubtful, but has harbored a grudge against Pomp for many years as a result of a disputed croquet score. Judge Jumpin signs the warrant and checks the boxes permitting nighttime execution and no-knock entry.

Chief Pipeline, Detective Stopper and Officer Geezer then arrive at Hedge House. They break down the door. They observe Pam, dead on the floor, a knife protruding from her abdomen. President Pomp is placed in handcuffs. Pomp says, "I was directed to kill Pam by my neighbor's parrot, so I did so." A search of the residence yields large sums of cash, bank records and a number of gold coins, which were later determined to be stolen from the Cliff University Museum. In addition, a large amount of cocaine is found tucked in a drawer in Pomp's study.

The charges are as follows

Sales: Cultivating Marijuana, Possession of Marijuana.

Sue: Cultivating Marijuana, Possession of Marijuana, Possession of Cocaine.

Monty: Possession of a Handgun, Serial Number Defaced (4 Counts), Possession of a Sawed-Off Shotgun (2 Counts), Theft.

Pomp: Murder, Theft, Receiving Stole Goods (Gold Coins), Distribution of Cocaine (to Sue), Possession of Cocaine with Intent to Distribute (in Hedge House).

PLEASE DISCUSS WHAT, IF ANY, ISSUES ARE RAISED. WHAT EVIDENCE WILL BE AVAILABLE OR EXCLUDED AS AGAINST THE PARTIES AS A RESULT? WHY OR WHY NOT?

REMEMBER TO ANSWER THE QUESTION USING FEDERAL LAW WITH MASSACHUSETTS LAW FOR CONTRAST OR COMPARISON. REMEMBER "IRAC."

CRIMINAL PROCEDURE EXAMINATION
INSTRUCTOR: Harold Johnson
Spring 2008

GENERAL INSTRUCTIONS

The exam is lengthy, particularly the hypothetical. Take note of the point value of each section when budgeting your time. The basis of your analysis should be Federal Constitutional law with Massachusetts Constitutional law included where applicable and as contrast or comparison.

IDENTIFY YOURSELF BY SOCIAL SECURITY NUMBER ONLY.

RELAX AND GOOD LUCK.

INSTRUCTIONS BY SECTION:

SECTION I: 30 POINTS

Answer **THREE OF THE 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 the classic issue hypothetical. Answer in essay form.

SECTION I

30 POINTS

ANSWER THREE OF FIVE QUESTIONS

1. Police execute a search warrant at the home of your client, Dapper Dan. They search and find drugs. Your client is charged with the possession of the drugs. Dapper has a hunch that the affiant, Detective Drippy, was untruthful in the affidavit.

Under what circumstances can the factual statements in the affidavit be challenged in a hearing? What will be the result in this case?

2. Speedy is stopped by Officer Stringent for traveling at thirty-six miles per hour in a posted thirty-five speed zone. Stringent orders the driver, Speedy, and his passenger, Dumbstruck, out of the car. Stringent searches the car and finds a handgun tucked under the passenger seat. Both Speedy and Dumbstruck are charged with possession of the handgun.

A motion to suppress is filed on behalf of each.
What will the results be Federally? How about Massachusetts law?
Discuss the standards and issues.

3. Wilbur is arraigned before Judge Jiminy on a charge of Burglary. Cam Conscience is appointed, as counsel, to represent him. Wilbur is held on high bail and remanded to the jail. While Wilbur is at the jail Detective Hampstead Heath visits him in his cell. Cam is not present.

Heath reads *Miranda* warnings to Wilbur, verbatim from a card and correctly. Wilbur indicates that he understands the warnings. Heath asks, "So, Will, did you kill Orville before the burglary?" Wilbur replies, "I think I may need to speak to Cam." Heath responds, "Tell me the truth, Will. You will feel better." Wilbur replies, "Ya, I killed him."

A motion to suppress the statement is filed by Cam on Wilbur's behalf in the murder case. Will it be successful? Why or why not?

