

Froelich
Criminal Procedure
Fall 1996

General Instructions:

All of the questions are, generally, of equal weight; there is probably not enough time to answer every question as completely as you would like; however, everyone will be in the same position and the final grades will be curved. Limit your answers to areas discussed in the casebook and class - **do not get distracted**.

I. The Defendant, Evil Doer (formerly known as Joe Smith), is an avowed Satanist. He resided alone in a quiet residential neighborhood before he changed his name and converted to his current religion. Within the last several months there have been numerous complaints from the neighbors about strange goings-on at his house. For example, weird noises come out of the house at all times, very strange looking people enter and leave at unusual hours, and a poultry truck delivers scores of live chickens every week, the carcasses of which are found in the Defendant's trash.

The Defendant is charged with "intentionally killing chickens without a permit" when it is found out that he apparently uses these animals in some sort of ritual. This offense carries a sentence of up to ten (10) years in prison and has been on the books since 1850 when there was a rash of disease which was caused by improperly-killed chickens; however, there have been no prosecutions since that time despite the fact that local poultry farmers do not obtain permits. Once charged, the Defendant was arrested and the police have requested a one-million-dollar bail.

(a.) The Defendant is upset that he was prosecuted when others have not been. What are the Defendant's legal complaints, what can he do about them, and how should the Prosecution respond?

(b.) The Defendant does not think it is right that the bond is so high and believes he should be released on his promise to appear; argue both sides.

II. The Defendant, Ima Madd, is charged with Driving Under the Influence (which is defined in the local statute as driving while under the influence of alcohol). She was involved in a collision with another car in which she was not injured but the victim was taken to the hospital. The Defendant has entered a plea of guilty and is awaiting sentencing when the victim dies as a result of the collision.

The Defendant is now charged with Aggravated Vehicular Homicide (which is defined as causing the death of another while driving under the influence of alcohol).

The trial on the homicide charge has started and the jury has been selected and sworn

and testimony is scheduled to start tomorrow morning. During a recess, the Defendant's attorney moves to dismiss the homicide charge based on double jeopardy.

Please argue both sides of this motion.

III. On January 1, 1970, Paul Protester is found dead in his apartment as a result of a pipe bomb explosion. Investigators have always suspected Don Defendant as being responsible for this homicide and the investigation has been kept open.

On February 1, 1990, Don Defendant is indicted and arrested for this murder. The following events ensue:

February 1, 1990 - Indictment and arrest.

March 1, 1990 - Defendant arraigned and indicates he will retain his own attorney; trial set for July 1, 1990.

June 1, 1990 - Defendant still does not have an attorney and the Court appoints a recent graduate for his attorney and continues the July 1 trial.

August 1, 1990 - Defendant says he does not get along well with this attorney and wants to retain his own attorney; the Court sets a status report for December 1.

December 1, 1990 - Defendant still has not retained an attorney and the Court appoints the previous counsel and sets trial for August 1, 1991.

February 1, 1991 - Defendant's counsel indicates he is ready to go to trial, but informs the Court he can't locate his two main alibi witnesses.

July 30, 1991 - Defense counsel indicates to the Court that he has just determined that the two witnesses died in 1980 and requests a continuance and the case is set for trial on December 1, 1991.

December 1, 1991 - The Prosecution moves and is granted a continuance because two of its witnesses are not available and the trial is scheduled for February 1, 1992.

January 31, 1992 - Defendant files a Motion to Dismiss based on an alleged denial of his speedy trial right.

February 1, 1992 - The Court continues the trial while it considers the Motion to Dismiss.

June 1, 1995 - The Court renders a Mitten decision denying the Motion to Dismiss and

sets the case for trial on September 1.

September 1, 1995 - Defendant waives his right to a jury trial and after a two-day trial he is convicted of murder; neither the Defendant nor any witnesses testified for the Defense.

On appeal, the Defendant argues that he was denied a speedy trial; argue both sides.

On appeal, the Defendant also argues that he was denied effective assistance of counsel saying that he would have been acquitted had the case been tried to a jury and not to the judge and, further, if the attorney would have called the Defendant to testify. The attorney has submitted an affidavit stating that he did not call the Defendant because the Defendant told the attorney that he (the Defendant) thought the deceased deserved to be blown up, but that if he testified, he (the Defendant) would say he could not have committed this crime because he and the deceased were best of friends.

IV(a). At 4:00 p.m. on a Wednesday morning, the police are called to the Defendant's (John Doe) house. A neighbor heard a shot and when the police arrived, they found John Doe sitting in his living room chair with a still smoking gun in his hand. On the floor across from him is a dead body.

The Defendant is indicted for murder which is defined as the killing of another person. The Defendant says that he thought the deceased was breaking into his house and, therefore, shot to defend his property and his own safety (both of which are permitted by local law). The deceased worked for the local utility company and, the Prosecution says, was on his way to the basement to check on a gas leak (a local ordinance permits meter readers to enter residential property at any time if a written notice has been sent)

The Defendant is totally blind. He says that he did not know anything about the scheduled appearance of the meter reader and the person never identified himself. During the jury selection process of the trial, the Defendant complains because only one blind person is present and, further, the prosecution has exercised a peremptory challenge against this potential juror stating that this juror would not be able to see the coroner's pictures of the body, would not be able to see a drawing of the scene and, further, the prosecutor just had a bad feeling about this juror.

The juror is excused, the trial proceeds, and the Defendant is convicted. What arguments can the Defendant make on appeal concerning the jury (and what remedy is sought) and what are the Prosecution's arguments?

IV(b). After his conviction, the Defendant learns that the written notice of intent to enter the premises was never sent by the utility company and that the utility worker had been disciplined the week before the shooting for entering a residence without permission and, further, that the prosecutor was aware of both of these facts and never told the

defendant's attorney. Does this situation give the Defendant a basis for appeal. Argue both for the Defendant and the Prosecution.

V. Extra credit (will be used only if total scores on I-IV put you in between the curve's cut-offs).

"This is England, not Spain." How does this quote from A Man For All Seasons relate to the roles of a current-day prosecutor and defense attorney?