

MASSACHUSETTS SCHOOL OF LAW
Massachusetts Trial Court Practice & Procedure – Criminal
Judge Robert A. Cornetta – Spring, 2014
and Rose Church, Esq.

FINAL EXAMINATION

INSTRUCTIONS: This examination consists of three (3) questions of equal weights. You are to number your BLUE BOOKS as questions 1-3. This is a closed book examination.

Question One is a ten (10) part multiple choice question.

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On Questions two (2) and three(3), you are to write out your answers. Please remember to be concise and to the point. DO NOT repeat the fact pattern in your answer and be sure that you cover EACH ISSUE in the fact patterns. If you decide to cite a statute, regulation, rule or case, be sure your citation is correct. Grammar, spelling and syntax all count as does legible handwriting.

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Good Luck !

QUESTION ONE:

1. Please select the correct statement regarding arrest and the criminal charging process in Massachusetts:
 - A. Misdemeanors cannot be indicted in the Superior Court
 - B. An arrest by the police, without more can satisfy the standard of proof required in order for a criminal complaint to issue
 - C. An arrest can be made by the police without a warrant whenever it is believed that a crime has been committed.
 - D. Once a complaint has been issued by a Clerk Magistrate in the District Court, it can never be dismissed by the judge, based upon the concept of separation of powers.

2. Which of the following statements regarding bail is correct:
 - A. Bail must be posted in court. It cannot be posted at a jail
 - B. Once a defendant out on bail fails to appear on a scheduled court, date he/she cannot be again admitted to bail thereafter in the case.
 - C. If someone who posts bail, returns with the body to court and demands return of his/her posted bail, the court can return the bail to the surety and take the defendant into custody, even over the objection of the defendant.
 - D. Bail bondsmen have been abolished in Massachusetts.

3. Please select the correct statement regarding criminal practice discovery in Massachusetts:
 - A. As in civil practice, depositions can be used in criminal cases for all discovery purposes.
 - B. Reciprocal discovery means that the defendant must turn over to the Commonwealth everything he/she has as part of the defendant's case file, just as the Commonwealth must do.
 - C. Provided that the Commonwealth has supplied the defendant with copies of all police reports involving the case, the defendant cannot obtain a bill of particulars on motion made.
 - D. The defendant can obtain grand jury minutes, even over an objection made by the Commonwealth.

4. Please select the correct statement regarding probation practice in Massachusetts:
 - A. A probationer who is acquitted of a subsequent offense charged while on probation can nevertheless have his/her probation revoked and be committed to a correctional facility.
 - B. Based upon separation of powers considerations, assistant district attorneys cannot prosecute probation violations before the court. Only senior probation officers may do so.
 - C. Just as in trial practice, hearsay evidence is excluded from probation practice

- D. Persons who are given a continuance without a finding or “CWOFF” as the disposition in their case cannot be placed on probation supervision.
5. Which of the following statements regarding mental health practice in criminal proceedings is incorrect:
- A. Once a criminal defendant is found not guilty by reason of mental illness and is sent to a secure facility, upon dismissal of the criminal case, the defendant can be immediately sent back to the same facility upon a civil commitment proceeding.
 - B. Persons who are committed to a correctional facility can nevertheless be sent to a mental health facility while they are serving a sentence or awaiting trial.
 - C. So called “Pink Paper” commitments in Massachusetts have been abolished based upon due process considerations.
 - D. Warrants of apprehension in G.L. Ch. 123, section 35 cases can be exercised by the police anytime they are able to locate the respondent.
6. Please select the correct statement regarding criminal jury trial practice in Massachusetts:
- A. The Commonwealth must agree before a criminal defendant can waive a jury trial.
 - B. The Commonwealth gives its opening first before the jury and its closing to the jury last.
 - C. Sequestration of witnesses while permitted in civil cases is not permitted in criminal cases based upon due process guarantees.
 - D. Defendants who are in custody cannot participate in jury selection at the judge’s bench based upon public safety concerns.
7. Which statement is correct regarding criminal sentencing in Massachusetts:
- A. “Split sentences” cannot be imposed by Superior Court judges.
 - B. The practice of “filing” charges during sentencing has been abolished in Massachusetts.
 - C. After sentencing, any motion seeking a new trial must be filed within 60 days of the imposition of the sentence.
 - D. Any time that a defendant serves in custody while awaiting rendition will be credited to his final sentence imposed on the crime, if convicted.
8. Please select the correct statement regarding criminal arrest warrants in Massachusetts.

- A. Default warrants appear on the CORI/CARI data base maintained by the Probation Department but not on the Warrant Management System (WMS) maintained by the Clerk's office.
- B. Upon the issuance of a criminal complaint by the District Court/BMC, an arrest warrant will immediately follow from the clerk's office.
- C. Police cannot arrest on a warrant unless they have the original warrant issued by the court.
- D. Straight warrants do not appear on the CORI/CARI data base maintained by the Probation Department

9. Please select the correct statement regarding entry of pleas:

- A. At pre trial hearing, the defendant cannot seek to tender a change of plea.
- B. A defendant capped plea must be withdrawn if its terms are not accepted by a judge.
- C. A plea taken by a judge who fails to give any defendant an "alien warning" so called, will always be set aside on appeal.
- D. A defendant-capped plea is available in the District Court/BMC and a Commonwealth capped plea is available ONLY in the Superior Court.

10. Which is a correct statement regarding search warrants:

- A. As with all other papers, upon being applied for a search warrant application is filed with the court's case file maintained by the clerk's office.
- B. Upon its execution by the police, a search warrant must be immediately returned to court.
- C. An affidavit in support of a search warrant may rely solely upon facts and evidence supplied by an un named, confidential informant.
- D. The officer's return on a search warrant may only be examined upon motion made by the defendant and will otherwise remain impounded.

QUESTION TWO:

Carlos Rico is a thirty-four (34) year old divorced man with three daughters from his former marriage. His daughters right now are fifteen (15), thirteen (13) and eleven (11) years old and live with their mother, Vera.

Carlos and Vera divorced seven (7) years ago. He now lives with a woman (Ida) who is ten (10) years younger than Vera. Carlos and Ida have no children.

The divorce was a particularly acrimonious one since Carlos was seeing Ida while still married to Vera and it has not helped that Carlos has often been late with his child support payments.

Most recently, Vera has filed a contempt in the Essex Probate & Family Court alleging once again that Carlos has missed his support payments. In addition, the former couple's oldest child has most recently alleged that while Carlos and Vera lived together that Carlos molested her on various occasions.

On the basis of that allegation, the police and district attorney's office have conducted an investigation. Vera and the children were interviewed, along with school officials, friends and family members and treatment providers.

The case was presented to a grand jury and Carlos has been indicted on multiple counts of rape of a child, rape of a child with force and indecent assault and battery on a child under fourteen (14) years on diverse times and at diverse locations.

Carlos was arrested, booked and has appeared for arraignment in Superior Court. He is represented by court appointed counsel but, his lawyer seems to be having difficulty with the case. Here are some examples:

1. At arraignment upon motion by the District Attorney, Carlos was held without bail as a dangerous person. He has no record of prior sex crimes, nor of violence. He has never defaulted on a court appearance. He does have convictions for shoplifting, trespassing, minor in possession of alcohol and larceny by check. During his arraignment, his lawyer requested a continuance of the bail hearing which was denied by the judge. The judge announced from the bench that she was adhering to time standards and would not tolerate delays in bringing the case to trial.
2. At pre trial hearing, Carlos's attorney sought to obtain a bill of particulars, copies of interview notes made by investigators, copies of medical reports regarding examination of the alleged victim, copies of school records and copies of psychiatric treatment records of the alleged victim. The District Attorney's office vehemently opposed these requests citing work product, HIPAA Rules and privilege as to medical and psychiatric records. The judge denied each of these discovery requests based upon the Commonwealth's objections.
3. Carlos's lawyer filed a motion for funds for an investigator. The Commonwealth filed a written opposition. The judge then allowed a total of \$250.00 for Carlos to hire an investigator.
4. Throughout the entire trial, Carlos was seated at the defense table wearing a blue denim shirt and pants with a number on the upper left pocket of the shirt. He remained handcuffed during the trial since the judge determined that he was dangerous.

Please identify what (if any) issues there are regarding the defense that Carlos received in this case and what you might argue as appellate counsel now that Carlos has just been convicted and sentenced.

QUESTION THREE:

Larry Parsons is on probation out of Lawrence District Court after having pleaded guilty to possession of class B controlled substance (cocaine) and larceny. Larry's original sentence was two (2) years in the house of correction with six (6) months to serve and the balance suspended for two (2) years with probation supervision and conditions, including restitution payments.

While on probation, Larry was charged with domestic assault and battery and violation of a G.L. Ch. 209A domestic abuse prevention order. He was arraigned on those charges and was released on \$1,500.00 cash bail. He was then issued a violation of probation (VOP) notice by the probation department.

On the day of trial for the new offense, the alleged victim (Larry's wife) refused to testify and the case was dismissed. At his VOP hearing, while testifying, the probation officer told the judge that Larry had invoked his marital privilege and that he should be found in violation of his probation.

Upon investigation, it was determined that Larry's spouse had lied to the police about the incident since she was mad at him for not procuring cocaine for her. He was arrested based upon her statement and as provided for under G.L. Ch. 209A.

While on probation supervision out of Lawrence District Court, Larry is also required to report to a parole officer and further has to pay a parole supervision fee. Between the parole supervision fee and his probation supervision fee and restitution payments, Larry has been unable to meet his obligations to provide for his wife and two children.

During his VOP hearing at Lawrence District Court, Larry's probation officer sought to have an assistant district attorney prosecute the probation violation. Larry's attorney objected and the judge overruled the objection. The ADA then sought to introduce the police report from the incident between Larry and his wife. Officer Whitman, who investigated the case is currently at the police academy taking advanced courses. Larry's lawyer again objected on the grounds of hearsay. This time the judge sustained the objection.

Larry's lawyer argued to the judge that the probation department had failed to meet its burden of proof beyond a reasonable doubt and that therefore Larry should not be found in violation of his probation.

The judge took a recess to review the evidence. She returned to the bench 15 minutes later and found Larry in violation of his probation based upon the subsequent arrest and further stated from the bench that there was nothing she could do about Larry's outstanding fees and payments.

Larry was sent back to the house of correction to complete his sentence.

