

TABLE OF CONTENTS

GENERAL PRINCIPLES

| | | |
|----------|--|----------|
| 1 | EXPECTATION OF PRIVACY | 1 |
| 1.1 | Automobile Parked in Driveway | 1 |
| 1.1.1 | Generally | 1 |
| 1.1.2 | Police Officer’s Technical Trespass onto Driveway; Effect | 2 |
| 1.2 | Interior of Motor Vehicle | 2 |
| 1.2.1 | Areas Where an Expectation of Privacy Exists | 2 |
| 1.2.2 | Covered Items in Area Not Otherwise Subject to Privacy Expectation..... | 3 |
| 1.3 | Equipment and Safety Features | 4 |
| 2 | EXISTENCE OF A STOP/SEIZURE/SEARCH..... | 4 |
| 2.1 | Following a Motor Vehicle | 4 |
| 2.1.1 | Merely Following | 4 |
| 2.1.2 | Pursuit; Criteria Implicating Constitutional Rights | 4 |
| 2.2 | Roadblock..... | 5 |
| 2.3 | Random License Plate Check; Random Stop to Check Documents | 6 |
| 2.4 | Activation of Lights..... | 6 |
| 2.4.1 | Context | 6 |
| 2.4.1.1 | Non–Community Caretaking | 6 |
| 2.4.1.2 | Community Caretaking | 7 |
| 2.4.2 | Civil Infraction | 7 |
| 2.4.3 | Threshold Inquiry | 7 |
| 2.4.3.1 | Moving Vehicle | 7 |
| 2.4.3.2 | Parked Vehicle..... | 7 |
| 2.5 | Use of Flashlight | 8 |
| 2.6 | Use of Alley Lights on Moving Vehicle | 8 |

| | | |
|----------|---|-----------|
| 2.7 | Approaching Parked Vehicle | 9 |
| 2.7.1 | Investigatory Purpose | 9 |
| 2.7.1.1 | Merely Approaching..... | 9 |
| 2.7.1.2 | Blocking | 10 |
| 2.7.2 | Community-Caretaking Purpose | 10 |
| 2.8 | Dog Sniff of Exterior of Motor Vehicle | 11 |
| 2.8.1 | Exterior Sniff Occurring During Routine Traffic Stop Undecided | 11 |
| 2.8.2 | Exterior Sniff Where There Is Reasonable Suspicion of Criminal Activity Not Search Under Article 14 | 12 |
| 2.8.3 | Suspicion of Drug-Related Criminal Activity Not Prerequisite..... | 12 |
| 3 | LAWFUL JUSTIFICATIONS FOR A STOP | 14 |
| 3.1 | Civil Motor Vehicle Infraction..... | 14 |
| 3.1.1 | Type of Violation..... | 14 |
| 3.1.1.1 | Equipment Violation..... | 14 |
| 3.1.1.2 | Traffic Violation | 14 |
| 3.1.2 | Level of Police Belief Required | 14 |
| 3.1.2.1 | Dependent on Type of Violation..... | 14 |
| 3.1.2.2 | Good-Faith Belief but Officer’s Mistake of Law | 17 |
| 3.1.3 | Authorization Test Versus Pretext Test | 17 |
| 3.1.3.1 | Difference Explained; Pretextual-Stop Rule Rejected..... | 17 |
| 3.1.3.2 | Failure to Cite for Violation Not Fatal to Subsequent Police Action | 18 |
| 3.1.4 | Police Officer Defined..... | 18 |
| 3.2 | Community Caretaking..... | 19 |
| 3.2.1 | “Totally Divorced” Rule..... | 19 |
| 3.2.1.1 | Officer’s Belief of Possibility of Criminal Activity Does Not Change Justification | 20 |
| 3.2.1.2 | Concern for Motorist and Concern for Public’s Safety Justify Application of Doctrine..... | 21 |
| 3.2.2 | Noncoercive Approach and Inquiry..... | 21 |
| 3.2.2.1 | No Preliminary Showing of Need or Reasonableness Required | 21 |