4. Percepto, a circus performer with world renowned ability to observe and recall minute detail, is, unfortunately, approached and robbed at gun point by Bobolink. Following the attack, Percepto describes his attacker as 5'10", bushy eyebrows, a small scratch on his forehead, fair skin, brown eyes and with a small scar on his lip. Percepto also describes the attacker's clothing in detail and includes the fact that the attacker was wearing a false diamond earring. Some weeks later, police develop leads indicating that the robber was, in fact, Bobolink. Police show Percepto a photograph of Bobolink. Percepto, somewhat theatrically, exclaims, "That is my attacker. He's not so tough

without that rusty handgun. And, of course, that diamond is one fourth carat smaller than the one he sported on the day of my ordeal. But, at least that one is real.”

Bobolink is charged with the robbery and brings a motion to suppress the out of court identification.

Will the motion succeed? What are the standard and issues? Describe the differences, if any, between the Federal and Massachusetts analysis.

5. Discuss the differences in definition of seizure of the person in the context of flight under the Federal and Massachusetts Constitutions. What is the relevance of the distinction?

SECTION II
70 POINTS
ISSUE HYPOTHETICAL

Each year, as the white remains of Winter recede and the robins return and grasses green, the nation turns its attention to, of all things, horse racing.

In late April the very epicenter of the horse racing universe is the venerable Anthill Downs, located in Thoroughbred City in Confusion, the fifty-first state in the union. Anthill Downs is an antique but well maintained racetrack with steep, beautifully appointed spectator areas, a church-like spire and an absurd air of solemnity. On the last Saturday in April, well-heeled horse owners, ambitious networkers and determined partygoers compete in a valiant if vain attempt to impersonate British nobility, complete with loud blazers and outlandish headgear.

This year's race favorite is "Bigfoot," owned by the multimillionaire, Gil Bates. Another contending horse is Waltzking, the product of Johnny Strauss Farms. During raceweek, the entrants are kept in the paddock area under the watchful eyes of the private security firm, Weseeya, Inc. The head security guard, who sports an official looking uniform reminiscent of the last Russian Czars, is Paul Pompous. Pompous, a former Thoroughbred City Police captain, is concerned about a rumor of "horse doping," a vile practice which consists of the illegal drugging of horses to manipulate race results. Pompous was told by Scallywag, a local racing aficionado who had himself once been convicted of racefixing, that one of the track executives, Lill E. Putt, is running the doping operation.

Lill is provided an ornate apartment on the grounds of Anthill Downs Corporation. Pompous decides to take action. During the evening, Pompous, using his pass key, enters Lill's apartment. Pompous searches and finds, in the closet, a case of morphine, a substance used to numb equine pain and increase performance without regard to horse health. Pompous returns to his office and calls a friend on the Thoroughbred City Drug squad, Detective Goggles. Pompous tells Goggles about the rumor, stating, "I looked in the apartment and saw morphine in the closet. Ya, gotta keep me outta this, though. But, Goggles, something must be done." Goggles replies, "I'll handle it." Goggles speaks to his colleagues, Detectives Stumbles and Babbles. The head of the drug squad, Captain Crush, is also consulted and a multifaceted plan is devised.

Detective Goggles travels to Anthill Downs, climbs a tree and peers into the window of Lill's apartment with night vision binoculars. He observes Lill and another person he recognizes as Doctor Pimento, who runs a local drug clinic. Unable to lip read, Goggles climbs down from the tree, ascends the fire escape and there places a water glass against the apartment's window and presses his ear against the glass. He hears Lill say, "Doc, honey, I need another case of morphine. We'll shoot up Waltzking, he'll beat Bigfoot and we'll be rich." Goggles climbs back down the fire escape.

Detective Stumbles waits outside the Galloping Hoof Bar in Thoroughbred City. Stumbles observes Needles, a known heroin addict. Stumbles approaches Needles and

says, "Hey, Needy, how's it goin'?" Needles reaches for his left jacket pocket. Stumbles says, "Hold it." Stumbles pats the exterior of Needles' jacket and immediately feels what he thinks is a syringe. Stumbles then pats the right side of the jacket and feels the outline of a metal handgun. Stumbles removes the gun. Stumbles then reaches into the left pocket and pulls out a small tube like device filled with water, which he immediately recognizes as an ear cleaner. Needles states, "Ear ache."

