SEPERAC MEE MASTER RELEASED ANSWER COMPILATION
FEBRUARY 2017 MEE EXAM
RELEASE DATE: DECEMBER 18, 2016

MEE QUESTIONS WITH ANALYSES (WITH ISSUE-BREAKDOWNS) AND ANSWERS
FEBRUARY 1995 TO JULY 2016 (44 EXAMS)

INTRODUCTION

This Compilation outline is based on the last 44 MEE exams and contains 297 MEE questions from the tested MEE subjects of Agency & Partnership, Civil Procedure, Conflict of Laws, Constitutional Law, Contracts, Corporations & LLCs, Criminal Law & Procedure, Evidence, Family Law, Real Property, Secured Transactions, Torts, Trusts, and Wills & Estates. Each MEE question is followed by the NCBE Answer Analysis (and more recent questions also have the best examinee answers from other states).

This outline is intended to help you with specific elements of a good MEE answer. According to NCBE's 2016 MEE Instructions, on the MEE you must: "*[d]emonstrate your ability to reason and analyze. Each of your answers should show an understanding of the facts, a recognition of the issues included, a knowledge of the applicable principles of law, and the reasoning by which you arrive at your conclusions. The value of your answer depends not as much upon your conclusions as upon the presence and quality of the elements mentioned above.*" Your ability to "*show an understanding of the facts*" will be developed by reading the MEE questions and reviewing the answers to see how the relevant facts are discussed. You will also "*[d]emonstrate your ability to reason and analyze*" by reviewing the NCBE Answer Analyses which do an excellent job of showing how to analyze an MEE essay. In addition, the best examinee answers from other states serve as good examples of proper reasoning and analysis. By analyzing representative good answers, examinees will learn to write passing MEE essays by example. These best examinee answers provide insight as to what type of writing and how much knowledge and analysis is required for an above average score that is not at the level of the released NCBE Answer Analyses. Reading, listening to, outlining, and answering these MEE essays will teach you how to compose an MEE answer that the bar examiners are looking for. Sometimes, different topics are raised in these answers, illustrating that an examinee's answer does not have to mirror the NCBE answers to receive a high score.

The MEE questions in this Compilation are grouped by priority (based on the SEPERAC MASTER priorities), with the most important questions/answers first. A HIGH priority essay is an essay where all the issues contained in it are HIGH priority in the SEPERAC UBE MASTER OUTLINE. A MEDIUM priority essay contains lower priority issues and a LOW priority essay contains the least amount of HIGH/MEDIUM priority issues. There is nothing to say that a topic won't come from a LOW priority ESSAY, but given the limited study-time subscribers typically spend on the essays (to focus on the MBE), the HIGH priority essays should serve as the best example of the essays you should see on the upcoming exam. There is no guess-work involved here – start with the first essay and work your way down. If you can complete 50% or more of the HIGH priority essays, you will be in an excellent position to do well on the MEE.

Each NCBE Answer Analysis in this Compilation has been significantly edited. In the released MEE exams, the answers contain numerous citations that are irrelevant to an examinee answering the MEE questions. Removing these superfluous citations has made the answers 10% shorter. However, all the references to important statutes and cases remain. This way, if you see a case or statute in a Compilation answer, you should make the effort to mention it on the exam when applicable, because these are the seminal cases and statutes/acts according to NCBE (the exam maker and grader). To make the answer review more efficient, I broke down each MEE answer into individual parts and then reconstructed the answers in a better format and style. In some cases, the number of Legal Problems in the

Answer Analysis did not correspond with the number of Answer points. In all cases, this has been fixed so the answers are consistent. Please note that all the typographical errors I encounter are corrected in these essays, so they will not mirror the MEE essays released by NCBE. Also, there are intentional (but de minimus) mistakes intended to prevent the copying/sharing of this Compilation.