| | | |
|---------|---|----|
| 3.2.2.2 | Activation of Police Lights Does Not Transform into Seizure | 22 |
| 3.2.2.3 | No Written Policy Required | 22 |
| 3.2.3 | Applicability When Based on Anonymous Report (Moving Vehicle)..... | 23 |
| 3.2.4 | License and Registration Request Does Not Turn Check into a Seizure; Rationale | 24 |
| 3.2.5 | Exit Order Is Permissible | 24 |
| 3.2.6 | Stranded Driver and the Issue of Seizure | 24 |
| 3.2.7 | Explicit or Invariable Directive Not Required..... | 24 |
| 3.2.8 | Approaches Deemed Lawful | 25 |
| 3.2.8.1 | Massachusetts Case-Law Examples | 25 |
| 3.2.8.2 | Other Jurisdictions | 25 |
| 3.2.9 | Approaches Deemed Unlawful..... | 27 |
| 3.2.9.1 | Massachusetts Case-Law Examples | 27 |
| 3.2.9.2 | Other Jurisdictions | 28 |
| 3.3 | Emergency..... | 29 |
| 3.3.1 | Generally | 29 |
| 3.3.2 | Anonymous Report of Operating Under the Influence..... | 30 |
| 3.4 | Roadblock..... | 31 |
| 3.4.1 | OUI Detection | 31 |
| 3.4.2 | Homeland Security | 31 |
| 3.4.2.1 | Search Analogous to Screening/ Administrative Search | 31 |
| 3.4.2.2 | Two-Prong Test for Legality | 31 |
| (a) | First Prong: Search Must Not Be to Gather Evidence for Criminal Prosecution..... | 31 |
| (b) | Second Prong: Search Must Be Limited in Its Intrusiveness | 32 |
| (b)(i) | Advance Notice a Factor; Minimizes Search’s Intrusiveness..... | 32 |
| (b)(ii) | Less Intrusive Alternatives to Search Not Required..... | 34 |
| 3.4.3 | Apprehension of a Fleeing Suspect | 34 |

| | | |
|----------|---|-----------|
| 3.4.4 | Roadblock Decisions Do Not Open the Door to Suspicionless Searches and Seizures in Other Contexts | 36 |
| 3.5 | Threshold Inquiry | 37 |
| 3.5.1 | Based on an Officer’s Observation..... | 37 |
| 3.5.1.1 | Operator Deemed Owner..... | 37 |
| 3.5.1.2 | Propriety of Stop; Based on Reasonable-Police-Officer Test, Not Officer’s Subjective Belief | 39 |
| 3.5.1.3 | The “Good Faith” Doctrine | 39 |
| (a) | Reliance on the Warrant | 39 |
| (b) | Reliance on Other Agency Records | 40 |
| (b)(i) | Federal View..... | 40 |
| (b)(ii) | Massachusetts View..... | 40 |
| 3.5.2 | Based on an Informant’s Tip..... | 41 |
| 3.5.2.1 | Anonymous Tipster Versus Citizen | 41 |
| 3.5.2.2 | Reliability and Basis of Knowledge of Tipster..... | 42 |
| (a) | Reliability..... | 43 |
| (b) | Basis of Knowledge | 44 |
| (c) | Federal Totality-of-Circumstances Test..... | 45 |
| (d) | Concerns Regarding Police..... | 45 |
| (d)(i) | Fabrication..... | 45 |
| (d)(ii) | Calculated Harassment | 45 |
| (d)(iii) | Arbitrary Action and Abusive Practices..... | 45 |
| (e) | Concerns Regarding Anonymous Telephone Tipster | 46 |
| 3.5.3 | Based on a Police Radio Broadcast | 47 |
| 3.5.3.1 | General Rule..... | 47 |
| 3.5.3.2 | Description of Vehicle | 48 |
| 3.5.3.3 | Differences Between Report and Observation | 49 |
| 3.5.3.4 | Type of Crime Reported | 49 |
| 4 | UNLAWFUL JUSTIFICATIONS FOR A STOP..... | 50 |
| 4.1 | Hunch | 50 |

| | | |
|-------|--|----|
| 4.2 | Contraband Interdiction Roadblock..... | 50 |
| 4.2.1 | Contraband Defined | 50 |
| 4.2.2 | Reason..... | 51 |
| 4.3 | License and Registration Check | 51 |
| 4.4 | Selective Enforcement Based on Race or Ethnicity | 51 |
| 4.5 | Warrant for Search of Residence | 52 |