Larry has called you from the house of correction to ask you about his situation. What might you advise him ?

MASSACHUSETTS SCHOOL OF LAW

MASSACHUSETTS TRIAL COURT PRACTICE & PROCEDURE
JUDGE ROBERT A. CORNETTA
Spring 2012 - Criminal

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Good Luck !

QUESTION ONE

1. **Regarding commencement of a criminal action, please select the correct statement of law:**
 - a. Complaints brought in the District Court/BMC must be within the final jurisdiction of the District Court/BMC
 - b. Upon a “no bill” being returned by the Grand Jury, the Commonwealth is precluded from again seeking to complain against the defendant.
 - c. If it is determined that there is insufficient probable cause to issue criminal process, the court may dismiss the complaint, even over the objection of the Commonwealth
 - d. Once the Commonwealth has been issued a complaint by the court based upon a particular set of facts alleged in a criminal enterprise, it is precluded from seeking further complaints associated with that same criminal enterprise.

2. **As to Mental Health issues associated with criminal prosecutions, please select the correct statement:**
 - a. Upon the adjudication of a defendant as *not guilty* by reason of mental illness or defect, the defendant will be released by the court since the defendant cannot be determined to be responsible for his/her conduct at the time.
 - b. The standard of proof in a civil mental health commitment hearing is *proof beyond a reasonable doubt*.
 - c. Pursuant to a warrant of apprehension issued pursuant to G.L. Ch. 123, s. 35, the police shall arrest the subject of the section 35 petition and hold that person in custody pending the next sitting of court wherein they shall appear.
 - d. Unlike a house of correction sentence, persons who decompensate while serving a term of incarceration at a state prison *shall only be treated for symptoms of mental illness at the correctional facility’s medical care unit consistent with their being committed and serving a sentence at such a correctional facility.*

3. **In considering probation practice as part of Massachusetts criminal procedure, please select the correct statement:**
 - a. A sentence of “straight probation” can always been seen as a better outcome in a criminal case based in part upon its favorable appearance on the defendant’s CORI/CARI report.
 - b. A VOP warrant can be executed by the police only when court is in session to avoid holding a probationer in custody without an immediate hearing.
 - c. All persons serving probation in Massachusetts for crimes committed are on standard “risk-need” supervision requiring at least bi-weekly reporting to a probation officer.
 - d. When a person who is on probation is charged with another crime and is found “not guilty” of that other crime, nevertheless the probationer can be found in violated of their probation and sent to jail or prison.

4. **Regarding search warrants, please select the correct statement:**
- In order to obtain a “no knock” search warrant, the police must establish that the search warrant will be executed after sunset.
 - In instances where the search warrant is executed by one or more officers who have not applied for the same, the search warrant’s execution will be seen as defective by the court.
 - Upon issuance, a search warrant’s documents are maintained by the Court as part of the case’s criminal file which is available for inspection and copying.
 - Officers executing a search warrant must file a return with the court or, the search warrant will be treated by the court as invalid.
5. **Which of the following statements is correct as applied to criminal discovery?**
- A defendant can also be required to produce discovery in a criminal case pursuant to the Massachusetts Rules of Criminal Procedure.
 - In instances where the Commonwealth fails to provide the defense with discovery, the sanction of dismissal with prejudice will be imposed by the court to preserve the defendant’s constitutional rights, both state and federal.
 - The defense’s request for a “bill of particulars” is satisfied when the Commonwealth provides a certified copy of the police report to the defense.
 - Privileged treatment records, including psychiatric and psychological treatment records are unavailable to the defense in rape and sexual assault cases as a matter of public policy and statutory law.
6. **When considering post-conviction relief, which of the following statements is correct?**
- A motion seeking to revise and revoke a sentence must be brought within 90 days of the entry of judgment of conviction or the right is lost.
 - Upon the defendant’s filing an appeal after conviction, the trial court’s sentence is automatically stayed pending the outcome of the appeal.
 - A motion seeking a new trial under Rule 30 can be brought at anytime after conviction.
 - As with other post-conviction motions, in order for a revise and revoke motion to be acted upon by the court under Rule 29, it may be brought by the defendant, the Commonwealth or the court .
7. **Regarding the entry of pleas in criminal cases, please select the correct statement:**
- In a “commonwealth capped plea”, the defendant reserves the right to withdraw his/her plea if the court declines to accept it.
 - In a “defendant capped plea”, the defendant reserves the right to withdraw his/her plea if the court declines to accept it.
 - A plea requesting a CWOFF (continued without a finding) cannot be accepted in the District Court/BMC where a crime of violence against the person is charged.

- d. Where a defendant seeks to enter a plea in a criminal case, the prosecutor does not have the right to stipulate to a “lesser included offense” since it is the Commonwealth that has initially brought the charges.

8. When considering Domestic Abuse Prevention proceedings in Massachusetts, which is the correct statement?

- a. A domestic abuse order application under G.L. Ch. 209A cannot be heard at the same time as a criminal arraignment since the defendant would be required to surrender his/her right against self incrimination in order to testify at the G.L. Ch. 209A hearing while being arraigned on a criminal charge.
- b. The police can arrest anytime and without a warrant when a G.L. Ch. 209A (restraining order violation) is alleged. In addition, prior to arraignment, the charge is non-bailable in Massachusetts.
- c. The District Court/BMC cannot hear requests for financial support as part of a G.L. Ch. 209A application. That jurisdiction is exclusive to the Probate & Family Court.
- d. The District Court/BMC cannot hear requests for visitation with minors as part of a G.L., Ch. 209A application. That jurisdiction is exclusive to either the Probate & Family Court or the Superior Court.

9. In a criminal jury trial setting, please select the correct statement:

- a. In the District Court/BMC, each side is allowed four (4) pre-emptory challenges.
- b. The defendant who is being held in custody is unable to participate in the jury selection process with his/her attorney at sidebar.
- c. Voir Dire questions to the jury pool are limited to thirty (30) each by both the prosecution and defense.
- d. Once the defendant is put to the bar in a jury trial, the prosecutor can only file a nolle prosequi with the consent of the defense.

10. Please select the correct statement regarding Youthful Offender cases:

- a. It is up to the District Attorney and not the court whether a juvenile will be charged as a Youthful Offender in Massachusetts
- b. During a transfer hearing, the District Attorney must present a preponderance of evidence in order to meet his/her burden in seeking to have a juvenile charged as a Youthful Offender.
- c. In Youthful Offender cases ages 7 to 14 years, the courtroom is closed to the public by statute.

- d. While a convicted Youthful Offender can be sentenced to a combination of DYS and state prison, nevertheless, there is no provision in the Youthful Offender statute for a sentence of life without parole.

QUESTION TWO:

Tim Olin has been arrested and charged with assault and battery (domestic), assault, illegal possession of a firearm and ammunition, assault and battery upon a police officer and threats. Tim is currently on probation for violation of a G.L. Ch. 209A domestic abuse prevention order.

The police were called to Tim's new girlfriend's apartment at 12:45 a.m. by neighbors who heard noise and screaming coming from their second floor apartment. When they arrived, the police knocked but no one came to the door. They then forced open the door. They heard a male voice shout "I'm going to kill you". Tim was found in the bedroom alone. His girlfriend was in the corridor outside the bedroom's open door and showed visible red marks on her arms and legs. She looked as if she had been crying. A neighbor told police that Tim's girlfriend had told her she had been hit and to call the police. The police went to take Tim into custody and he stiffened and resisted. His girlfriend cried out NO! and jumped on the back of one of the officers. Tim struck the officer's arm apparently while trying to get his girlfriend off of the officer. Tim's girlfriend then told the police that nothing happened and that she did not want Tim arrested. Tim was taken into custody and while escorting him out of the apartment, one of the officers opened the drawer of a wardrobe, apparently to get Tim's shirt. There, the officer found a .22 caliber target pistol with six rounds in the clip. Tim's girlfriend was advised by the police to seek a restraining order. She said she would think about it but, she would not request anything right now.

Tim was brought to the police station on Friday night and held over a long holiday weekend. On Tuesday, he was interviewed by probation and appointed a public defender. At his arraignment, his public defender, Ed Esquire moved to dismiss the charges based upon Tim's being held over a long weekend without the benefit of a bail hearing. Atty. Esquire also objected to Tim's being arraigned and having an immediate hearing on a new G.L. Ch. 209A domestic abuse prevention order. The probation officer in the courtroom informed Atty Esquire of his intention to have Tim detained pending a final VOP hearing. Again, Atty Esquire objected noting that Tim had not been convicted of any crime(s), he was only being arraigned. Atty Esquire informed the court that he planned to file motions to suppress statements and evidence and would again move to dismiss all charges at a later date. In the prisoner's dock, Tim sat in the far corner on a bench and shielded his eyes from the proceeding. He refused to speak with Atty Esquire in the courtroom. In the lockup downstairs, he had been somewhat talkative.

After the clerk read the complaint, when the judge asked Tim if he understood what he was being charged with, Tim responded by telling the judge that he wanted to leave and that the court had no jurisdiction over him because he was a political prisoner and did not recognize the authority of the court. He cited the fact that he was held for three days without a hearing. He then told the judge that he would not respond to any more questions from anyone.

The prosecutor then requested that Tim be examined regarding competency. Atty Esquire vehemently objected at that point telling the prosecutor he had no standing to make such a request. He, (Atty Esquire) would determine when and if a request would be made that his client be examined. The prosecutor finally filed a motion pursuant to G.L. Ch.276, s. 58A and asked that Tim be held for at least three more days for a dangerousness hearing. Atty Esquire again objected and demanded an immediate hearing citing his client's liberty interest.

Please advise how the judge should rule in these matters.

QUESTION THREE:

Maria Guzman has been charged with operating under the influence of alcohol, a marked lanes violation and speeding. She and her attorney, Mark Question, have elected a jury trial. They did so after the prosecutor informed them that if they sought a bench trial, the Commonwealth would oppose the same.

As the jury pool filed into the room, Atty Question presented a motion for voir dire questions to be posed to the jury. The prosecutor objected and told the judge that the Commonwealth believed that the statutory questions to the jury pool in a district court OUI case more than satisfied the law. The judge agreed. Each side was afforded an opportunity to exercise challenges to the jury's makeup. Atty Question asked that his client accompany him to sidebar to assist in the jury selection process. The judge did not respond. Atty Question pre emptorily challenged four potential jurors and said he was content. The Commonwealth also exercised four pre emptory challenges and had removed from the panel the two persons of Latino surname who were seated. There were no other persons of color or of Hispanic background on the jury. Atty Question sought to enter an objection but was cut off by the judge who reminded the attorney that these were pre emptory challenges only.