Utilizing the hyperlinked Table of Contents or Microsoft Word's Navigation Pane (go to View, and then mark the check box to show the "Navigation Pane" or "Document Map"), you can jump to any subject, question or answer instantly. To use the hyperlinked Table of Contents, simply hold down the CTRL key and click on an item in the Table of Contents and you will jump to that question in the Compilation document. In addition, if you go to View from the menu, if you check "Navigation pane" in the Show menu, you will see a hyperlinked navigation pane on the left side of the document. As a word document, the document is editable and searchable. You can make this document your own, by adding notes, comments, or special formatting or highlighting. In addition, examinees can search the document for keywords in the past essay questions and answers. You can identify the cross-over essays as the ones with a / between the subjects (e.g. AGENCY-PARTNERSHIP/TORTS). Of the 298 MEE essay questions tested from Feb 1995 to July 2016, a total of 23 essay questions (7.7%) contained more than one area of law. The most commonly tested pair of subjects was Civil Procedure/Conflicts which appeared 5 times.

MEE practice should involve a mix of reading/listening to/outlining and answering MEE questions and answers. I deliberately hide the subject in the Table of Contents in case examinees want to read the questions to realistically simulate testing or issue spotting (but you can see the subjects in the answer headings). Alternatively, there are two other methods of viewing the answer headings: (1) turn on the Navigation Pane in Word (go to View, and then mark the check box to show the "Navigation Pane") or edit the Table of Contents to include Level 4 headings (Right-click on the Table of Contents, choose Edit Field, select TOC from the Field Names list, press the Table of Contents button, and then change Show Levels to 4). In addition, the questions and answers in this Compilation are separated by a page break so an examinee can read an MEE essay and and answer the question (or quickly issue spot) without any hint of the answer, and the examinee can then go to the answer explanation(s) on the next page (unlike the MEE exam booklets, each answer in the Compilation always appears after the question so examinees do not have to hunt for the answers). This means that an examinee can use this Compilation not only for MEE studying, but also for MEE testing. Lastly, the Compilation also identifies every single issue tested on every single essay (it cross-references with the SEPERAC UBE MASTER OUTLINE) – this can be used to check whether your issue-spotting is on point when you are outlining.

ESSAY 123: JUL 2016–MEE Q02: QUESTION TWO – F17 ESSAY PRIO: MED

A defendant was tried before a jury for a robbery that had occurred at Jo-Jo's Bar on November 30. At trial, the prosecutor called the police officer wh
objection, the officer testified as follows:

Officer: I arrived at the defendant's home on th
invited me inside, and I asked him, "Did you ro
started crying. I decided to take him to the stati
warnings, and he said, "Get me a lawyer," so I

Prosecutor: Did the defendant say anything to y

Officer: I think he did, but I don't remember ex

Immediately after this testimony, the prosecutor
identified the document as notes she had made
defendant on December 1. The prosecutor provided a copy of the document to defense counsel. The document, which was dated December 2, stated in its entirety:

The defendant burst into tears when asked if he had committed the robbery. He then received and invoked Miranda rights. I stopped the interrogation and didn't ask him any more questions, but as soon as we arrived at the station the defendant said, "I want to make a deal; I think I can help you." I reread Miranda warnings, and this time the defendant waived his rights and said, "I have some information that can really help you with this case." When I asked him how he could help, the defendant said, "Forget it – I want my lawyer." When the defendant's lawyer arrived 30 minutes later, the defendant was released.

The officer then testified as follows:

Prosecutor: After reviewing your notes, do you remember the events of December 1?

Officer: No, but I do remember making these notes the day after I spoke with the defendant. At that time, I remembered the conversation clearly, and I was careful to write it down accurately.

Over defense counsel's objection, the officer was permitted to read the document to the jury. The prosecutor also asked that the notes be received as an exhibit, and the court granted that request, again over defense counsel's objection. The testimony then continued:

Prosecutor: Did you speak to the defendant any time after December 1?

Officer: Following my discovery of additional evidence implicating the defendant in the robbery, I arrested him on December 20. Again, I read the defendant his Miranda rights. The defendant said that he would waive his Miranda rights. I then asked him if he was involved in the robbery of Jo-Jo's Bar, and he said, "I was there on November 30 and saw the robbery, but I had nothing to do with it."

Defense counsel objected to the admission of this testimony as well. The court overruled the objection.

The defendant's trial for robbery was held in a jurisdiction that has adopted all of the Federal Rules of Evidence.

Were the following decisions by the trial court proper?