THE STOP ITSELF

| | | |
|----------|---|-----------|
| 5 | EXTRATERRITORIAL JURISDICTION | 53 |
| 5.1 | Police Territory Not Always Determined by Imaginary Boundary Lines | 53 |
| 5.2 | Sources of Authority Recognized | 54 |
| 5.2.1 | Fresh Pursuit..... | 54 |
| 5.2.1.1 | Common Law: “Fresh Felony Pursuit” | 54 |
| 5.2.1.2 | Statutory Authority: Fresh Pursuit for Misdemeanor or Felony | 54 |
| | (a) Pursuit Does Not Require Activation of Lights or Siren..... | 55 |
| | (b) Pursuit Justified Only for Arrestable Offenses Occurring in Police Officer’s Jurisdiction..... | 56 |
| | (b)(i) Police Knowledge of Arrestable Offense Required..... | 56 |
| | (b)(ii) Collective-Knowledge Doctrine Meets Requirement | 57 |
| | (b)(iii) “Some Reason to Believe” Is Level of Knowledge Required | 57 |
| | (c) Pursuit in Unmarked Police Cruiser by Plain-Clothed Officer | 58 |
| 5.2.1.3 | Authority Measured by Objective Standard | 58 |
| 5.2.2 | Aid Requested by Police | 59 |
| 5.2.3 | Mutual Aid Agreement | 59 |
| 5.2.4 | Specially Sworn City or Town Police Officer | 60 |
| 5.2.4.1 | Statutory Authority: G.L. c. 41, § 99 | 60 |
| 5.2.4.2 | Purpose..... | 60 |
| 5.2.4.3 | Prerequisites to Invocation | 61 |

| | | |
|----------|---|-----------|
| 5.2.5 | Specially Sworn State Police Officer..... | 61 |
| 5.2.5.1 | Statutory Authority: G.L. c. 22C, § 63..... | 61 |
| 5.2.5.2 | Geographical Scope of Authority | 62 |
| 5.2.6 | Brookline Police Acting in Boston | 62 |
| 5.2.7 | Private Citizen | 63 |
| 5.2.7.1 | Common-Law Standard..... | 63 |
| 5.2.7.2 | Relaxed Standard Where Citizen Is a Police Officer..... | 63 |
| 5.3 | Sources of Authority Not Recognized | 64 |
| 5.3.1 | <i>Terry</i> Stop | 64 |
| 5.3.2 | Stop to Deliver Copy of a Civil Motor Vehicle Infraction..... | 64 |
| 5.4 | Remedy for Unlawful Extraterritorial Stop..... | 65 |
| 5.5 | Out-of-State Stops | 66 |
| 5.5.1 | Common Law; Look to the State in Which Stop Occurred | 66 |
| 5.5.2 | Interstate Fresh-Pursuit Laws | 66 |
| 5.5.2.1 | Massachusetts..... | 66 |
| 5.5.2.2 | Connecticut | 67 |
| 5.5.2.3 | New Hampshire..... | 68 |
| 5.5.2.4 | New York | 70 |
| 5.5.2.5 | Rhode Island..... | 71 |
| 5.5.2.6 | Vermont | 72 |
| 6 | SCOPE OF INTRUSION | 74 |
| 7 | <i>TERRY</i> STOP VERSUS ARREST..... | 76 |
| 7.1 | Degree-of-Intrusiveness Distinction..... | 76 |
| 7.2 | Blocking Vehicle | 77 |
| 7.2.1 | At Minimum a <i>Terry</i> Stop..... | 77 |
| 7.2.2 | Policy Issues Involved in Distinguishing <i>Terry</i> Stop from Arrest..... | 77 |
| 7.3 | Seizure of Keys..... | 78 |
| 7.4 | Detention of Individual..... | 79 |
| 7.4.1 | Placing Motorist in Police Cruiser..... | 79 |
| 7.4.2 | Length of Detention..... | 79 |