During the trial, Officer Blaine testified as to Maria's appearance at the police station and her refusal of the breath test. He also testified that he had come onto the scene of an accident, found Maria sitting on a park bench about 50 feet from her car and was told by a citizen at the scene that Maria had been weaving and speeding before she hit a telephone pole. The citizen's statement is in the police report. He was unavailable to attend the trial.

The jury came back after presentation of the evidence and pronounced Maria guilty on all counts. Atty Question asked that the jury be polled. The judge responded that the case was not being tried in the superior court.

The Commonwealth immediately moved for sentencing. Maria has no prior record, is in the United States as a permanent alien, married to a U.S. citizen. She works as a secretary.

Both sides were heard on sentencing. The prosecutor reminded the judge that Maria is not from the United States and is at risk to flee. The judge then imposed a six months sentence for the OUI

conviction, and concurrent 30 days sentences on the speeding and marked lanes convictions. Maria was led off to Framingham to begin serving her sentence.

Atty Question moved to revise and revoke Maria's sentence within 45 days of her conviction. The judge denied the motion as untimely. The attorney also sought habeas corpus relief and a new trial. Both motions were denied with the comment that there was no basis for the same since there were no extraordinary circumstances which would permit the judge to set aside the jury's verdict.

Atty Question has appealed and provided the prosecutor with notice of appeal and his motion for a stay of sentence to the appeals court. The prosecutor has filed an opposition directing the appeals court's attention to the fact that it has no jurisdiction to stay the sentence pending appeal... under the rule, only the trial court judge who knows all the facts can act upon that motion.

As a consulting attorney, you have been requested to review the record of this matter and to advise Atty Question as to any issues found. Please do so and remember that the jury has already heard all of the evidence and found Maria guilty.

MASSACHUSETTS SCHOOL OF LAW
Massachusetts Trial Court Practice & Procedure - Criminal
Judge Robert A. Cornetta – SPRING, 2010

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MASSACHUSETTS SCHOOL OF LAW
TRIAL COURT PRACTICE & PROCEDURE
Criminal-Spring, 2010 - Judge Robert A. Cornetta

FINAL EXAMINATION

QUESTION ONE:

1. Please select the correct statement regarding bail:
 - A. Bail review in the Superior Court is no longer available since the inception of the Judicial Response System in Massachusetts.
 - B. There is a presumption of a defendant being admitted to bail in the District Court/BMC..
 - C. At a dangerousness hearing, the Commonwealth's witnesses must appear to testify and be subject to cross examination.
 - D. Attorneys can post bail provided such funds are duly accounted for in an IOLTA account.

2. Which statement is correct regarding probation:
 - A. Upon being served a violation of probation notice by a probation officer, the probationer will immediately be taken into custody pending a final surrender hearing.
 - B. Under the OCC program, probationers who fail to cooperate will be placed back on supervised probation.
 - C. During a probation surrender hearing, the probation department seeks to establish evidence of proof beyond a reasonable doubt that a probation violation has occurred.
 - D. Probationers must pay \$65.00 per month for supervised probation and \$50.00 per month for administrative probation or must perform community service.

3. The following statement is correct regarding criminal practice and mental health issues:
 - A. Under G.L. Ch. 123, s. 7 & 8, before a person can have a "substituted judgment" hearing regarding medications to be taken, he or she must first be committed to a facility.
 - B. Under G.L. Ch. 123, s. 12, before a person can be "pink papered" by the police, a family member must be contacted.

C. Under G.L. Ch. 123, s. 35, a person who is committed as a substance abuser must remain in a detox program for at least thirty (30) days before being returned to court for further hearing.

D. Under G.L. Ch. 123, s. 18A, a prisoner committed to Bridgewater State Hospital (BSH) as a result of mental health decompensation while in a correctional facility must be brought back to court for a hearing before being discharged from BSH back to the correctional facility.

4. The following is a correct statement regarding sentencing:

A. It is reversible error for a judge to deviate from sentencing guidelines.

B. A person sentenced to from-and-after time is not eligible for parole consideration until at least half of both sentences have been served.

C. A "straight probation" disposition is always better than being given a suspended sentence.

D. A continued without a finding (CWO) cannot be imposed by the judge over the Commonwealth's objection.

5. Regarding juvenile cases, the following is correct:

A. Under revised charging and sentencing statutes, "delinquency" dispositions must no longer be imposed by juvenile court judges.

B. Under revised trial court rules, juvenile cases are now open to the public.

C. Juveniles committed to the Department of Youth Services (DYS) are no longer allowed to be held in locked facilities.

D. In a YO (Youthful Offender case), children fourteen (14) years of age or older can be committed to state prison for life.

6. Regarding criminal records, the following is true:

A. Upon payment of a required fee, with proper identification and without court authority, a person can get a copy of their criminal record as maintained by the Commissioner of Probation.

B. Due to privacy rights, CARI records no longer list DNA sample and sex offender registry information on the face of the record.

C. While a sealed record can be examined by law enforcement agencies investigating a crime, the same is not true regarding executive pardons.

D. In order to have a criminal record expunged, a judge must find that the arrest never should have occurred.

7. Regarding criminal jury trials, which statement is correct?

A. If the parties agree and the judge assents, alternate jurors can deliberate the case with the rest of the jury panel.

B. Upon the jury pool being brought into the court room, the District Attorney loses the right to enter a nolle prosequi in the case without the consent of the defense.

C. A conspiracy charge cannot be tried together with the criminal case in chief.

D. If the defendant seeks to waive his/her right to trial by jury and proceed before a judge, he/she must obtain the assent of the Commonwealth to do so.

8. The following is true regarding criminal discovery:

A. If a particular item of discovery is not revealed on the pre trial conference report, the parties have the right to obtain an extension of the trial date from the court.

B. The Commonwealth's duty to reveal exculpatory evidence ceases upon the seating of the jury for trial.

C. Under reciprocal discovery, a defendant can be compelled by the court to disclose to the Commonwealth prior to trial the names and addresses of all witnesses to be called at trial, written or recorded statements made by the defendant to police, intended expert opinion testimony and intended trial exhibits.

D. Upon the Commonwealth's failure to comply with a discovery order by the court, the case will be dismissed with prejudice upon motion of the defense.

9. The following statement is true regarding the charging process:

A. If a civilian signed application for complaint is denied by a clerk magistrate and on appeal to a judge is also denied, the applicant's final appeal is to a single justice for relief.

B. Upon being charged with a misdemeanor in the District Court/BMC, a defendant can seek to remand the matter back to a clerk magistrate for hearing before arraignment.

C. Murder can be charged in the District Court.

D. Police may arrest someone without a warrant if they have probable cause to believe that a misdemeanor or felony has been committed.

10. Please select the correct statement:

A. As a result of sentencing reform, the defendant capped plea is now available in both the District Court/BMC and the Superior Court.

B. Domestic abuse prevention orders (G.L. Ch. 209A) cannot be issued against "room mates".

C. Upon issuance of a search warrant by the court to the police, the contents of the warrant can then be made public.

D. Grand jury minutes remain "secret" until the case is over.

QUESTION TWO:

On Thursday, December 24, 2009 at about 1:30 p.m. Salem Police responded to a silent bank alarm at the Witchcraft Savings Bank on Washington Street. Upon pulling up to the building, the police saw a man in his early twenties running from the building, carrying a canvas bank money bag and discarding a Richard Nixon face mask. He was also carrying what appeared to be a silver hand gun.

Officers immediately exited their cruiser with weapons drawn and ordered the suspect to the ground. After a brief struggle, he was handcuffed and a weapon was recovered from him, a fully loaded .380 semi automatic silver handgun. The mask was recovered in a public refuse receptacle just in front of the bank building.

The suspect (Orno Webster) was taken into the bank in handcuffs by officers and immediately identified as the person who had just held up the teller at window three. Inside the canvas bank bag, \$7,680.00 in U.S. currency (small bills) was recovered together with an unexploded die pack.

Webster was placed in the back of a cruiser and transported to Salem Police Headquarters. Police began to engage him in conversation while he was in the cruiser. He was booked, finger printed and 'Mirandized'. He was then placed in a cell.

Since it was the afternoon, and since a long holiday weekend was coming up, Webster was simply held by the police in their lock up until Monday morning when he appeared in Salem District Court. Webster was charged with armed robbery while masked, illegal possession of a firearm, resisting arrest and threats.

Amy Flowers, a public defender having her first day on the job, was assigned to represent Webster. When the case was called for arraignment, she immediately submitted to the Court and ADA Quinton Dexter a motion to dismiss. Her motion was grounded on two principles, viz: first, lack of jurisdiction by the District Court and second, illegal detention over a long holiday weekend. The Court took her motions under advisement.

Webster was ordered held without bail pending hearing and pursuant to a dangerousness motion filed by the ADA.

Flowers moved for hearing *forthwith*. The motion was taken under advisement and Flowers again objected seeking dismissal of the case. At the dangerousness hearing, the Commonwealth sought to introduce hearsay evidence from the bank teller who was recuperating from a heart attack. Amy objected and made an oral motion to strike all such evidence.

Webster was ordered held without bail and a probable cause hearing was set down for April 9, 2010.

Prior to the probable cause hearing, Flowers moved for certain discovery having given prior

notice to the ADA. Flowers moved for discovery of all police radio broadcasts leading up to the defendant's arrest by police. She also moved for the bank's video surveillance tapes, copies of notes taken by police officers and used in creating the police reports of the incident, witness statements taken at the scene, photos and sketches and exculpatory evidence. The ADA responded that the Commonwealth would provide exculpatory evidence and objected to each of the other requests as being "work product". The ADA also informed Flowers that he would be seeking reciprocal discovery from the defendant. Amy was confident nothing would come of that motion since, the defendant has an absolute right to remain silent and has no obligation to cooperate with the government.

At the probable cause hearing, Flowers intended to seek additional information from the government's witnesses while they were on the stand, under oath and on the record. The judge commented that he didn't know what difference all that made.

As the probable cause hearing was about to get underway, the ADA was approached by a State Police Detective who handed Quinton Dexter a note.

The ADA then immediately requested to be heard at sidebar. The judge had both Flowers and Dexter come up to the bench.