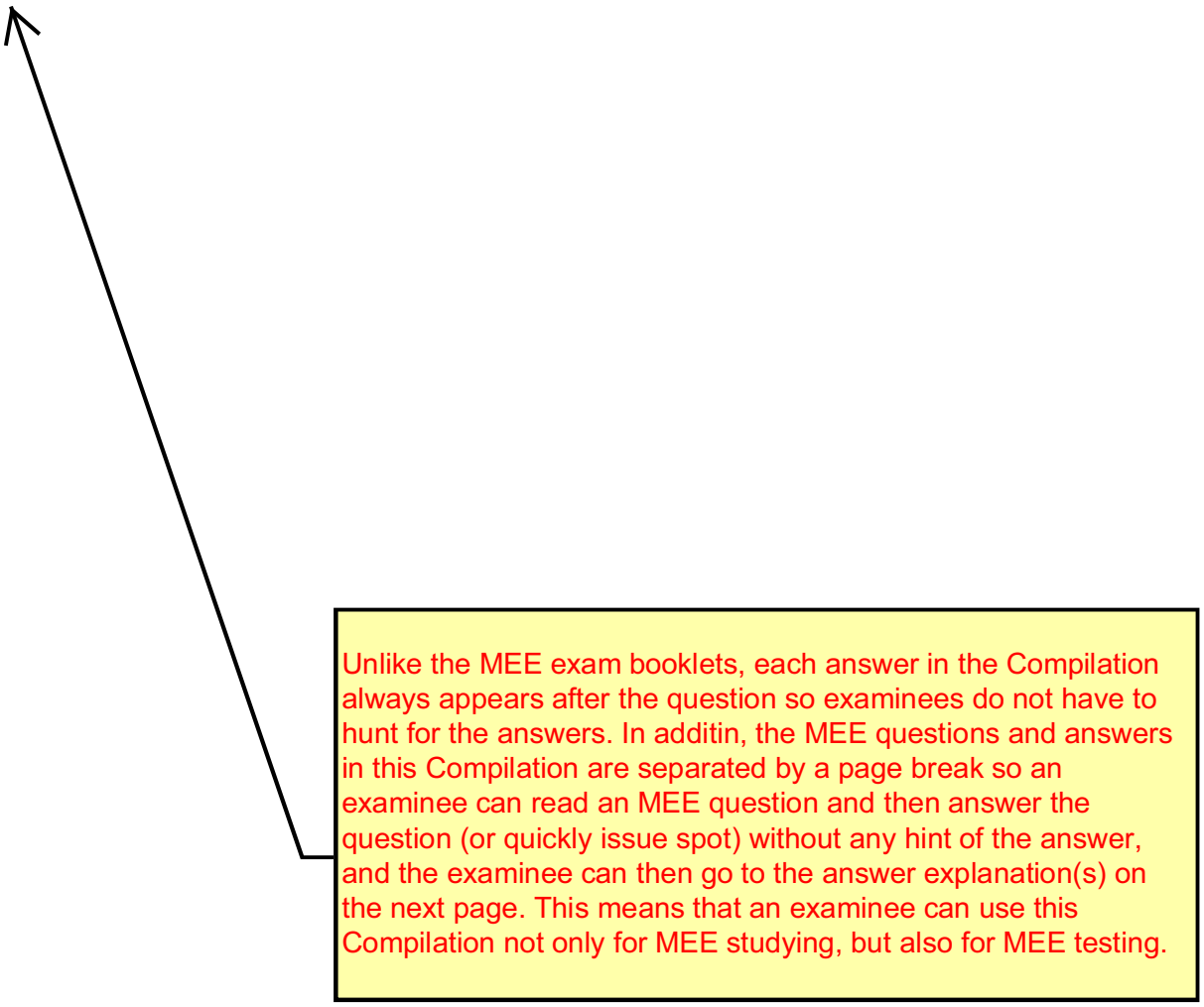
1. Admitting the officer's testimony that the defendant started crying. Explain.

2. Permitting the officer to read her handwritten notes to the jury. Explain.

3. Admitting the officer's handwritten notes into evidence as an exhibit. Explain.

4. Admitting the officer's testimony recounting the defendant's statement, "I have some information that can really help you with this case." Explain.

5. Admitting the officer's testimony recounting the defendant's statement, "I was there on November 30 and saw the robbery, but I had nothing to do with it." Explain.