Stumbles arrests Needles for the unlicensed handgun. Needles is transported to the police station. Stumbles asks Needles booking questions, parents' names, date of birth, etcetera. Stumbles then says, "Needy, you know the drill. You have the right to a mouthpiece. You can keep quiet. If you say anything, it can be used against you. If you can't afford a lawyer you'll be given one. You know?" Needles replies, "I have a lawyer, Norm Navigator. Stumbles felt it imprudent to mention that Attorney Navigator was, at that precise moment, in the foyer of the police department trying to get in to see Needles. Stumbles says, "Well, Needy, what about the gun? Needles responds, "I need the gun to get in and out of the Hoof alive. There's money all over the place in there. They're running a betting operation. The owner, Breeches, is taking all kinds of action on Bigfoot. He must be crazy, he'll never be able to pay when Bigfoot wins." Needles is placed in the cell.

Detective Stumbles confers with Captain Crush. Stumbles writes an affidavit, and at Crush's direction, takes it to the home of Moby Magistrate, a longtime friend of Crush who is due to retire the next day. Moby reviews the application and affidavit. Stumbles includes in the affidavit requesting a search warrant for the Galloping Hoof, the information received from Needles, naming him. Stumbles also includes his own observations, made coincidentally over the two previous weeks, of known gambling addicts leaving the bar with slips of paper. Moby signs the warrant, checking the nighttime execution provision and permitting a "no knock" entry as well as the search of all persons present.

Detective Stumbles, with other officers assisting, approaches the Galloping Hoof. A bouncer, Toohuge, steps in front of Stumbles. Stumbles shows Toohuge the warrant. Toohuge refuses to move and pushes Stumbles. Stumbles strikes Toohuge with his service baton in the left knee. Just as the police are about to enter, Breeches walks out the front door. Breeches is not allowed to leave and is handcuffed and brought back into the bar. A search of the bar area yields betting slips. A search of the person of Breeches yields a cell phone. Detective Stumbles looks into the contents of the cell phone and there finds text messages back and forth to Lill regarding the number of bets on Bigfoot. A bar patron, Clockwinder, is searched and a small rock of cocaine is found on his person. Evidence found at the scene and seized includes some two-hundred thousand dollars in cash, a number of bags of marijuana and a live Bengal tiger, which was kept in a second floor storage room.

Back at the station, Breeches is questioned. Following *Miranda* warnings, Breeches says, "I'm saying nothing." Stumbles says, "Breech, listen, Mrs. Breeches is in the waiting room. Her name's on the bar, too. I'd hate to see her mixed up in this." Breeches responds, "Lill. It's her show. She keeps the morphine at her apartment. She was gonna drug all the horses, except Bigfoot, so they'd out run him. She said we'd all get rich." Breeches is placed in a cell.

Following this, Detective Babbles, along with other members of the drug squad devises a plan. Coincidentally, one of the intersections near Anthill Downs has the most driving while intoxicated arrests in Thoroughbred City. The Realfast Horse Association's clubhouse is near the intersection. Lill is known to have a few glasses of wine there each night and then drive through the intersection. Babbles hurriedly constructs a "sobriety checkpoint" to take place later that evening at the intersection. The police had published the likelihood of a roadblock in the local paper, but had actually intended to establish it one day later and a block away.

Captain Reg of the motor vehicle division, in accordance with policy, begins the roadblock at ten o'clock in the evening. All vehicles are stopped and those drivers showing signs of alcohol ingestion are directed to speak to officers off to the side.

The first car approaching the roadblock is that of the former jockey, Afterburn. Afterburn sees the roadblock, stops the car before arriving at it and runs. Officer Burly tackles him. He later registers a .21, well above the legal limit, when, after refusing a breathalyzer, police, with the help of a nurse, draw blood and it is analyzed.

Later, Lill is stopped in her Mercedes. Lill, not surprisingly, smells of alcoholic beverage and is directed to the side. Babbles asks Lill to perform field sobriety tests, including asking her the date six years before her date of birth. Lill cannot remember her actual date of birth. She fails the other field tests and is arrested for driving while intoxicated. Lill's vehicle is towed. A search of the trunk yields morphine and betting slips in a number of locked containers.