| | | |
|----------|---|-----------|
| 7.5 | Display of Weapons..... | 79 |
| 7.5.1 | No Bright-Line Rule; Reasonableness Inquiry..... | 79 |
| 7.5.2 | Safety Justification..... | 80 |
| 7.5.3 | The “Hobson’s Choice” Rationale..... | 80 |
| 7.6 | Considerations in Allowing Police to Adapt to Particular Circumstances..... | 81 |
| 8 | APPROACH AND CONTACT; FURTIVE MOVEMENTS | 82 |
| 8.1 | What Is at Issue | 82 |
| 8.1.1 | Not Forcing Officer to Gamble with Personal Safety..... | 82 |
| 8.1.2 | Citizen’s Right to Make Movement | 82 |
| 8.1.3 | Avoiding Turning Any Movement into Furtive Movement | 83 |
| 8.2 | General Meaning Ascribed to Furtive Movement | 84 |
| 8.3 | Typical Factors Considered in Furtive-Movement Analysis..... | 84 |
| 8.4 | Police Officer’s Testimony; Reasonable-Person Analysis | 85 |
| 8.5 | Furtive Movement as Reason for Search or Patfrisk | 85 |
| 8.6 | Routine Traffic Stop Completed; Prior Furtive Movement as Reason to Continue Detention | 85 |
| 9 | EXIT ORDER..... | 86 |
| 9.1 | Routine Traffic Stop | 86 |
| 9.1.1 | Fourth Amendment: As a Matter of Course to Both Driver and Passenger..... | 86 |
| 9.1.2 | Article 14: Reasonable-Safety Justification | 87 |
| 9.1.2.1 | Article 14 Rationale | 87 |
| 9.1.2.2 | Safety-Belief Threshold | 88 |
| | (a) Generally | 88 |
| | (b) Belief Measured by “Reasonable” Police Officer Standard..... | 88 |
| | (b)(i) Standard Applied in Reviewing “Reasonableness” of Belief..... | 88 |
| | (b)(ii) Testimony by Officer That Fear Existed Not Necessary..... | 89 |
| | (c) Factors Alone Insufficient to Create Reasonable Belief..... | 90 |
| | (c)(i) Nervous Appearance..... | 90 |
| | (c)(ii) Inability to Produce Identification..... | 90 |

| | |
|---|-----------|
| (c)(iii) Police Outnumbered | 90 |
| (c)(iv) High-Crime Area | 90 |
| (c)(v) Suspected Narcotic Involvement | 91 |
| 9.1.3 Exit Order May Be Issued for Valid Investigatory Purpose..... | 91 |
| 9.1.4 Exit Order May Precede Threshold Inquiry..... | 91 |
| 9.1.5 Exit Order Not Dependent on Immediate Threat..... | 92 |
| 9.2 Community Caretaking..... | 93 |
| 10 PATFRISK..... | 93 |
| 10.1 Generally | 93 |
| 10.2 Standard..... | 93 |
| 10.3 Waiting for Backup..... | 93 |
| 11 THRESHOLD INQUIRY | 94 |
| 11.1 <i>Miranda</i> Warnings | 94 |
| 11.2 Expanding Threshold Inquiry and Prolonging Detention | 95 |

SEIZURES OF MOTOR VEHICLES

| | |
|--|-----------|
| 12 IMPOUNDMENT..... | 97 |
| 12.1 Noninvestigatory Justifications: Public Safety and Fear of Theft, Vandalism, or False Claims | 97 |
| 12.2 Community-Caretaking Justifications | 97 |
| 12.2.1 Generally | 97 |
| 12.2.2 Vehicle Disabled, Illegally Parked, or Impeding Traffic..... | 97 |
| 12.2.3 Postarrest; Vehicle on Private Property | 98 |
| 12.2.3.1 Arrest Unrelated to Property; “Imperiled” Vehicle Exception..... | 98 |
| 12.2.3.2 Arrest Related to Premises | 98 |
| 12.3 Motor Vehicle Parked in Private Lot | 99 |
| 12.3.1 Vehicle Parked at Time of Defendant’s Arrest in Vicinity | 99 |
| 12.3.2 Vehicle Parked at Location Unrelated to Where Arrest Occurred | 101 |
| 12.3.3 Vehicle Stopped at the Direction of Police | 102 |
| 12.4 Practical Alternatives to Impoundment; Effect on Reasonableness of Inventory | 102 |