Legal Issue Analysis:

Each of these issues (1,200+ issues over 44 exams) is contained in the SEPERAC UBE MASTER OUTLINE. Thus, for every ABC level category, you can see all the issues tested for that category over 44 exams

Issue (1): Did the admission of the officer's defendant's Miranda rights? Was this evide

Issue (2): Was the officer properly permitted to read her handwritten notes to the jury?

Issue (3): Were the officer's notes properly received into evidence as an exhibit?

Issue (4): Did the admission of the officer's testimony recounting the defendant's statement "I have some information that can really help you with this case" violate the defendant's Miranda rights? Was this evidence inadmissible hearsay?

Issue (5): Did the admission of the officer's testimony recounting the defendant's statement "I was there on November 30 and saw the robbery, but I had nothing to do with it" violate the defendant's Miranda rights? Was this evidence inadmissible hearsay?

Answer Discussion:

The Answer Discussion provides a great synopsis of the answer. Examinees with limited time to study should focus on the Answer Discussions rather than the full answers.

The trial court properly permitted the offi
asked him, "Did you rob Jo-Jo's Bar last
compelled communication or testimony protected by the privilege against self- incrimination or the Miranda rule. Furthermore, Miranda warnings are required only when a suspect is both in custody and under interrogation. The defendant was under interrogation, but he was not in custody when he burst into tears. Finally, the defendant's crying did not raise hearsay concerns because it was not a statement.

The trial court properly permitted the officer to read her notes to the jury. Although the notes are hearsay, they are admissible under the hearsay exception for recorded recollections. They concern a matter about which the officer once had knowledge but now has inadequate recollection to testify fully and accurately, they were made by the officer at a time when the events were fresh in her memory, and she has testified that the notes are accurate. Thus, the notes were properly admitted and read into evidence.

However, the trial court erred by receiving the notes as an exhibit. A written document admitted as "recorded recollection" may be read to the jury, but it may not be received as an exhibit unless it is offered as such by the adverse party. Here, the adverse party (defense counsel) did not offer the document but, in fact, objected to its admission.

The trial court properly permitted the officer to recount the defendant's statement "I have some information that can really help you with this case." There was no Miranda violation because the defendant initiated communication with the officer. Under the Federal Rules of Evidence, the out-of-court statement is not hearsay because it is an "opposing party's statement."

The trial court properly permitted the officer to recount the defendant's December 20 statement. Even though the defendant had invoked his right to counsel on December 1, the officer arrested him on December 20 and interrogated him without counsel being present. Nonetheless, the defendant's December

20 statement—"I was there on Novembe
properly admitted. First, at the time he w
custody for over two weeks. This was su
defendant's December 1 invocation of th
warnings on December 20, prior to reinitiating interrogation, and the defendant waived his rights. Finally, under the Federal Rules of Evidence, the out-of-court statement is not hearsay because it is an opposing party's statement.

The Point Value of each issue is reported. Each issue is bookmarked and can be accessed by clicking on the relevant Issue Link in the SEPERAC UBE MASTER OUTLINE

Explanation to Point One (25%):

2016-JUL-Q2-P1: CrimLaw: Cat V: Const Protections of Ds (B. Confessions/Self-incrimination privilege) – F17 Prio: MED
2016-JUL-Q2-P1: Evidence: Cat V: Hearsay & Admissibility (A. Definition of hearsay) – F17 Prio: MED

The officer's testimony that the defendant started crying did not violate the defendant's Miranda rights because crying is not testimonial/communicative evidence and the defendant was not in custody when he burst into tears. This testimony is not hearsay because crying is not a statement.

The trial court properly permitted the officer to testify that the defendant began crying after she asked him, "Did you rob Jo-Jo's Bar last night?" The testimony did not violate Miranda, because crying is not the type of compelled communication or testimony protected by the privilege against self-incrimination. Miranda has consistently been interpreted to protect only testimonial/communicative evidence. Here, the defendant's crying would not be considered a testimonial communication. In order to be testimonial, an accused's communication must itself, explicitly or implicitly, relate a factual assertion or disclose information.