Meanwhile, Detective Goggles had appeared before Moby Magistrate. Goggles applied for a search warrant and included in the affidavit the information from Pompous, whom he described as a confidential informant, regarding Pompous' secret entry into Lill's Apartment. He also included his binocular observations and his glass-listening results as well as the statement of Breeches. Moby issues a search warrant for Lill's apartment. Goggles goes to the apartment with other officers. Goggles knocks at the door and Doctor Pimento opens the door. Goggles says, "Doc what are you doing here?" Pimento replies, "I live here with Lill. Goggles responds, Doc, your girlfriend is in a heap of trouble. Want to let us in to search?" Pimento replies, "I don't think so." At that instant, Lill's adult daughter, Teeter, emerges from the living room. Teeter says, "This old coot, the good Doctor, doesn't even live here. He just stays with mom once in a while. You can search the house. Mom's up to something. Start in the closet." Goggles shows Doctor Pimento the search warrant. The police search.

The search reveals evidence of race fixing, including the morphine in the closet. Just as Goggles and the other officers are finishing the search, Thoroughbred City Police Officers assigned to the Burglary Squad break down the door. Officer Ram, the leader, tells Detective Goggles that a silent burglar alarm for the apartment rang back at the station and in accordance with policy the Burglary Squad entered forcibly to secure the apartment.

It is later learned that Teeter, herself, was only there to rearrange her mother's furniture in accordance with the principles of feng shui. Teeter had yet to finish the task.

Lill is charged with the following:
Conspiracy to commit a crime; racefixing;
Unlawful gaming;
Illegal possession of morphine;
Driving under the influence of liquor.

Doctor Pimento is charged with:
Conspiracy to commit a crime; race fixing.
Possession of morphine.

Needles is charged with illegal handgun possession.

Breeches is charged with:
Unlawful gaming;
Possession of marijuana;
Conspiracy to commit a crime; race fixing;
Possession of a member of endangered species; the tiger.

Toohuge is charged with assault and battery on a police officer.

Clockwinder is charged with cocaine possession.

Afterburn is charged with driving under the influence.

PLEASE DISCUSS WHAT, IF ANY, CONSTITUTIONAL ISSUES ARE RAISED. WHAT EVIDENCE WILL BE AVAILABLE OR EXCLUDED AS AGAINST THE PARTIES AS A RESULT? WHY OR WHY NOT?

REMEMBER, THE BASIS OF YOUR ANSWER SHOULD BE FEDERAL CONSTITUTIONAL LAW, USING MASSACHUSETTS CONSTITUTIONAL LAW AS CONTRAST.

REMEMBER 'IRAAC.'

CRIMINAL PROCEDURE EXAMINATION
INSTRUCTOR: Harold Johnson
Spring 2007

GENERAL INSTRUCTIONS

The exam is lengthy, particularly the hypothetical. Take note of the point value of each section when budgeting your time. The basis of your analysis should be Federal Constitutional law, with Massachusetts Constitutional law included where applicable and as contrast or comparison.

IDENTIFY YOURSELF BY SOCIAL SECURITY NUMBER ONLY.

RELAX AND GOOD LUCK.

INSTRUCTIONS BY SECTION:

SECTION I: 30 POINTS

Answer **ALL FOUR** 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 the classic issue hypothetical. Answer in essay form.

SECTION I

30 POINTS

ANSWER ALL FOUR QUESTIONS

1. Officer Gil Gruesome is investigating a particularly vicious random attack on a pedestrian, Stumbles. Stumbles was not able to get a good look at his assailant, but told police that he was, eventually, able to shoot his attacker in the arm with a pellet from his highly distinctive antique pellet gun.

Officer Gruesome, based on the statement of a distant eyewitness, arrests a local hoodlum, Cookie. Cookie is in custody on an unrelated charge. Gruesome wants to have the jail physician, Doctor Yess, extract the pellet to prove that Cookie is the assailant.

Officer Gruesome approaches Judge Jingles and seeks an order from him permitting a surgical extraction of the bullet.

Is such an order possible? If so, what is the standard for allowing such a procedure? What would be the analysis?