| | | |
|-----------|---|------------|
| 12.5 | Impoundment Not Dependent on Arrest..... | 103 |
| 12.6 | Impoundment Allows Officer to Perform Acts Without Implicating <i>Bishop</i> | 103 |
| 12.6.1 | The “Minimally Necessary” Rule | 104 |
| 12.6.2 | Exigency Theory as Basis to Enter Vehicle | 104 |
| 13 | CRIME CONNECTION..... | 104 |
| 14 | FORFEITURE..... | 105 |
| 14.1 | Statutory Authority | 105 |
| 14.2 | Statutory Interpretations | 106 |
| 14.2.1 | Merely Possessing Contraband | 106 |
| 14.2.2 | Conveying a Party to a Drug Transaction..... | 106 |
| 14.2.3 | Exercising Dominion and Control Over the Vehicle | 107 |
| 14.2.4 | Carrying Drugs on the Person | 107 |
| 14.3 | Underlying Philosophy..... | 107 |
| 14.4 | Criminal Case Requirement..... | 108 |
| 14.5 | Exemptions from Forfeiture | 108 |
| 14.6 | Time Period to Initiate Proceeding | 108 |
| 14.7 | Right to a Jury Trial..... | 109 |
| 14.8 | Burden of Proof..... | 109 |
| 14.9 | Double Jeopardy..... | 111 |
| 14.10 | Incident-to-Forfeiture Exception to Warrant Requirement | 111 |

WARRANTLESS SEARCHES

| | | |
|-----------|---|------------|
| 15 | SCOPE..... | 115 |
| 15.1 | Generally | 115 |
| 15.2 | Drug Searches | 115 |
| 16 | THE AUTOMOBILE EXCEPTION | 119 |
| 16.1 | Warrantless Search of Vehicle Stopped in Transit or Seized or Searched in a Public Place | 119 |
| 16.1.1 | Original Formulation: Probable Cause and Exigency | 119 |

| | | |
|-----------|---|------------|
| 16.1.2 | Current Formulation: Probable Cause Alone..... | 119 |
| 16.1.2.1 | Fourth Amendment..... | 119 |
| 16.1.2.2 | Article 14..... | 120 |
| | (a) Moving Vehicle to Secure Location Does Not Alter Current Formulation..... | 121 |
| | (b) Timing of Search Once Vehicle Is Removed Is Critical..... | 122 |
| 16.2 | Warrantless Search of Vehicle Parked on Private Property and Seizure of Contraband Found Within..... | 123 |
| 17 | CONSENT..... | 125 |
| 17.1 | General Principles | 125 |
| 17.2 | Miscellaneous Issues | 126 |
| 17.2.1 | Consent Must Be Voluntary; “Knowing and Intelligent” Waiver Not Required | 126 |
| 17.2.2 | Consent May Be Found Even if Arrest Occurred Prior to Consent..... | 126 |
| 17.2.3 | Consent Not Dependent on Advisement of Right to Refuse..... | 127 |
| 17.2.4 | Consent Not Dependent on Informing Person of Right to Demand Warrant..... | 127 |
| 17.2.5 | Consent Obtained Through Exploitation of Prior Illegality; Test | 127 |
| 17.2.6 | Limitations on Consent; Reasonable-Person Test..... | 128 |
| 18 | INTERIOR PROTECTIVE SEARCH | 128 |
| 18.1 | <i>Terry</i> -Stop Rationale..... | 128 |
| 18.2 | Two-Part Test: Permissible Initiation and Scope | 129 |
| 18.3 | Actual Knowledge of Presence of Weapon; Reasonable Concern for Safety | 130 |
| 18.4 | Search of Interior While Suspect Outside Automobile | 130 |
| 19 | PROTECTIVE SWEEP | 131 |
| 20 | SEARCH INCIDENT TO ARREST | 131 |
| 20.1 | Difference Between Search Incident to Arrest and <i>Terry</i> -Type Search.... | 131 |
| 20.2 | Probable Cause to Search Versus Arrest; Distinction and Importance..... | 131 |