Moreover, Miranda protections apply only when a suspect is both in custody and under interrogation. The defendant was under interrogation becau
defined as either express questioning or
only be established if a reasonable perso
custody. Here, when the defendant burst
not in custody because a reasonable pers
home would not believe that he was in c
suspect's home by several government agents was not viewed as custody without a more "significant" deprivation of the suspect's freedom of action.

The Compilation also identifies every single issue tested on every single essay (NCBE's answer analysis does NOT have this, nor does any bar material) – this can be used to check whether your issue-spotting is on point when you are outlining.

Finally, crying does not raise hearsay concerns because it is not a statement. Hearsay is an out-of-court statement "offered in evidence to prove the truth of the matter asserted in the statement." Here, the defendant burst into tears, but did not assert or communicate anything while he was crying.

Explanation to Point Two (25%):

2016-JUL-Q2-P2: Evidence: Cat V: Hearsay & Admissibility (E. Past recollection recorded) – F17 Prio: LOW

The notes made by the officer are hearsay, but the officer was properly permitted to read the notes to the jury as a recorded recollection. Statements by the defendant contained in the notes are nonhearsay opposing-party's statements.

The trial court properly permitted the officer to read her notes to the jury. The document containing the officer's notes is hearsay because it is an out-of-court statement that is "offered in evidence to prove the truth of the matter asserted in the statement." However, the notes are admissible under the hearsay exception for recorded recollections. A recorded recollection is "a record that is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately and was made when the matter was fresh in the witness's memory." The officer's notes are a recorded recollection because the officer, who once had knowledge of the contents of those notes, prepared them herself but had insufficient recollection of the events they described to testify fully and accurately at trial regarding those matters.

The Federal Rules of Evidence also permit the use of a writing, such as the notes, to refresh a witness's recollection for the purpose of testifying. Here, the prosecutor's effort to use the notes to refresh the officer's recollection was not successful because even after reading the notes, the officer still had insufficient recollection to enable her to testify fully and accurately. However, the officer also testified that she remembered making the notes and that she was careful to write the notes correctly. Thus, the court properly admitted the notes into evidence and permitted the officer to read them to the jury.

The notes themselves recount additional out-of-court statements made by the defendant (a second level of hearsay), but these statements are deemed nonhearsay by the hearsay exception for out-of-court statements by opposing parties.

Explanation to Point Three (10%):

2016-JUL-Q2-P3: Evidence: Cat V: Hearsay & Admissibility (E. Past recollection recorded) – F17 Prio: LOW
2016-JUL-Q2-P3: Evidence: Cat V: Hearsay & Admissibility (G. Public records and reports) – F17 Prio: LOW

<u>The trial court erred by receiving the officer's notes as an exhibit.</u>

Although the officer's notes fit the hearsay exception for recorded recollections, under this exception "if admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party." Here, the notes were used by the prosecutor and offered as an exhibit by the prosecutor, not by an adverse party. Therefore, it was error for the court to admit them as an exhibit.

[NOTE: The officer's notes are not admissible under the hearsay exception for public records under Federal Rule of Evidence 803 because the rule specifically exempts statements by law enforcement personnel when offered in a criminal case.]

Explanation to Point Four (25%):

2016-JUL-Q2-P4: CrimLaw: Cat V: Const Protections of Ds (B. Confessions/Self-incrimination privilege) – F17 Prio: MED
2016-JUL-Q2-P4: Evidence: Cat V: Hearsay & Admissibility (A. Definition of hearsay) – F17 Prio: MED

<u>The admission of the officer's testimony recounting the defendant's statement "I have some information that can really help you with this case" did not violate the defendant's Miranda rights because the defendant initiated communication with the officer. This testimony also is not hearsay because it is an opposing-party statement.</u>

The trial court properly permitted the officer to testify recounting the defendant's statement "I have some information that can really help you with this case." On December 1, the officer provided the defendant with Miranda warnings and the defendant invoked his right to counsel by stating, "Get me a lawyer."

After the defendant's invocation of his right to counsel, the officer was required to cease the interrogation. Here, the officer immediately stopped the interrogation.

However, if a custodial suspect who has invoked his right to counsel initiates post-invocation communication with the police, the suspect's subsequent statements may be admissible. Although a suspect's questions/comments "relating to routine incidents of the custodial relationship" will not be treated as initiation of communication with the police, statements from a suspect that clearly indicate a willingness to speak to the police about matters relating to the investigation will be treated as initiation of communication.