2. Romey and Julie are married. Julie is unaware that Romey maintains a collection of shrunken heads in the living room closet, a souvenir from his single days. Officer Hipster, based on information from a drunken friend, who has an unfortunate mental health history, knocks at the Romey-Julie residence door located at 55 Capulot Way.

The door is opened by Romey, who is standing with Julie. Hipster asks permission to search the premises. Julie states, "Ya, go ahead." Romey says, "No way!"

Hipster enters, finds the "collection" and arrests Romey for violation of a local law regarding the storage of human remains.

Romey's lawyer seeks to have the evidence suppressed.

Will an examination of the information which led Hipster to knock at the door be fruitful for the defense, or not?

Will the evidence be suppressed? Why or why not?

Would the answer be the same if the facts were that only Julie answered the door and allowed Hipster entry while Romey was at work?

3. What is the Doctrine of Incorporation? What is incorporated into what? How? What is not incorporated? What are the theories of incorporation?

4. Flash is suspected of setting his home on fire, in violation of a local "arson" statute, to collect the insurance. The arson squad, which is led by Detective Waters, arrives on the scene during the extinguishing of the fire. The "squad" remains there for a few hours, examining the basement area where it appears the fire started. Tired, the squad goes home and returns the following day and finds a gas can during their search of the upstairs bedroom.

Will the gas can be admissible against Flash? Why or why not?

SECTION II
70 POINTS
ISSUE HYPOTHETICAL

Goofbay Harbor is a picturesque, quintessentially beautiful New England seaside town perched on the shore of the Atlantic Ocean in the state of Confusion, the fifty-first state in the Union. The cobblestoned streets are lined with old sea captains' homes and million dollar sailing yachts bob in the famed harbor. Despite the idyllic appearance, Goofbay, which is near the great capital city of Beantown, is a prime location for the drug trade.

Chief Brownshoes of the Goofbay Police, a large amiable fellow, is under great pressure from the town selectmen to assure that Goofbay remains as pure as its external appearance. To that end, the chief assembled a police force which employs three experienced drug investigators, Deputies Dredge, Seagrass and Dune.

One area of Goofbay, Holy Hill, is considered the center of drug activity. Dredge and Seagrass concoct a plan. The two set up a "drunk driving roadblock" in the middle of Holy Hill. Some ten officers spread out. The guidelines for the roadblock prescribe that the officers stop every vehicle and direct any driver exhibiting signs of alcohol consumption to a nearby parking lot for further investigation. Those found to be under the influence are to be arrested.

As ten p.m. rolls around, the roadblock is activated. The first driver who approaches the roadblock is Cook, in his classic MG auto. Cook pulls his vehicle to the curb a few feet before reaching Deputy Sandpiper, who is assisting in the roadblock. Cook jumps from his car and runs down the street. Sandpiper gives chase and observes Cook toss a handgun, which is later found to be stolen, from his person. Sandpiper tackles Cook and repeatedly strikes him with his service baton breaking his nose. Cook, after being cuffed, exclaims, "I stole the gun but Queeg used it to kill Halsey. Halsey was moving in on our heroin turf." Sandpiper retrieves the gun and Cook is transported to the police station. During the ride to the station it becomes apparent that Cook is drunk. Cook's MG is searched by Deputy Dredge and he finds, in the trunk, a dried puddle of what eventually is determined to be the blood of Halsey.

Based on the new information, Chief Brownshoes is called. Deputy Dredge explains the events to the Chief. Meanwhile, Deputy Seagrass observes Morgan, a known drug user, in the area of the roadblock. Seagrass sees Morgan approach Bluebeard, a convicted heroin dealer. The two embrace. Deputy Seagrass approaches the two and says, "Hey, boys, what's up?" Morgan responds, "Just out of rehab, but I'm havin' some problems." At that point, Seagrass pats the clothing of Bluebeard and feels a bulge in Bluebeard's pocket which he immediately recognizes as a large bag of marijuana. Seagrass removes the bag and arrests Bluebeard, placing him in the cruiser.

Deputy Seagrass says to Bluebeard, "Blue, ya don't have to say anything, but if you do it could go against you. We can call your lawyer, Jabber, but if you haven't got the dough to pay him, we'll find someone for you." Bluebeard says nothing. Seagrass asks, "What do ya know?" Bluebeard says, "I bought the grass from Halsey's wife, Happy. She's still runnin' the family business. She just sold me the bag over at the Crabby Clam Tavern. She's probably still there."