| | | |
|-----------|--|------------|
| 20.3 | General Laws c. 276, § 1 | 132 |
| 20.3.1 | Purpose of Statute..... | 133 |
| 20.3.2 | History Behind Exclusionary Amendment to Statute | 133 |
| 20.3.3 | Fourth Amendment and Article 14 Limitations | 133 |
| 20.3.4 | Policy Concerns | 134 |
| 20.3.4.1 | Pretextual Searches | 134 |
| 20.3.4.2 | Identity Searches; Limiting the Breadth of G.L. c. 276, § 1 | 134 |
| 20.3.5 | Search Preceding Formal Arrest; Effect | 135 |
| 20.3.6 | Contemporaneous Requirement | 135 |
| 20.3.7 | Search Violating G.L. c. 276, § 1 but Justified on Other Grounds.... | 135 |
| 20.3.8 | Grounds Stated Do Not Support Search but Other Grounds Do; Rule | 136 |
| 20.3.9 | Search of Vehicle Before Search of Arrestee; Effect..... | 136 |
| 20.3.10 | Search Incident to Arrest Leads to Independent Search Incident to Arrest..... | 136 |
| 20.4 | Search Area | 137 |
| 20.4.1 | Generally Limited to Area Within Person’s Immediate Control..... | 137 |
| 20.4.1.1 | Meaning of “Within Immediate Control” | 137 |
| 20.4.1.2 | The “Lunge Theory” Definition | 137 |
| 20.4.2 | Analyzing the Area Under the Arrestee’s Control | 138 |
| 20.4.2.1 | Search Area Dependent on the Circumstances | 138 |
| 20.4.2.2 | Factors Considered in Analysis | 138 |
| 20.4.3 | Case Examples | 139 |
| 20.4.3.1 | Defendant Standing Outside Vehicle..... | 139 |
| 20.4.3.2 | Defendant Seated in Police Cruiser..... | 139 |
| 20.4.3.3 | Defendant Removed from Area of Vehicle..... | 140 |
| 20.5 | Container Carried by Arrestee | 140 |
| 20.5.1 | Fourth Amendment..... | 140 |
| 20.5.2 | Article 14..... | 141 |
| 20.6 | City Ordinance as Basis for Arrest | 141 |
| 21 | STORAGE SEARCH..... | 141 |

| | | |
|-----------|---|------------|
| 22 | INVENTORY SEARCH..... | 142 |
| 22.1 | Noninvestigatory Prerequisite | 142 |
| 22.2 | Lawfulness of Search Based on Two Inquiries | 142 |
| 22.3 | Three Interests Protected | 143 |
| 22.4 | Standardized Written Procedures Required Under Article 14..... | 143 |
| 22.4.1 | Reason Written Policy Required..... | 144 |
| 22.4.2 | Proof of Policy..... | 144 |
| 22.4.2.1 | Oral Testimony May Be Basis..... | 144 |
| 22.4.2.2 | Introduction of Policy Avoids Potential Hearsay or Best Evidence Problem | 145 |
| 22.4.3 | Breadth of Policy | 145 |
| 22.4.3.1 | Locked Trunk | 145 |
| 22.4.3.2 | Unlocked Closed Containers | 146 |
| 22.4.3.3 | Closed Containers Within Closed Containers | 146 |
| 22.4.3.4 | Containers Containing Valuables | 147 |
| 22.4.3.5 | Other Areas | 147 |
| 22.4.4 | De Minimis Violations of Policy | 148 |
| 22.5 | Limited Search Constitutes Inventory Search..... | 148 |
| 22.6 | Inventory Search and Impoundment Require Different Analysis | 149 |
| 22.7 | Police Officer’s Subjective Belief | 149 |
| 23 | PLAIN-VIEW DOCTRINE | 150 |
| 23.1 | Constitutional Overview..... | 150 |
| 23.2 | Three-Part Test | 150 |
| 23.3 | Issues Surrounding the Test..... | 151 |
| 23.3.1 | Being Lawfully in Position..... | 151 |
| 23.3.2 | Observation of Objects Capable of Both Lawful and Unlawful Use..... | 152 |
| 23.3.2.1 | Generally | 152 |
| 23.3.2.2 | Constitutional Concern Raised..... | 153 |
| 23.4 | Observation of Item Versus Seizure of Item | 154 |