Here, when the defendant said, "I want to make a deal; I think I can help you," he was clearly initiating communication with the officer. Following this initiation of communication by the defendant, the officer properly provided new Miranda warnings and obtained a waiver of rights. Admission of the defendant's subsequent statements did not violate his constitutional rights.

Finally, although the defendant's statement was made out of court because it was made by the defendant and offered by the prosecutor against the defendant, it is an opposing-party statement and not considered hearsay.

Explanation to Point Five (15%):

2016-JUL-Q2-P5: CrimLaw: Cat V: Const Protections of Ds (D. Right to counsel) – F17 Prio: MED
2016-JUL-Q2-P5: Evidence: Cat V: Hearsay & Admissibility (A. Definition of hearsay) – F17 Prio: MED

The admission of the officer's testimony recounting the defendant's December 20 statement "I was there on November 30 and saw the robbery, but I had nothing to do with it" did not violate the defendant's Miranda rights because, following the defendant's second invocation of his right to counsel of December 1, the defendant was released from interrogative custody for 19 days. This testimony is nonhearsay because it is an opposing-party statement.

As discussed in Point Four, on December 1 the defendant received Miranda warnings from the officer, invoked his right to counsel by saying "Get me a lawyer," initiated communication with the officer, received a fresh set of Miranda warnings, waived his rights, made a statement, and then re-invoked his right to counsel by saying, "Forget it – I want my lawyer." Following the defendant's second invocation, he was provided with counsel and released. He was not questioned again until more than two weeks later, when he was arrested and given fresh Miranda warnings.

The Supreme Court has concluded that if a suspect has been released from interrogative custody, the police obligation to honor an invocation of the Miranda right to counsel terminates after 14 days. Although the defendant invoked his right to counsel on December 1 by saying "Forget it – I want my lawyer," that earlier invocation by the defendant of his right to counsel was no longer binding on the officer when she re-arrested the defendant on December 20.

On December 20, the officer properly provided the defendant with new Miranda warnings.

The defendant waived his rights and made a voluntary statement to the officer. Admission of the statement into evidence did not violate the defendant's constitutional rights. Moreover, the statement is not hearsay because it is a statement by an opposing party.

ESSAY 123: J16-2 MEE: ANSWER: NEW YORK (EVIDENCE/CRIM LAW & PROC)

1. Admitting the officer's testimony that the defendant started crying was proper. At issue is whether this is a statement and therefore whether it is subject to possible suppression on 5th Amendment grounds or hearsay grounds. Hearsay is defined as an out of court statement offered for the truth of the matter asserted. Under the Federal Rules of Evidence, all hearsay must be excluded unless it falls within an exception found in FRE 803. However, excluded from the definition of hearsay is a statement by a party opponent (a statement made by the party not seeking to introduce it). Here, if this were found to be a statement, the defendant made it and therefore its admission would not be barred on hearsay grounds. However, bodily responses like crying are not likely to be deemed statements anyway as crying under ordinary circumstances would not be meant to convey an idea or express something but rather a reaction that is physical and can be observed by anyone within sight.

The 5th Amendment protects defendants from self-incrimination by excluding from evidence statements made without proper Miranda warnings while subject to custodial interrogation. However, this only applies to statements. As stated above, the involuntary response of crying is unlikely to be deemed a statement and therefore its introduction cannot violate the defendant's 5th Amendment rights.

There are about 100 best examinee answers contained within this Compilation. These released best examinee answers from other states serve as good examples of proper reasoning and analysis. By analyzing representative good answers, examinees will learn to write passing MEE essays by example. These best examinee answers provide insight as to what type of writing and how much knowledge and analysis is required for an above average score that is not at the level of the released NCBE Answer Analyses. Reading, listening to, outlining, and answering these MEE essays will teach you how to compose an MEE answer that the bar examiners are looking for. Sometimes, different topics are raised in these answers, illustrating that an examinee's answer does not have to mirror the NCBE answers to receive a high score.

pperly admitted. At issue is whether the
warn a suspect or defendant that
have a right to an attorney and that one
s must be given prior to custodial
For a statement to be suppressed
t of custodial interrogation. A person
ir situation would not feel free to
the officer was there pursuant to a
kely that a person will be found to be
facts like handcuffing. Interrogation
ating response. Here, the question "Did
sponse and is therefore likely
t of crying could not be suppressed