At the bench, ADA Dexter announced that Webster had just been indicted in the matter by the Essex County Grand Jury on one count of armed robbery while masked. The ADA also informed the Court that a WMS warrant had just been issued for the defendant by the Essex Superior Court and that the State Police were taking custody of Webster on the warrant and immediately transporting him across the street to the Superior Court for arraignment.

Flowers was stunned. The court room was in total silence as uniformed members of the State Police who had accompanied the detective to the court room handcuffed Webster and led him out. Flowers immediately called out to anyone who would listen..."You can't do this. Its illegal !"

The judge simply sat at the bench and did not respond.

Please identify each potential practice and procedure issue here. Is Flowers correct ? Has a total injustice been done here ?

QUESTION THREE:

On January 15, 2010, Dan Yosemite and Kit Rider were drinking at the Dew Drop Inn (a local tavern) in Beverly, Massachusetts. An argument erupted over which team had better pitching, the Phillies or the Cardinals. The parties became animated and then violent. Rider finally took a Bud Lite bottle from the bar and smashed it over Yosemite's head. Yosemite is a white male. Rider is a person of color.

Yosemite went down in a pile where he stood, blood streaming down his face. The bar tender called police who arrived within minutes, arrested Rider after a brief struggle and called for EMTs. Yosemite was taken from the scene and admitted to Beverly Hospital with head trauma. Rider was taken to Beverly Police headquarters where he was booked and placed in a cell. During the booking process, police found seven (7) twists of what appeared to be class B controlled substance (cocaine) on his person.

Rider was charged with threats, disorderly conduct, resisting arrest, illegal possession of a class B controlled substance, assault and battery on a police officer and assault and battery by means of a dangerous weapon, to wit: a beer bottle.

The case has now been called for trial in the District Court before a jury of six (6).

As the jury trial has begun with the Honorable Elton Always Wright presiding, certain issues have arisen.

The jury pool was brought into the court room and the judge announced that the copy machine in the jury pool room was broken. Thus, there would be no paperwork accompanying jurors to the court room. But, not to worry, since the judge would screen all potential jurors to be sure Rider got a fair trial.

The defense proposed their own questions to be asked to potential jurors. The judge announced he wasn't into this "new fangled" jury selection stuff and would ask the questions. The judge posed statutory questions only to the members of the jury pool and then immediately ordered the session clerk to put eight (8) jurors in the jury box.

He then called the ADA and defense counsel up to sidebar. The defense attorney inquired about his client's participation in the jury selection process. The judge confidently told defense counsel that the defendant was seated in a good vantage point in the court room. He would be able to observe the jury selection process quite well. The defense again inquired of the judge, this time regarding posing questions to potential jurors who would be called up to the bench. The judge responded in effect that such a process would simply take too long. It wasn't necessary.

As the jury was constituted, it consisted of seven (7) white males and one Latino male. The Commonwealth used a peremptory challenge to remove the Latino male from the jury. He was replaced by a white female.

During the government's opening statement, the ADA referenced the fact that Kit Rider had been convicted of a similar charge in this same court room seventeen (17) years ago and that he was a career criminal. Defense counsel rose to object and Judge Wright told him to take his seat. After the government's opening statement, Judge Wright called the parties to sidebar and admonished defense counsel that it was not proper to object during opening or closing arguments. The judge then apologized from the bench to the jury for defense counsel's inappropriate behavior.

The trial continued.

During the course of the trial, the Commonwealth introduced a drug certificate from the Department of Public Health laboratory certifying the seven (7) twists to be cocaine. Defense counsel objected and judge Wright overruled the objection noting that during a tight government budget crisis, the government couldn't possibly be expected to have a lab technician testify as to the presence of cocaine in the twists seized by police.

At the conclusion of the trial, all eight (8) jurors were still in the jury box. Hoping at least for some type of justice, defense counsel suggested that all eight (8) jurors be allowed to deliberate the case. With more jurors, the possibility of at least one not guilty vote increased.

The judge and ADA were obviously moved by the defense attorney's plea since they finally relented and agreed that all eight (8) jurors could deliberate the case.

The jury was sent out to deliberate and the attorneys and the judge went to lunch. When Judge Wright returned from lunch, he found a note from the jury foreperson on his desk. It read: "how are we supposed to determine if the white powder is illegal drugs". The judge instructed the court officer to go back and tell the jury that the drug certification meant that it was drugs and to continue deliberating. The jury announced within five (5) minutes that they had a verdict.

Before they were brought into the court room, in the interest of full disclosure, the judge informed both attorneys that he had answered the jury's written question to avoid any delay in the deliberations. The attorneys thanked the judge for his efforts.

After deliberations, the jury came back and returned a verdict of guilty on all counts. The defense attorney immediately rose and asked that the jury be polled by the session clerk. Judge Wright denied the request since polling of jurors in criminal cases only takes place in the Superior Court.

Please identify any issues that you might see here, keeping in mid that Judge Elton Always Wright is a *veteran* jurist of many years experience and great wisdom.

MASSACHUSETTS SCHOOL OF LAW

Trial Court Practice & Procedure
Spring, 2007 - Judge Robert Cornetta

FINAL EXAMINATION

Instructions:

This final examination consists of three (3) questions of equal weight. Question one (1) has multiple parts to it. Please number your responses accordingly in your blue books, viz: Question 1, select answers a,b,c or d; then go on to essay Questions 2 & 3.

This is not an open book examination. Therefore, you are to have no outside sources with you during the examination. You must write **legibly** in order to receive full credit for each question. It is highly recommended that you keep in mind proper writing style, syntax, spelling, punctuation and the like in completing your answers. If you intend to cite a case or statute, be sure it is correct. Incorrect cites will result in deduction of credit.

Questions two (2) and three(3) are essay questions requiring you to write out your responses *after* carefully thinking about each problem. Your answers to these questions should be concise and should not repeat the fact pattern. Each essay question calls upon you to identify the issues, discuss them in the context of the given fact pattern and arrive at a conclusion supported by applicable law.

Please remember that it is *quality* and not quantity that counts.

Good luck !!!

- (7) Under no circumstances can a defendant be sentenced by a District Court judge and required to serve more than 2 ½ years in the House of Correction.
- (8) If the defendant received a split sentence of 2 years to the House of Correction, six months to serve and the balance suspended for 2 years, and while on probation is convicted of another crime, upon a determination that the defendant is in violation of his probation, the court is required to revoke his probation and impose the balance of the suspended sentence.
- (9) Hearsay is admissible in a probation violation proceeding only if it is shown to be reliable and that there is good cause for not calling a live witness.
- (10) In a criminal case tried in the district court, each side is entitled to one peremptory challenge for each juror seated.

QUESTION 2

You are employed as a junior associate in the firm of Deer, Deer and Antelope of Andover-Essex Massachusetts. A senior partner in the firm advises you that she is scheduled to try a case next week in which the defendant is charged with operating under the influence of alcohol, operating to endanger, and a marked lanes violation. She wants your advice about several issues. First, are there any motions that should be filed. Second, can she offer a guilty plea in circumstances in which the defendant is not willing to accept anything more than a continuance without a finding for six months with no special conditions of probation after an admission to sufficient facts, and if so, what will the procedure entail. You are advised that all discovery is complete, a motion to suppress evidence seized from the automobile has been heard and denied, and the defendant and his wife are prepared to testify that the defendant only consumed 2 beers at dinner and was not drunk at the time. The arresting officer's police report reads as follows:

"This is the report of Officer John Smiley. At 12:45 a.m. on January 30, 2003, I was on routine patrol on Main Street in Andover Essex, Massachusetts. I was operating a marked cruiser. I received a radio call from my dispatcher that indicated a man had called the police station on his cell phone to report a red corvette that was weaving "all over the road" on Main Street. The report further indicated that the car was headed in my direction. I pulled my cruiser over to wait for the vehicle to pass. There were no other cars on Main Street at the time. In one minute, I spotted the red corvette and saw it cross over the center line. I activated my blue lights and pulled onto Main Street behind the Corvette. It appeared that there were two people in the front seat. Suddenly, the corvette accelerated and turned off Main Street. I pursued it but lost sight of it on Appleton Street. About five minutes later, I was back on Main Street when I saw the same red corvette parked in front of Ed's all night diner. Both doors were wide open and the car was parked illegally. I entered the diner and saw two people seated in the first booth. The defendant, later identified as Harry Potter, was slumped over the table and reeked of alcohol. He had blood shot eyes. His clothing was disheveled. There were two cups of black coffee in front of him. His female companion was seated opposite from him. I heard her say, "Honey, drink

your coffee. They'll be here any minute now. We've got to go." I approached the pair and asked if the defendant was the operator of the corvette. The women answered, "None of your business. We were just about to leave." I informed the defendant that I wanted him to perform several field sobriety tests. He tried to stand up, but fell back to his seat to his severe degree of impairment. When he tried to speak, his speech was slurred and barely audible. I told him he was under arrest for operating a motor vehicle on a public way while under the influence of alcohol. When I went to secure the car, I found the car keys on the front driver's seat. The keys were on a key ring with a tag that said "Harry Potter." The defendant was taken to the police station and booked in the ordinary course. These are the essential facts."

You should assume that Operating Under the influence of Alcohol requires proof that the defendant operated a motor vehicle on a public way while under the influence of alcohol and the Main Street in Andover-Essex is a public way. Also, assume that there are no statutory limitations or restrictions on the sentencing authority of the judge other than those that apply generally to all criminal cases in the district court.

What advice will you give your senior associate in reply to her two questions?

Question 3:

On April 18, 2003 the Andover-Essex Police Department received a 911 call from a distraught elderly female. She was obviously in fear, crying and begging for police to come and protect her. She continued to cry out on the phone to the dispatcher that her son had attacked her and was trying to do so again.

Officers Starsky and Hutch responding to the call in a marked cruiser pulled up at 35 Reston Street within five minutes and observed 56 year old Lucian Hightower seeking to break down the door of apartment one with a tire iron.

The officers immediacy took Hightower into custody and entered the apartment. Inside they found 87 year old Imelda Hightower in obvious fear, clutching her phone and crying. She began to scream when she saw Lucian and trembled as she told the police to take him away from her.