Bluebeard is taken to the station. Jabber, who became aware of Bluebeard's arrest, calls the police station and asks to speak to his client. Unfortunately, before the call can be put through, the dispatcher inadvertently disconnects Jabber. Jabber, engrossed in a DVD of "Moby Dick," forgets to call back.

At that moment, the Chief completes his affidavit in support of a proposed search warrant for the Queeg residence, located at 45 Tiller Way. The chief includes the information from Cook, naming him, describing the gun's use, and the attribution of Halsey's cause of death to Queeg. Prior to applying for the search warrant, the Chief drives over to Tiller Way. Queeg's residence is in darkness. The Chief, a former C.I.A. operative, picks the lock to the house and goes inside. There he sees, in the laundry area, a coat with the name "Queeg" on it. The coat is covered in blood. The Chief leaves the same way he arrived, leaving no trace.

The Chief then goes to visit Magistrate Megalith. Megalith, as is known to the Chief, is under investigation by the Goofbay Police for forging his wife's name on a boat purchase agreement. Megalith reviews the affidavit and says to the Chief, "Well, its not great Chief, but I'd do anything for the Goofbay Police." Megalith signs the warrant to permit the search of 44 Tiller Way. He also permits a No-Knock entry by checking the applicable box and allows, similarly, a nighttime execution.

The police arrive at Queeg's house. They are accompanied by a local news camera crew, which includes local reporter, Glamour. At that instant, Queeg is observed to be walking towards the house. Detective Seagrass runs and grabs Queeg before he enters the house. Seagrass says, "You don't mind if we search the house, do ya?" Queeg responds, "No. What's the difference now?" At that point, the Chief approaches Queeg and shows him the warrant. The camera crew gets it all on film, Glamour providing the narration.

The search discovers the bloody clothing, which is taken. The police also take a scale model of the Mayflower, which they think might be stolen from the Goofbay Museum.

Meanwhile, Deputy Dune, dressed in plain clothes, goes to the area of the Crabby Clam. Dune, using satellite technology available to the Chief from his spy days, establishes the position of the patrons inside the bar. He also uses a large electronic "ear" to listen to conversations in the bar. He locates Ms. Halsey after hearing her say, "My husband may be dead, but business must go on." Dune enters the bar and speaks to Ms. Halsey who sells him some marijuana. Dune writes out an affidavit including the information he obtained.

Dune goes back to Megalith, obtains a search warrant for the Crabby Clam, and returns. Dune arrests Ms. Halsey. A search of her person reveals a Roman coin recently stolen from the Goofbay Museum. A large stash of marijuana is taken from behind the bar and the bartender, Skip is arrested. Also, as a result of a search, Legless, a customer, is arrested for possession of fish eggs, a local ordinance which is arrestable but punishable only by a fine.

Queeg, who is under arrest for murder is arraigned before Judge Jumpy. Queeg is appointed counsel, Leapin. Queeg is remanded to custody. During the ride to the jail, Deputy Dredge, who accompanies him, states, "Halsey deserved what he got. Whoever killed him should get a medal." Queeg then stated, "Pin it right here."

At that moment a photo of Queeg is presented to Specs, an eyewitness to the murder by the Chief. Specs identifies Queeg as the shooter of Halsey.

The parties are charged as follows:

COOK: 1. MURDER (HALSEY).
 2. POSSESSION STOLEN GUN

QUEEG: 1. MURDER (HALSEY).
 2. POSSESSION STOLEN GOODS (MAYFLOWER MODEL)

HAPPY 1. DISTRIBUTION OF MARIJUANA
HALSEY 2. POSSESSION STOLEN GOODS (COIN)

BLUEBEARD
 1. POSSESSION WITH INTENT TO DISTRIBUTE
 MARIJUANA

SKIP 1. POSSESSION WITH INTENT TO DISTRIBUTE

LEGLSS 1. VIOLATION LOCAL ORDINANCE (FISH EGG
 POSSESSION).