OUI DETECTION

24 ROADBLOCKS..... 155

- 24.1 Written Guidelines Required to Establish the Reasonableness of the Action 155
 - 24.1.1 “Reasonableness” Requirement of the Fourth Amendment and Article 14 156
 - 24.1.2 *McGeoghegan* Guidelines 157
 - 24.1.3 Site-Selection Requirement 158
 - 24.1.4 Compliance with Guidelines 158
 - 24.1.4.1 Constitutionality Measured by Compliance with Guidelines 158
 - 24.1.4.2 Strict (Not Substantial) Compliance Required 159
- 24.2 Commonwealth Need Not Prove That No Less Intrusive Measures Are Available 159

25 FIELD SOBRIETY TESTING..... 160

- 25.1 Fourth Amendment and Article 14 Implicated..... 160
- 25.2 Article 12’s Self-Incrimination Provision Not Implicated 161
- 25.3 *Miranda* Warnings Not Required 161
- 25.4 Performance Request Must Be Based on Reasonable-Suspicion Standard..... 161
 - 25.4.1 Combined Observations Rise to Required Standard..... 162
 - 25.4.2 Suppression Is Remedy Where Suspicion Is Lacking 162
- 25.5 Operator’s Right of Refusal Not Recognized, but Compulsion Prohibited 162

SUPPRESSION OF EVIDENCE

26 MOTIONS TO SUPPRESS 165

- 26.1 Particularity of Motion 165
- 26.2 Supporting Affidavit 166

27 STANDING TO CHALLENGE SEARCH..... 167

- 27.1 Automatic 167
 - 27.1.1 The Massachusetts Rule 167

| | | |
|--------|--|-----|
| 27.1.2 | Rationale | 168 |
| 27.1.3 | Denial of Ownership of Item | 168 |
| 27.2 | Target | 169 |
| 27.2.1 | Theory Not Adopted but Not Rejected | 169 |
| 27.2.2 | Reason Behind Reluctance to Adopt Theory | 169 |
| 27.3 | Derivative | 171 |
| 27.4 | Expectation of Privacy | 171 |

PASSENGER ISSUES

| | | |
|-----------|---|------------|
| 28 | THRESHOLD INQUIRIES..... | 173 |
| 29 | EXIT ORDERS..... | 173 |
| 30 | SEARCHES AND PATFRISKS..... | 173 |
| 30.1 | Odor of Marijuana | 173 |
| 30.2 | Automatic Companion Rule | 174 |
| 31 | STANDING TO CHALLENGE SEARCH OR SEIZURE..... | 175 |

STANDARD OF APPELLATE REVIEW

| | | |
|-----------|--|------------|
| 32 | FACTS FOUND BY JUDGE ACCEPTED ABSENT CLEAR ERROR.... | 177 |
| 33 | COURT INDEPENDENTLY REVIEWS APPLICATION OF CONSTITUTIONAL PRINCIPLES..... | 177 |
| 34 | COURT MAY ADOPT DIFFERENT THEORY | 177 |
| 35 | COURT MAY CONSIDER ISSUES NOT RAISED BELOW | 178 |

| | |
|--|------------|
| <i>TABLE OF AUTHORITIES</i> | 179 |
|--|------------|

| | |
|---------------------------|------------|
| <i>INDEX</i> | 199 |
|---------------------------|------------|