Imelda related to the officers that Lucian lived with her and had been in the apartment earlier, had struck her repeatedly with a hard bound bible and told her she was not a worthy subject of God. Lucian then left, telling her he was going out and would return to her with faith. Imelda was found with wounds to her head, arms, neck and back and she was bleeding from her forehead. The apartment was in total disarray. Imelda's walker was upside down in the back stairwell.

An ambulance was called and Imelda was immediately transported to the hospital for treatment of her wounds and shock.

The officers then transported Lucian to the station in custody. He was booked, printed and photographed and placed in a cell. During the booking process, police found three five dollar twists of cocaine on his person together with assorted pills and various religious objects. A prescription for paxil was also found, made out to Lucian from the Essex Street Mental Health Clinic. Lucian had a strong odor of alcohol on his person and kept mumbling that he was "an instrument of almighty God" as he was being transported, booked and locked up.

Lucian was held until his appearance in court on Tuesday, April 22nd since Monday was a holiday. On Monday afternoon, police entered his cell, took away his belt and shoe lacings when he threatened to hang himself in his cell. He arrived at the Andover-Essex District Court on Tuesday morning and as duty attorney, you have been assigned to interview Lucian in the cell block in preparation for his arraignment shortly upstairs in the court room.

While speaking to you in the cell block, Lucian has related to you that all he wants to do is leave so that he can take care of his elderly mother. He keeps repeating that she needs him. While his eyes are glassy and he appears disheveled, nevertheless, he tells you he has spoken to his mother

by phone from the police station and that she wants him to come home. He denies any knowledge of the incident. The arresting officer is in court and tells you that in fact Lucian's mother did call the station, telling the duty officer that she was treated and released from the hospital and that the entire matter was simply a misunderstanding and that the police over-reacted. She says she loves her son and needs him home to care for her.

A check of Lucian's CORI shows several charges of assaultive behavior, threats, breaking and entering and prior marijuana possession charges. Yet, surprisingly, not one conviction or one default. In fact, most charges over the last ten years have either been dismissed or continued without a finding. There is no record of any 209A restraining orders ever being issued against him as well.

Lucian is being charged with assault and battery by means of a dangerous weapon upon a person 60 years of age or older with serious injury, attempted breaking and entering, threats and possession of class B controlled substance, to wit: cocaine.

The Assistant District Attorney tells you that because of what the officers observed when they arrested Lucian, that she is going to move for a dangerousness hearing in this case. When you relate this to Lucian in his cell, he is stunned and tells you to do everything possible to get him released and that his mother will die if he is not there to care for her.

Please identify each issue surrounding this incident as you undertake the representation of Lucian and describe what actions you propose to take on his behalf and in his defense.

Question 4:

On March 30, 2003, Hobart Faxon tendered a plea in the Salem District Court to a charge of operating under the influence of alcohol, speeding and marked lanes violations. A guilty finding was entered by the court on the operating under count and he was found 'responsible' on the speeding and marked lanes violation. Because the case involved an accident with minor personal injuries, Judge Fairness sentenced Hobart to 18 months straight probation together with a \$750.00 fine and \$200.00 in civil assessments. Hobart's license was suspended for 60 days and he was required to attend the alcohol safety program with added fees and costs.

This was Hobart's first conviction of any kind. He is a 34 year old computer software marketing executive who lives in Georgetown and works in Salem. He is married and has two children whom he supports, ages 5 and 2 years. It is very hard for him to get to work without a ride since there is no direct public transportation between Georgetown and Salem.

On May 5th, Hobart was scheduled to give a very important computer demonstration to software executives from around the country. He had arranged for a cab to take him to work at 9:00 a.m.. By 8:45 a.m. the cab still had not arrived and because of the importance of his getting to work, Hobart took the family vehicle and started out onto route 97. Georgetown Police

Officer Joe Thursday, following Hobart in a marked cruiser, noticed a break light out on Hobart's minivan and pulled the vehicle over. Hobart produced a valid registration for the vehicle but, had no license to show the officer. He was immediately arrested and booked for operating after suspension for OUI. At his arraignment in Haverhill District Court, he was released on \$500.00 cash bail for an appearance back in court on June 11th. In the meantime, Hobart has received a violation of probation notice from Salem District Court Probation Officer I. Lockemup. A final surrender hearing has been scheduled in that matter at Salem District Court for June 5th and it appears likely that Hobart will have to appear before Judge Nathan Nosympathy on that date.

Hobart tells you as his lawyer that he realizes what he did was wrong but that his job really depended on his being in work on time on May 5th and that as a result of his arrest, he has been fired.

You have spoken to the probation officer who has said to you, "look, these cases are zero tolerance around here. You can take your chances with the judge if you want, but I'm recommending 18 months to the house of correction committed for this guy. He's a menace."

Hobart tells you that a commitment will devastate his family. His wife is currently undergoing treatment for severe anxiety and his youngest daughter will soon have to submit to surgery to correct a left lazy eye. The family has no other local support. Hobart's wife is an only child who lost her parents recently to SARS and he has one younger sister who lives in Detroit and cares for an elderly aunt who has Alzheimer's disease.

Are there any alternatives that you might present to the judge at the final surrender hearing that could avoid Hobart's incarceration while providing for the myriad of issues he presents with? And, what of the Haverhill District Court case? That case is coming up after the Salem VOP hearing. Is Hobart simply destined to go to jail?? Is there no hope? No justice?

Please discuss.

MASSACHUSETTS SCHOOL OF LAW
Trial Court Practice & Procedure
Spring, 2006 Semester – Criminal
Hon. Peter Agnes, Jr. – Hon. Robert A. Cornetta

FINAL EXAMINATION

Instructions: This final examination consists of four (4) questions. Question one (1) is a ten (10) part true/false exercise.

Questions two (2), three (3) and four (4) are all essay questions. This is a **closed book** examination. Please be sure to **number** each question in your blue books.

Please also keep the following in mind:

1. Write legibly. If your examination cannot be read, you will not receive a grade.
2. Please consider outlining your answers on the back of this examination sheet before you write in your blue books. It will help you with organization and issue spotting. However, anything you outline **MUST** be written in your blue book. No credit will be given for outline materials not written in your blue books.
3. Please **DO NOT** repeat the question in your answer. Do get right to the point and be both precise and concise in your answers. Identify each issue you find in the fact pattern. If you are going to cite case law or statutory law, be sure your citation is correct. Remember, it is quality not quantity that counts.
4. In the event you write in more than one blue book, please be sure to number each blue book and be sure your SSN is on each for identification purposes.

Good Luck!

Question One:

- A. Under Massachusetts law, a defendant if an indigent defendant is before the court for arraignment on a felony charge and there is no attorney available to represent him or her, the defendant must be released on personal recognizance. True or false?
- B. The standards and procedures for setting bail in criminal cases are the same in all departments of the Massachusetts Trial Court (Superior, District, BMC, and Juvenile). True or false?
- C. Misconduct in the form of a prosecutor's failure to observe her constitutional obligation to turn over exculpatory evidence prior to trial entitles the defendant to the dismissal of the charges without the need to establish prejudice. True or false?
- D. Under Rule 14 of the Massachusetts Rules of Criminal Procedure, the Commonwealth is required to disclose the names of all persons (civilian and police) to whom the victim has made statements about the subject matter of the case whether before or after the date of the offense. True or false?
- E. A private party may initiate a criminal prosecution against another person by filing an application for process with the Clerk-Magistrate of the District Court in both misdemeanor and felony cases. True or false?
- F. A defendant has a right to an independent medical examination under G.L. c. 263, § 5A in any case in which a crime involving alcohol or drugs is charged in connection with the operation of a motor vehicle. True or false?
- G. There is no constitutional right in Massachusetts to a "show-cause hearing" or "clerk's hearing" in misdemeanor cases before a person may be required to appear in court and answer to criminal charges in misdemeanor cases. True or false?
- H. An indictment that is based entirely on hearsay evidence presented to the grand jury is subject to be dismissed as lacking in probable cause under *Commonwealth v. St. Pierre*, 377 Mass. 650 (1979).
- I. Under the so-called "Bishop-Fuller protocol," a party seeking access to any information revealed by a person alleged to be the victim of a crime to another person who is providing counseling or therapeutic services must first obtain a court order based upon a showing that the information sought is exculpatory and material to guilt or innocence. True or False?
- J. In Massachusetts, when the issue of whether the defendant validly waived his Miranda rights or gave a voluntary confession to the police is raised by the evidence the Commonwealth has the burden of proving a waiver or voluntariness by a standard of proof beyond a reasonable doubt. True or false?

Question Two:

Based on your distinguished law school record, you have been appointed as Chief Law Clerk for Justice Miriam Wisdom of the Andover-Essex Supreme Judicial Court. In the jurisdiction of Andover-Essex, Massachusetts law is controlling.

Based on the record and the appellate briefs submitted in the case of Commonwealth v. Jones, the following summary of the facts has been prepared by another law clerk which you may accept for purposes of this assignment.

“The defendant appeals from four armed robbery convictions. He claims error in the denial of his pretrial motion to dismiss the robbery indictments or to suppress photograph and fingerprint evidence as a remedy for an allegedly illegal detention.

“At approximately 11:00 A.M. on Tuesday, February 21, 2004, following an automobile chase which terminated when the defendant's vehicle struck a guard rail, the defendant was arrested for receiving a stolen motor vehicle, receiving a stolen credit card, driving to endanger, failing to stop for a police officer, and attaching plates. The defendant was not at that time a suspect in any armed robbery investigation. The injured defendant was taken to a hospital, and bail in the amount of \$250,00.000 surety or \$25,000.00 cash was set later that day by a judge at the Wareham District Court while the defendant, who was unrepresented at the bail hearing, was in the hospital. The defendant's case was continued until March 3, and the judge issued a mittimus ordering that the defendant be committed to the Plymouth County house of correction pending his postponed appearance.

“At approximately 12:00 P.M. the following day, February 22, the sheriff's department transported the defendant from the hospital to the house of correction where he was fingerprinted and photographed pursuant to the facility's standard admissions procedure. Later that day, the staff psychologist at the house of correction examined the defendant, found the defendant to be suicidal, and recommended that he be committed to Bridgewater State Hospital. The following morning, after he set fire to his own cell, the defendant was examined by a second doctor who concurred in the first doctor's recommendation and filed a request for commitment with the court. Pursuant to G.L. c. 123, § 18(a), a District Court judge adopted the recommendation and ordered that the defendant be committed to Bridgewater for a period of observation not to exceed thirty days

“The defendant was first brought to court on March 27, after being released from Bridgewater, and was arraigned at that time on the charges arising out of the February 21 incident. The defendant was also arraigned, following his release from Bridgewater, on charges for various armed robberies to which the police had connected him using the photographs and fingerprints taken at the house of correction. The charges arising out of the February 21 incident were subsequently dismissed.