2. Permitting the officer to read her handwritten notes was proper. At issue is whether it was permissible to read these notes to the jury or if this constituted hearsay. If a witness takes the stand and cannot remember something, they are permitted to look at anything that may refresh their recollection provided that the opposing side has access to the item used to refresh the witnesses' recollection. If a witness's own notes or writing is used to refresh the witness's recollection but it is unable to successfully do so, it may be read to the jury under the hearsay exception of past recollection recorded. A witness is able to read their prior notes or writing if it was written contemporaneously or soon after the event in question and if it was accurate. Here, the officer testified that he knew the defendant said something but couldn't remember what. He testified that the notes did not refresh his recollection but he knew that he wrote them only two days after the incident and that he was careful to write everything down accurately. This is enough to satisfy the requirements for a past recollection recorded and therefore was properly admitted.

3. It was improper to admit the handwritten notes into evidence. At issue is whether a document read as past recollection recorded may be introduced into evidence as an exhibit. Generally, a document used to refresh a witness' recollection that is subsequently read as past recollection recorded may only be introduced into evidence by the opposing side. Here, the prosecution's witness testified regarding the contents of the notes and then the prosecution asked for the notes to be received into evidence. This was improper procedure as only the defense could introduce this into evidence should they choose to do so.

4. It was proper to admit the testimony regarding the defendant's statement, "I have some information that can really help you with this case." At issue is whether admission violates defendant's Miranda rights. As discussed above, statements made in violation of a defendant's Miranda rights should be suppressed. However, as discussed above statements are only suppressed if they are the product of custodial interrogation. This means that if a defendant voluntarily says something not in response to questioning or actions by the police, that statement is not going to be suppressed under Miranda because it was a voluntary statement not made in response to interrogation. Police must scrupulously honor invocations of Miranda, but after voluntarily reinitiating discussions with the police suspects may waive Miranda after having previously waived it. Here, even though the defendant had invoked Miranda, he spontaneously stated as he arrived at the police station that he had information the police wanted. He was then re-read Miranda and at that point waived his rights and made the statement in question. The defendant was aware of his rights and waived them voluntarily. Conversation was reinitiated by the defendant and not the police - the police scrupulously honored his invocation by reminding him of his rights before he continued. This knowing and voluntary waiver was valid and therefore the statement is admissible

5. It was proper to admit the defendant's statement "I was there on November 30 and saw the robbery, but I had nothing to do with it. After a cooling off period, police are allowed to reinitiate interrogation and reissue Miranda warnings prior to formal charges being brought, despite a previous invocation of Miranda. Here, the defendant invoked his right under Miranda to a lawyer on December 2. Then over two weeks later he was arrested and reread Miranda. The defendant knowingly waived his rights at that point and therefore the interrogation that followed was not Miranda deficient.

ESSAY 123: J16-2 MEE: ANSWER: NEW YORK (EVIDENCE/CRIM LAW & PROC)

1) The decision by the trial court to admit the officer's testimony that the defendant started crying was proper. At issue is whether the testimony violates the bar against hearsay, or the defendant's Miranda Rights.

Hearsay is an out of court statement offered to prove the truth of the matter asserted. The statement does not have to be verbal, non-verbal acts can also qualify by statements if they are intended to be an assertion of fact (for example, nodding one's head in response to a question). However, statements by a party are not hearsay when offered against that party at trial. In this case, the defendant bursting into tears in response to the question "Did you rob Jo-Jo's Bar last night?" is likely not a statement, and thus not hearsay, because it was not intended to be an assertion of fact in response to the question, but rather was a spontaneous physical act. This point is highlighted by the defendant's continued denial of involvement in the robbery, it was not intended to be an affirmative statement in response to the question. Thus the crying is not hearsay but is rather is a physical observation of the officer that constitutes circumstantial evidence of the defendant's guilty mind. Even if the crying was held to be a statement asserting the defendant's guilt, it still would be admissible, as it is a statement by the defendant offered against the defendant at trial and thus is not hearsay as defined by federal rule 801(d)(2).