PLEASE DISCUSS WHAT, IF ANY, CONSTITUTIONAL ISSUES ARE RAISED. WHAT EVIDENCE WILL BE AVAILABLE OR EXCLUDED AS AGAINST THE PARTIES AS A RESULT? WHY OR WHY NOT?

REMEMBER, THE BASIS OF YOUR ANSWER SHOULD BE FEDERAL CONSTITUTIONAL LAW, USING MASSACHUSETTS CONSTITUTIONAL LAW AS CONTRAST.

REMEMBER 'IRAAC.'

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, Mums 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?

4. Discuss the significance of Dickerson v. U.S., 530 U.S. 428 (2000).
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.**

**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 (20POINTS)

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?
9. Define the Federal standard for the admissibility of an out-of-court identification procedure. Describe the ramifications and applicable standards regarding any possible effect on a later, proposed in-court identification.
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, Dalglish disengaged the greenhouse and removed the water and electricity hookups from the "RV". Dalglish 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 Dalglish 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, Dalglish 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 ballistic test revealed that the bullet came from the pistol found on the person of Morse. Dalglish 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.

Dalglish, 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.

CRIMINAL PROCEDURE
SPRING 2001
EXAMINATION
INSTRUCTOR: H. JOHNSON

INSTRUCTIONS

The exam is divided into three sections. I suggest that you read it over and evaluate the relative importance of each section and the time you need to allot.

Part I (30 points) consists of ten questions. A paragraph or so should be sufficient to answer each.

Part II (50 points) is a classic issue hypothetical. Use the facts with the law in your analysis and conclusions. Be concise.

Part III (20 points) is a choice of essays. Pick one of the three choices and answer it.

PART I (30 POINTS) ANSWER ALL TEN.

1. Officer Oliver applies for a search warrant using information obtained from a "confidential, reliable informant" in the affidavit. Describe the former "Aguillar-Spinelli" test and the current Federal Constitutional standard for the evaluation of "probable cause."
2. David Driver is stopped by the Andover, Massachusetts Police Department for "speeding" in violation of local law. When may the police ask him to get out of the vehicle?
3. Police Officers observe Darryl Defendant place a suitcase, which they have probable cause to believe contains cocaine, in the trunk of a car. Darryl then drives away. The police stop the vehicle. What limits would the Fourth Amendment place upon any search?
4. Darlene Defendant, in lawful police custody on a littering charge, is asked by police to participate in a "voice lineup" and recite the words used in a robbery, "Put the dough in the bag, chum." The police do NOT give her "Miranda Warnings." Does it matter? Why or why not?
5. What does the Fourteenth Amendment have to do with search and seizure under the Fourth Amendment, self-incrimination under the Fifth Amendment, and the

right to counsel under the Sixth Amendment?

6. Sylvia is arrested, arraigned, appointed counsel, and held in custody awaiting trial on an offense of operating under the influence of liquor. The police approach Sylvia, without her lawyer present, while in custody. They "Mirandize" her. She indicates she understands the rights and wishes to talk to the police. She is interrogated and confesses to an unrelated murder charge. Is the confession admissible at the murder trial? Why or why not?
7. Define the term "search" in the Fourth Amendment context.
8. Jackson suffers from mental illness. He thinks he hears the voice of the late Bingo the Clown giving him various commands. The police arrest Jackson for stabbing a stranger. He is read his "Miranda" warnings. Jackson indicates he understands them and wishes to talk to the police. Jackson confesses to the murder after he hears Bingo say "all kids have to do the right thing". Is the confession admissible at the trial against Jackson? Why or why not?
9. In the State of Confusion, the fifty-first state of the Union, a law provides that the police may execute a search warrant at the home of a suspect without knocking in all drug cases. Is the statute constitutional? Why or why not?
10. Marvin is arrested for possession of a hypodermic needle and syringe in violation of local law. He is cuffed and placed in the back of a cruiser. Officer Oldie sticks his head in the back of the cruiser and asks, "Marv, can I search your house?" Marvin says, "why not, go ahead." Oldie searches and finds drugs in the house. Will the fruits of the search survive a motion to suppress? Why or why not?