“The defendant contends that his detention from February 21 to March 27 was illegal because bail was set in his absence and because he was not brought to court for an initial appearance. In response, the Commonwealth argues that the delay in bringing the defendant to court was reasonable under the totality of the circumstances, and therefore

lawful, since the defendant's own behavior in attempting to flee the arresting officer caused his hospitalization and therefore his absence from court when bail was set. According to the Commonwealth, whenever a defendant is unable to be present at arraignment for medical reasons, the standard practice in the Wareham District Court is to set bail in his absence and continue the case ten days. The delay beyond ten days in this case was reasonable, says the Commonwealth, because of the subsequent necessity of committing the defendant to Bridgewater for observation."

Justice Wisdom has provided you with a copy of the applicable Massachusetts bail statute, G.L. c. 276, § 58, which reads in pertinent part:

"A justice or a clerk or assistant clerk of the district court, a bail commissioner or master in chancery ... shall ... hold a hearing in which the defendant and his counsel, if any, may participate and inquire into the case and shall admit such person to bail on his personal recognizance without surety unless said justice, clerk or assistant clerk, bail commissioner or master in chancery determines ... that such a release will not reasonably assure the appearance of the prisoner before the court"

Justice Wisdom also indicates that she believes there are several precedents of the Supreme Judicial Court that may have a bearing on the outcome of this case.

First, Justice Wisdom explains there is a case that states that "[o]ur Legislature intended § 58 to protect the rights of a defendant by establishing a presumption that he or she will be admitted to bail on personal recognizance without surety and by delineating carefully the circumstances under which bail may be denied..

Second, Justice Wisdom explains that G.L. c. 276, § 61 provides that "[a] person authorized to take bail out of court shall take such bail in the presence of the person to be bailed."

Third, Justice Wisdom indicates that Rule 7(a)(1) of the Rules of Criminal Procedure provides in pertinent part that "[a] defendant who has been arrested shall be brought before a court if then in session, and if not, at its next session.... At that time the defendant shall be interviewed by the probation department; the probation department shall make a report to the court of the pertinent information reasonably necessary to determination of the issues of bail and indigency. If the judge or special magistrate finds that the defendant is indigent or indigent but able to contribute and has not knowingly waived his right to counsel under the procedures established in Supreme Judicial Court Rule 3:10, the Committee for Public Counsel Services shall be assigned to provide representation for the defendant. The judge or special magistrate shall then arraign the defendant or shall set a time for arraignment. The judge or special magistrate shall determine the conditions of the defendant's release, if any."

Justice Wisdom explains that the defendant has argued that his rights were violated and that the pending armed robbery charges must be dismissed as a remedy for the violation. She further indicates that she has not made up her mind about what to do and want you to prepare a draft decision based on your understanding of the appropriate way to apply the above legal principles (and any others you believe should be controlling) to the facts.

Question Three:

On Friday, January 13, 2006, Lewis Holmes was arrested by the Salem Police Department and charged with breaking and entering in the night time with intent to commit a felony, malicious destruction of private property, threats, assault and battery, resisting arrest and possession of class B controlled substance with intent to distribute, to wit: cocaine. The facts are stated briefly in the police report as follows:

Police received a 911 hang up call from 15 Main Street in Salem at about 8:30 p.m. Upon arriving at the scene they found the front door window of the one family house broken and the door open. Upon entering the premises, they found Maria Reyes inside the house crying. She had a red welt on the left side of her face. She told police that she had an argument over the telephone with her live in boyfriend Lewis Holmes and told him she was throwing him out of the apartment. She locked all the doors and called her sister to come over for protection. Before her sister arrived, Lewis drove up and began pounding on the door and windows on the first floor.

When Maria refused to let Lewis in, he broke the front door window and entered the apartment. A confrontation then occurred and Maria ran to get the phone. She dialed 911 and at that point, Lewis ripped the phone out of the wall, struck Maria in the face, knocked her down, took some of his belongings and left.

An ambulance was called for Maria and police began searching the neighborhood for Lewis. He was found about fifteen minutes later hiding under the back stairs of his parents' house at 29 Granger Avenue, a short distance from Maria's apartment. When police tried to arrest Lewis, he put up a struggle and had to be sprayed with pepper spray to be subdued enough to be handcuffed and put into a police cruiser. While being booked at the police station, Lewis was found to have fifteen (15) ten dollar (\$10.00) 'twists' of cocaine on his person, a cell phone, beeper and \$985.00 in small bills on his person.

Lewis was held by Salem Police over the long weekend and was transported to Salem District Court for arraignment on Tuesday morning. While in the lock up at Court, he had trembles, looked pale and sweaty, began to scratch himself all over, said he had nausea and was hearing voices, refused to further communicate with his court appointed lawyer and continually looked down at the cell floor while sitting in a corner. When he was brought upstairs into Court, the judge appointed an attorney for him and after a brief hearing immediately announced he was placing seventy five thousand dollars (\$75,000) cash bail on Lewis because the facts alleged by the prosecutor were so egregious. When defense counsel requested funds for an investigator in this case, the judge said he wanted to hear if the Commonwealth had any objection to the request since the case seemed so "cut and dried".

What issues might you wish to consider presenting to the Court on the next date since Lewis's parents has now hired you and dismissed the court appointed lawyer that had been given to their son?

Question Four:

Jorge Gonzalez is on trial in Essex Superior Court charged with drug trafficking (Class A – heroin), assault with intent to murder and conspiracy.

The District Attorney has announced the Commonwealth's intention to proceed with all three indictments at this time for reasons of judicial economy.

During the jury selection process, the District Attorney has exercised four preemptory challenges to potential jurors, each whose surname ends in a vowel.

Upon the defense's questioning of this, the trial judge has advised defense counsel that each side is entitled to four preemptory challenges for no cause and an unlimited number of challenges for cause.

Upon the seating of the jury, the judge has selected as jury foreperson, William Putnam, a white, iron worker from Saugus, Massachusetts. The defense has requested a sidebar conference in this matter and the judge has denied that request.

The defense has prepared and presented to both the trial judge and prosecutor a series of proposed voir dire questions to be presented to the jury during the selection process. The trial judge has indicated on the record that he has now reviewed and ruled upon each proposed question. Of the fifteen proposed questions, the judge has allowed three of them. The judge has indicated from the bench that the remaining questions are denied and has instructed the sessions clerk to proceed with the empanelment process.

During final arguments, the prosecutor has told the jury that they have more than enough evidence that has been presented to them to convict Jorge and that it is now their duty to remove him from the streets of the Commonwealth for the protection of society. The defense has objected to these statements and at sidebar has requested that the judge give an instruction to the jury to address this issue. In his final instruction, the judge has told the jury that final arguments presented by attorneys are not evidence, they only are presented by the parties to seek to explain what all the evidence means

After an hour of deliberations, the jury has come back with a finding of guilty as to each indictment. The defense immediately has moved for a stay in sentencing and for an aid in sentencing report. The defendant has been in custody since his indictment six (6) months ago. The defense notes that pursuant to Ch. 123, s. 18A, the defendant has been hospitalized at Bridgewater State Hospital three times for mental breakdowns and that this should be considered in any sentencing arguments the Court will hear.

The Commonwealth objects and moves for sentencing immediately. The judge grants that motion and after hearing, sentences the defendant to fifteen (15) to thirty (30) years consecutively on each indictment.

You have now been retained by the defendant's family to seek an appeal in this case. What issues do you plan to raise on appeal?

MASSACHUSETTS SCHOOL OF LAW

**District Court Practice & Procedure
Spring, 2003 Semester**

Judge Peter Agnes, Jr. - Judge Robert Cornetta

FINAL EXAMINATION

Instructions: This examination consists of four (4) questions of equal weight. Question 1 is a ten part question. In answering question one, please number each part's response in your exam booklet.

Questions 2, 3 & 4 are essay questions requiring you to write out your answers. Please note the following:

a) read the questions carefully, b) do not repeat the fact pattern in your answer; c) do write legibly; d) do identify as many legal issues as you are able to identify in the fact pattern; e) do arrive at a final conclusion or opinion in your answer; f) do be concise and to the point.

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

Question 1:

Indicate whether each of the following statements is "true" or false."

- (1) Any person who is arrested and held by the police for more than 24 hours before he or she is brought to court is entitled to a hearing and a judicial determination of probable cause under the Jenkins case.
- (2) The District Court is authorized to hold persons without bail whenever there is evidence that their release would pose a danger to the community or to any particular person.
- (3) In a District Court case governed by G.L. c. 278, § 18, the defendant is entitled to discovery that encompasses all relevant and material information in the possession or under the control of the prosecutor.
- (4) In Massachusetts, an individual has a constitutional right to be proceeded against by indictment before he or she can be convicted of a felony.
- (5) An admission to sufficient facts coupled with a continuance without a finding and the eventual dismissal of the charges can be ordered over the objection of the Commonwealth unless prohibited by a specific statutory provision.
- (6) In Massachusetts, under the defendant-capped plea system, any sentence of incarceration imposed by the court may not exceed that which is recommended by the defendant, but the court may impose any conditions of probation that it deems appropriate whether or not the defendant gives his or her assent

Question 1:

Multiple Choice: Please select the best answer to each question and mark the same accordingly in your blue book.