The defendant's Miranda Rights were also not violated because the defendant was not yet in custody. Miranda warnings need only be given to a defendant during a custodial interrogation, and an individual is not in custody for the purposes of interrogation when a reasonable person would feel free to leave and end questioning at any time under the circumstances. While the officer was asking the defendant about his potential involvement in the robbery, the questioning was conducted in the defendant's home. The defendant himself invited the officer inside. The defendant would not reasonably feel that he was not free to leave or end questioning in these circumstances, as the defendant himself invited the officer in and could easily ask him to leave. Therefore the defendant was not in custody at the time and the questioning was permissible without Miranda warnings.

2) The decision by the trial court to allow the officer to read her handwritten notes to the jury was proper. At issue is whether the officer could not remember the events of December 1st. When a witness has trouble remembering a previously known fact, the attorney may refresh the witness's recollection by allowing the witness to view some document or object to jog their memory. The document itself does not need to be admissible, only an aid to the witness's memory. After reviewing the document, if the witness can now recall the forgotten events, the attorney would then instruct the witness to set the document aside and to testify to the fact from her own memory. However, if after reviewing the document, the officer still cannot recall the previously known fact, the attorney may then read to the jury a previously recorded recollection of the events made by the witness at a time when she could accurately recall the events in question. Here, the witness testified that she could not remember what was said by the defendant at the police station. Even after being shown a copy of her notes, the officer still could not recall the events, but testified that the notes were an accurate reflection of the events written at a time when she could recall them. As a result, the notes are a recorded recollection, an exception to the bar against hearsay, and may be read to the jury.

3) The court erred in admitting the officer's handwritten notes as an exhibit in evidence. At issue is when a document admissible as a recorded recollection may be entered as an exhibit itself. While it is permissible to read a recorded recollection to the jury under the circumstances described in question 2,

entering the exhibit itself is not allowed by the proponent of the evidence. The document may be admitted on cross examination, but only on cross examination. Here, the document was entered by the prosecution, the proponent of the evidence, over the objection of the defense. This makes the exhibit improper and the judge's ruling erroneous.

4) The court was proper in admitting the defendant's statement "I have some information that can really help you with this case." At issue is whether the statement violates the bar against hearsay or the defendant's Miranda Rights. As previously discussed, hearsay is an out of court statement offered to prove the truth of the matter asserted, however statements made by a party offered against that party at trial are not hearsay under rule 801(d)(2). Here, the statement is made by the defendant and offered against the defendant at trial, therefore it is not hearsay.

The defendant's Miranda Rights also were not violated because the defendant himself reinitiated questioning. After a successful invocation of one's Miranda Rights, the police must cease questioning and may not reinitiate questioning to try to get a waiver out of the defendant until a sufficient amount of time has passed. Here, the defendant did successfully invoke Miranda at his home and the officer ceased questioning. However, at the station, the officer did not attempt to reinitiate questioning. Instead, the defendant himself offered information to the officer unprompted. At that point, the officer was free to reread the Miranda Rights and obtain a waiver, which she did. The statement in question came after this waiver, and does not violate the defendant's rights by being admitted at trial.

5) The court was proper in admitting the defendant's statement "I was there on November 30 and saw the robbery, but I had nothing to do with it." At issue is whether the statement violates the bar against hearsay or the defendant's Miranda Rights. For the same reasons discussed in question 4, the statement here is made by the defendant and offered against the defendant at trial, therefore is a statement by a party opponent and not hearsay.

The defendant's Miranda Rights were also not violated because a sufficient time had elapsed between the conclusion of his last invocation of his rights to reinitiate questioning. After a defendant invokes his Miranda Rights, officers may not attempt to reinitiate questioning until after 14 days, as ruled by the Supreme Court. After that time elapses, officers may again try to question the defendant, and if a new waiver of Miranda is granted, the evidence of that conversation will not be barred as a violation of the defendant's rights. In this case, the defendant asked for and received a lawyer on December 1st. The police ceased questioning at that time. Questioning was reinitiated on December 20th, more than 14 days later. At that time, the defendant waived his rights and as a result his statement is admissible against him. It should also be noted that the questioning does not violate the defendant's sixth amendment right to counsel, despite being provided with a lawyer previously, as no formal charges were yet brought against the defendant.