PART II (50 POINTS)

Detective Drainwater, a veteran of the Halibut Hills, Massachusetts, Police Department was walking to a scheduled court appearance in a high crime and drug area near the Halibut Project. He saw Carlton Cracker duck into an alley. Drainwater went to the alley and observed, from some sixty feet away, Cracker in conversation with Roger Ritz, a known drug user. Upon spotting Drainwater, Ritz and Cracker walked rapidly in opposite directions away from the detective. Drainwater hollered "halt" and approached the two who dutifully stopped.

Drainwater asked Ritz, "what are you two up to?" Ritz responded "we're talking about beating you with a blackjack, Drainey." Simultaneously Drainwater reached over and patted the exterior clothing of Cracker. He felt a small object that he thought, based upon his training and experience, to be a baggie containing rocks of cocaine. He reached in and extracted the object from beneath Cracker's coat and found that the baggie, marked "Jill's Jewelers" contained diamonds. The diamonds were the same size as small rocks of cocaine. Jill's, located two blocks away, had been broken into the day before and some diamonds were stolen.

At that point, Drainwater cuffed Cracker and Ritz and placed them in a patrol wagon that had been summoned by radio. Drainwater rode in the back with the two. Each was advised of his right to remain silent, that anything said could be used against him, that he had the right to have an attorney present during any questioning, and "if you can't afford a lawyer something can be done about it". Both Cracker and Ritz are independently wealthy.

Ritz, stating he understood his rights, indicated "I'll talk." Cracker stated "I want to talk to Lars", referring to a well known local attorney who had, in Drainwater's experience, represented Cracker in the past.

As the patrol wagon lurched along, Drainwater asked Ritz, as he sat beside Cracker, what he was doing in the alley. Ritz stated that he and Cracker were discussing the sale of an illegally obtained machine gun to a local street gang called the Jets, whose leader was named Leonard.

Drainwater said "I'm sure, Ritz, that you were only a follower, that this idiot (pointing to Cracker) was the brains of the operation." Ritz readily agreed and Cracker stated "The guy with the guns isn't me, its Biggs Waller. He keeps a stash of machine guns in his garage at 113 Vista View Lane."

Upon arrival back at the station Ritz and Cracker were charged with "Conspiracy to Sell Firearms" regarding the illegal transfer of the machine gun and Cracker faced the additional charge of "Receiving stolen property" regarding the diamonds, both of which are felonies.

Drainwater put the information in an affidavit that was sworn before Mervin Magistrate. Mervin issued a search warrant which was executed at 113 Vista View Lane. Three hundred machine guns were found in a tool shed 224 feet behind the house, visible from the street since the door was opened.

Biggs Waller, who was leaving his house at the time of the execution of the search was detained and placed in custody after the guns were found. Biggs was charged with illegal firearms possession.

Meanwhile, Drainwater's partner, Phil Fountain, based on the information supplied by Drainwater after his talk with Ritz and Cracker, was on the lookout for and observed Leonard driving his car, a Porsche 944. The car made an illegal right turn and Fountain stopped it for the traffic violation. Fountain really wanted to investigate further the issue of the machine gun.

Leonard was operating the vehicle on an expired license, an arrestable offense with a possible fine as a penalty. Fountain arrested, cuffed and placed Leonard in the back of his cruiser.

Fountain searched the interior of the car and found in a locked briefcase machine gun bullets, which are illegal to possess under local law.

Ritz was arraigned on the Conspiracy charge before a judge and placed in a cell after being appointed counsel. Cracker, his arraignment delayed, was placed in a lineup with five other persons, one of whom was suspected in a bank robbery. The victim, Vera, pointed out the robber, Alphonse, and stated as she pointed to Cracker, "that's the guy I saw walking down the street with a machine gun, yesterday".

PLEASE DISCUSS WHAT, IF ANY, CONSTITUTIONAL ISSUES ARE RAISED. ANALYZE THE FACTS AND APPLY THE LAW.

PART III (20 POINTS)
PICK ONE TO ANSWER

1. Discuss confessions and admissions where the suspect is in the custody of the police, including the applicable amendments and the significance of Dickerson v. United States.
2. Describe the "Benchmark" Fourth Amendment Warrant requirement and the major exceptions thereto.
3. Discuss the Exclusionary rules, their purpose, scope and the exceptions.