1. At pretrial hearing, the following are true, except:

- a. A voir dire hearing can be held regarding discovery;
- b. An out of court date can be established for discovery compliance
- c. The defense and Commonwealth can be heard regarding the defense's motion for funds
- d. The defense and Commonwealth can be heard regarding a *DiBenedetto* motion

2. At arraignment the following can be done, except:

- a. Seizing a defendant's driver's license
- b. Placing a defendant on pre trial probation
- c. Having cash bail posted by private counsel
- d. Recognizing a defendant to answer to an outstanding warrant *at another court*

3. While on probation, which of the following cannot be done?

- a. Ordering the defendant to stay out of a particular city or town
- b. Ordering the defendant who is a convicted sex offender not to participate in local government affairs
- c. Having probation officers conduct a warrantless search a defendant's place of residence
- d. Having the defendant participate in counseling against his wishes

4. During a mental health hearing, which IS true?

- a. The defendant is immediately entitled to have legal counsel represent him and a *guardian ad litem* appointed on his behalf
- b. The respondent can refuse to appear at hearing
- c. Treating physicians are precluded from testifying due to doctor/patient privilege

d. The respondent is automatically precluded from appearing *pro se*

5. At a dangerousness hearing each of the following is true, except:

- a. Upon motion by the Commonwealth, the defendant is *automatically* held without bail pending hearing
- b. The Commonwealth is entitled to such a hearing when the facts support the defendant being arrested for violence against a person
- c. The defense can seek to have the defendant committed for observation to a Department of Mental Health facility even if the Commonwealth believes the defendant is too dangerous
- d. After hearing, if the Court determines that the defendant is dangerous, its only option is hold him without bail

6. At sentencing, the following is true, except:

- a. The Boston Municipal Court can hand down a 'split sentence'.
- b. The District Court cannot hand down a 'split sentence'
- c. The Superior Court cannot hand down a 'split sentence'
- d. The Superior Court can place someone on life time probation

7. At Juvenile Court, each of the following is correct, except:

- a. A Youthful Offender cannot be sentenced to life without parole
- b. In a CHINS case, the juvenile is entitled to trial by jury
- c. A juvenile cannot claim a transfer hearing
- d. A juvenile cannot be sentenced to DSS

8. During a G.L. Ch. 209A domestic violence order hearing, the following is correct, except:

- a. A District Court Judge cannot transfer title to real property

b. A Boston Municipal Court Judge can order a defendant out of a real property setting such as an apartment or single family home

c. A District Court judge cannot issue a child visitation order

d. A Probate Court Judge cannot issue an order superceding the actions of a District Court Judge

9. The following is not true regarding Grand Juries in Massachusetts:

a. The Grand Jurors select their own foreperson

b. If the Grand Jury hands up a 'No Bill' it will then be excused by the District Attorney

c. The attorney for a witness before the Grand Jury can be seated in the hearing room while the Grand Jury takes testimony

d. Though the proceedings of the Grand Jury are secret, any indictments it returns are delivered to the Judge in open court

10. Each of the following can be done by the Court *except*:

a. Denying the District Attorney's submission of a nolle prosequi

b. After the complaint has issued, dismissing the case over the objection of the District Attorney based upon a finding of *no probable cause*

c. Allowing a defendant to waive his right to a probable cause hearing in the District Court where the offense charged is outside the jurisdiction of the District Court

d. Ordering a witness in a *criminal* case to submit to a deposition upon oral examination

Question 2:

Reggie Sutcliffe was arrested outside of Fenway Park after police received a 911 call about a disruption on Yawkey Way. He was charged with assault and assault and battery, both by means of a dangerous weapon, to wit: a knife. Reggie is 37 years old and is apparently both unemployed and residing at the Boston Mission. It is unclear what level of formal education he has attained.

When police arrived, they found Reggie wielding a knife and shouting at a young couple something about "they're my tickets", give them to me now.

The Red Sox had decided to sell a limited number of tickets on Friday morning over a three day holiday. People had been waiting in line out on the sidewalk overnight to purchase the prized "Green Monster" admissions. Witnesses at the scene relate that Reggie slept on the sidewalk all night drinking and that when he got to the ticket window after waiting in line, he could not produce enough money to buy the tickets (he had seven one dollar bills in his pocket and wanted four Green Monster seats).

Boston Police immediately subdued Reggie and took him to the Area D police station. By the time he was photographed, printed and processed, it was 3:00 p.m., too late to take him to Court.

Reggie stayed in custody at Area D and was brought to Boston Municipal Court, Roxbury Division on Tuesday morning.

As a duty attorney that day, you have been assigned to represent Reggie. You have found that in addition to the pending charges, Reggie is in default out of Salem District Court charged with larceny from a person.

Upon seeking to interview Reggie in the lock up, you have found him to be less than cooperative. He has provided you with some information but, he keeps complaining that the Boston Police have his tickets and refuse to give them to him. He has remained curled up in a corner of the cell. He says that he wants to give the tickets to his mother for her birthday. You notice that Reggie's eyes are glazed over, his speech is halting and he is scratching himself all over. He tells you he needs to be released so that he can take the bus to Worcester to see his friend Linda.

Upstairs in the court room, the Assistant District Attorney tells you she intends to seek \$50,000.00 cash bail on Reggie. She lets you know that such an amount "should hold him so that the community can get some relief". She also tells you that the city has decided to "clean up" the area around Fenway Park. The Area D police prosecutor has met with the D.A. this morning and they are both in agreement that your client is basically a 'nuisance' that they don't want around the park especially since opening day is just around the corner.

At a very brief arraignment, Judge Holdem sets bail on your client at \$75,000.00 and orders him to the Nashua Street jail in lieu of that amount. The entire proceeding takes about three minutes.

Your client is now scheduled to return to Court in thirty (30) days since the judge is very conscientious about complying with the '30 day rule'.

Please describe your client's rights in this matter and what you might do to effectively represent your client. By the way, what is the 30 day rule??

Question 3:

Sarah Smile is a 23 year old single mother of two. Her children are Cain and Abel whom she has had with two former significant others, Dave Dighton and Bart Bacon. Dave is currently an unemployed landscaper and Bart is employed as a longshoreman. Sarah is on AFDC and does not receive child support. Both fathers claim they cannot afford child support on their limited incomes.

Sarah has been sharing an apartment with her children and her current live in partner Otis Owl. Otis is on probation out of the Salem District Court for assault and battery. He is currently in VOP warrant status for violating his probation. Otis drives a beer delivery truck for a living.

Last Friday night, Sarah and Otis had a fight over who would control the T.V. remote. Cain wanted to watch The Simpson and Otis wanted to watch the Britney Spears music video on the 'E' channel.

Otis had been drinking (as he often does at home) and had a few 'hits' from a marijuana blunt. The fight escalated to a physical confrontation. Otis finally hit Sarah with the T V remote and split her lip. She screamed and Otis fled out the back door with his coat, keys and wallet.

On Monday, Sarah has come to see you seeking advice. She is very afraid of Otis since he has been threatening in the past and has struck her before while being under the influence. Sarah reports that she is out of money, about to lose her apartment and while she's afraid of Otis, she knows of no way to survive except by taking him back. She tells you she locked herself in the bathroom with her children over the weekend, waiting for the Court to open on Monday. Otis has all of his belongings in Sarah's apartment and she's afraid of his returning to get them.

Sarah has been looking for work and recently had a good interview at "Hair We Are", a local salon. But, she does not want to take the job only to have Otis come by and cause a scene resulting in her termination. Finally, Sarah shows you a document she says she received from the local District Court. She thinks Bart is trying to see his son and she's been calling the court clerk's office telling them she doesn't want Bart to have visitation. They keep telling her that they cannot help her.

What will you advise Sarah to do ??

MASSACHUSETTS SCHOOL OF LAW
DISTRICT COURT CRIMINAL PRACTICE AND PROCEDURE

JUDGE AGNES
JUDGE CORNETTA

FINAL EXAMINATION

Spring, 2002

DIRECTIONS: The first question consists of ten statements which are either "true" or "false." Accordingly, your answer should be simply "true" or "false." No explanation is required or permitted. The remainder of the questions call for an essay-type answer. You should read each question carefully, identify the legal issues, outline your answer on a separate sheet, and then write your answer legibly. If we cannot read your handwriting, you will not receive credit for your answer.

QUESTION ONE

- (1) At a so-called "dangerousness" hearing under G.L. c. 276, § 58A, in which the prosecutor is relying on the affidavit submitted by the victim in support of a restraining order under G.L. c. 209A along with the testimony of police officers who responded to the scene of the alleged offense, the defendant has a right to call the victim of the crime as a witness. True or false?
- (2) The district court has final jurisdiction of all misdemeanors and felonies not punishable by life imprisonment. True or false?
- (3) Tape recordings of the communications between the police dispatcher and the police cruisers which were involved in the high speed pursuit which led to the defendant's arrest for operating under the influence of alcohol are subject to a conditional privilege and are discoverable by the defendant only upon a showing of "good cause." True or false?
- (4) When the defendant has been summonsed to appear for her arraignment on a complaint charging a misdemeanor that does not involve violence such as trespassing, the defendant has the option of entering a finding of "responsible" by mail and paying a \$100 assessment instead of appearing in person in court. True or false?
- (5) Hearsay is always admissible in a probation violation hearing under the district court rules without regard to whether it is reliable or trustworthy. True or false?
- (6) A defendant who is arrested and found to be in default for an offense that is punishable by more than 100 days in jail such as operating a motor vehicle negligently or recklessly so as to endanger the lives and safety of the public is not eligible for bail until the default is removed and the case is disposed of. True or false?

(7) When the competency of the defendant is at issue, the Commonwealth has the burden of proving that the defendant is competent by clear and convincing evidence. True or false?

(8) Upon the defendant's conviction of a crime punishable by up to 2 ½ years imprisonment in the House of Correction, with no mandatory minimum sentence required, the district court may impose a split sentence of six months to the House of Correction, 30 days to serve and the balance suspended for 3 years that will result in the defendant being on probation for 3 years after completing the 30 day sentence. True or false?

(9) A motion to revise and revoke a sentence under Rule 29 of the Rules of Criminal Procedure is a remedy that authorizes the sentencing judge to take a second look at the sentence to determine whether justice was done and, if not, to revise the sentence to that which better serves the ends of justice. True or false?

(10) When a motion for a required finding of not guilty under Mass. R. Crim. P. 25 is filed at the close of the government's case, the judge is required to deny it so long as there is credible evidence offered by the Commonwealth that meets the standard of probable cause to believe that a crime was committed and that the defendant is the party who is responsible. True or false?

QUESTION TWO

Henry Adams has hired you to represent him. Six months ago he was arrested by the Massachusetts State Police for operating under the influence of alcohol, operating after suspension of his driver's license, and operating to endanger. He was arraigned the next morning in the Andover-Essex District Court. He declined appointment of counsel and pled guilty to the above offenses. He was sentenced by the court to 18 months in the House of Correction on the operating under the influence of alcohol charge and to a from and after sentence of 2 years straight probation on the other charges. Henry's family arranged for a transcript of the hearing to be made which reads as follows:

"Judge: Good morning Mr. Adams. My name is Judge Thunder of the District Court. I understand from the clerk that you do not have an attorney, that you do not wish to be considered for appointment of an attorney and that you simply wish to plead guilty. Is that correct?

Defendant: Yes, sir.

Judge: All right, let's proceed. Let me begin by advising you of your rights. You have a right to a trial or a jury trial and you do not have to plead guilty. If you had a trial, you may call witnesses, you have a right to remain silent and the Commonwealth has to prove that you are guilty beyond a reasonable doubt. You also have a right to have a jury trial in which people from the community will decide your guilt or innocence instead of a jury. If you're found guilty and you're not a citizen of the United States, you can be deported. Do

you have any questions so far?

Defendant: No, sir.

Judge: Tell me something about yourself.

Defendant: Sir, I am 28 years old, I've got as bad cocaine and alcohol problem and I'm afraid that if I don't get help I'm going to hurt someone or kill myself. I really want to get this over with. I don't feel too good this morning.

Judge: All right. Let me also tell you that the crimes you are charged with are punishable by imprisonment in a House of Correction. For example, if convicted of operating under the influence of alcohol, you can get 2 ½ years. Now I'm going to ask the District Attorney to read the police report. Please listen.

Defendant: Ok.

Assistant District Attorney: Reading from the report of Trooper Able, while on routine patrol last evening at 11:51 p.m. on Interstate Route 93, she observed the defendant's vehicle traveling too slow. She activated her blue lights and pulled the defendant over. She approached the driver's side and noticed that the defendant had stepped out of the vehicle. He was unsteady and had an odor of alcohol on his breath. The defendant could not do the 1 leg stand. He was arrested, taken to the barracks and booked. The car was towed. The defendant agreed to a breathalyzer test. The results of the 2 subject tests were 0.11% and 0.12%.

Judge: Mr. Adams, did you hear what the ADA had to say?

Defendant: Yes, sir.

Judge: Do you agree with those facts?

Defendant: Basically yes, sir.

Judge: Conferring with the ADA [inaudible at this point]. All right, sir. I sentence you to 18 months to the House of Correction on the operating under the influence charge and 3 years probation from and after on the other charges. Good luck. Custody, Mr. Officer."

What, if anything, will you do on Henry's behalf if you accept his case? In particular, analyze the plea hearing. Does it comply with the requirements of the law? If not, why not?

Question 3

On Friday, March 15, 2002, at 12:30 a.m., the Lawrence Police responded to a call of a home invasion at 53 Willow Street in that city. Upon arriving there, Officers Mike Foy and Sheila Cooke spoke with Amanda Blake and her twelve year old daughter Francine about the incident.

Both Amanda and Francine related that they had been asleep in their apartment on the second floor when a masked man about 5' 6" with an Hispanic accent and wearing what was described as "cat burglar clothes" burst into their apartment demanding money and drugs. Amanda sought to give him some cash from her handbag when he grabbed her purse and bolted down the stairs into the street. The man had a long buck knife and threatened both Amanda and her daughter with it. Once they were able to compose themselves, Amanda dialed 911 and the police arrived within minutes.

Both victims related to the police that they were sure the assailant was Amanda's former boyfriend Carlos Reis. The officers being familiar with Reis, immediately put out a citywide broadcast over their police radio network for the suspect.

Reis was arrested at his apartment about a quarter of a mile away from the Blake apartment within minutes by another route car that intercepted the citywide broadcast. Police knocked on the door and when Carlos came to the door, they immediately pushed him aside, handcuffed him and searched his one room apartment. In his apartment they found fifty five bags of cocaine, a digital scale, packaging and cutting supplies, two cell phones, a beeper and \$3,750.00 in U.S. currency.

Carlos was arrested and the evidence was seized, marked and put in property envelopes for return to the police station's property locker.

Carlos was held over the weekend at the Lawrence Police lockup and appeared in court Monday morning, March 18, 2002 for arraignment.

At his arraignment, Carlos was appointed an attorney. A bail hearing was held and bail was set by the judge at \$75,000.00 cash, \$750,000.00 surety. A motion was filed at that time seeking funds for an investigator. The judge set the matter down for hearing on the pre trial date of April 29, 2002 and instructed defense counsel to supply the District Attorney with a copy of the motion, so that the Commonwealth would be ready to argue the motion on the next in court date.

Please identify each issue presented in this fact pattern and advise whether the actions taken conform with applicable law and in any particular instance, if not why not? Also, what if any remedy (ies) might Carlos have in seeking relief here ?

Question 4

Gail Wilson is a frequent patron of the Dew Drop Inn located in Andover, Massachusetts. It is a local bar where people often come to socialize, play darts and sometimes, meaningful relationships have their beginnings there. It is a *nice* local establishment.

On Saturday night, April 6, 2002, Gail was at the bar with her friend Jane. At about 11:45 p.m., it was clear that Jane had consumed too much liquor and was becoming quite loud and abusive.

Ted Rollins was at the bar that night playing darts with his significant other, Andy. The two men are openly gay and have frequented the bar for about a year. Both are employed in responsible jobs and they live in Andover. They are generally well liked by the patrons and staff at the bar.

As the night wore on and Ted was bringing drinks from the bar to the dart shooting line, Jane became increasingly loud and vulgar, making lewd remarks about Ted and Andy.

At some point, the bartender, Lou Atwater had enough. He told Jane to either pipe down or she would have to leave. At this, Jane became enraged and reached over the bar to grab and hit Lou. In self defense, Lou pushed her away and in so doing struck Gail who fell to the floor. A bottle on the bar thereupon rolled off the bar and struck Gail on the head, injuring her.

The police were called and an ambulance arrived. Gail was treated at the scene for her injuries but refused to go to the hospital. Gail and Jane were driven home by another patron and the bar was closed for the night. The police refused to press any charges, indicating that Lou acted in self defense and that it was a civil matter.

On Monday, still upset, Gail and Jane made out an application for process at the Clerk's Office of the Lawrence District Court seeking to charge Lou with assault and battery by means of a dangerous weapon, to wit a beer bottle, assault and threats. A hearing was held by an assistant Clerk Magistrate on April 17th and Lou appeared with a lawyer and one of the police officers who responded on the night in question. Each side told their story and after considering the matter, the clerk declined to issue criminal process.

Gail and Jane were furious over the matter and immediately went to the District Attorney's office in the court house demanding that Lou be charged and arrested. The assistant on duty listened to both women, reviewed a police report of the incident and interviewed the police officer who appeared at the clerk's hearing. After doing so, the district attorney also refused to act in the matter.

Gail and Jane then wrote a letter to the First Justice of the Lawrence District Court. In their letter they accused the assistant clerk and assistant district attorney with misconduct for failure to act and they have demanded that the First Justice order the clerk magistrate's office to issue criminal charges against Lou. They also demanded that the District Attorney's Office to be ordered by the judge to prosecute the case and citing the fact that assault and battery by means of a dangerous

weapon is a felony, they want the judge to order the District Attorney to present the case to the grand jury for indictment. They have concluded their letter to the judge by telling her that if she does not act in this matter immediately, they intend to go to the news media with their complaints.

What should the judge do in this case ??

Isn't there any forum where Gail and Jane now have a right to be heard after what has happened ??

Can't a court order be issued so that this case can be ordered to be prosecuted by the police and the district attorney ??

Are there particular issues involving the parties here that need to be discussed ??

What about the public's safety and the rights of Gail and Jane ... is there no justice ???

Please advise !!

MASSACHUSETTS SCHOOL OF LAW

**District Court Practice & Procedure
Spring, 2000 Semester**

Judge Peter Agnes, Jr. - Judge Robert Cornetta

FINAL EXAMINATION

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

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

QUESTION ONE

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

- (1) Under G.L. c. 218, § 26A and the Rules of Criminal Procedure for the District and Boston Municipal Court departments, at the arraignment the court is required to issue an "order of discovery" at the request of the defendant or on its own motion requiring that the defendant be permitted to discover, inspect and copy any material and relevant ^{for evidence} in the possession custody or control of the prosecutor. True or False?
- (2) Under G.L. c. 277, § 70C, at the request of the defendant and with the approval of the court, a misdemeanor may be converted from a criminal offense to a civil infraction so long as the defendant has no prior criminal convictions. True or False?
- (3) When a person has been arrested and is brought to the police station for booking, the Massachusetts Constitution requires that they must be brought to court for arraignment within 24 hours of their arrest. True or False?
- (4) The defendant has been arraigned before the Superior Court on an indictment charging him with Assault with Intent to Commit Murder and released on \$25,000 cash bail with a bail warning. Thereafter, the defendant is arrested and charged in the District Court with violation of a restraining order involving the same victim as in the Superior Court case. Under G.L. c. 276, § 58, the District Court judge has the authority to revoke a defendant's Superior Court bail and order the defendant held without bail under G.L. c. 276, § 58 if a finding is made that there is probable cause and that the defendant is a danger to the community or to a particular individual. True or False?
- (5) Following the arraignment, the trial judge is authorized to dismiss a complaint for lack of probable cause provided that the defendant files a motion and an affidavit in compliance with Mass. R. Crim. 13 and the Commonwealth is afforded an opportunity to be heard. True or False?
- (6) An admission to sufficient facts and a continuance without a finding is not available in felony cases. True or False?
- (7) A defendant has the right to appeal an adverse decision by a district court judge with respect to bail under G.L. c. 276, § 58 to the Superior Court where a new hearing will take place that could result in the same bail order, a lower or higher bail, or release on personal recognizance. True or False?
- (8) If in support of a motion for a new trial based on ineffective assistance of counsel, defense counsel establishes that the conduct of the defendant's trial counsel was measurably below that of the ordinary fallible lawyer because he failed to file a pretrial motion to suppress statements he made to the police at the scene of the offense without good cause, the defendant is

entitled to relief without regard to whether there was actual prejudice. True or False?

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

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

QUESTION TWO

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

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

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

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

Fifteen minutes later, you also get a telephone call from Mary Lou's mother and father asking you to represent her.

Assuming that you agree to represent her, what, if anything, will you do before the next morning and why? Assume that Mary Lou is brought into the Andover District Court the next morning for her arraignment and that the prosecutor indicates that she will ask for bail in the amount of \$50,000, describe each of the steps you will take to protect her rights, including any inquires you will make and any motions you will file.

Question 3:

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

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

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

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

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

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

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

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

Question 4:

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

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

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

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

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

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