

Froelich
Criminal Procedure
Fall 1997

General Instructions:

The questions are weighted as indicated. 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 case book and class.

I. (20%) The Defendant, Dwayne Doofus currently is employed by Microhard Computers in their "futures" department; his job is to sit in a room by himself and come up with new ideas for computers. Although he has only a sixth grade education, he apparently is a so-called autistic-savant and has developed an entirely new computer language.

Currently, Dwayne stands charged with planting a bomb and blowing up the corporate headquarters of HAL, Inc., the major competitor of Microhard. The charge carries up to ten years in prison and a \$250,000 fine.

At his first appearance before the judge, Dwayne indicates that he does not trust attorneys and, therefore, wants to represent himself.

A. What are the arguments for and against allowing Dwayne to represent himself?

For whatever reason (and do not let it influence your analysis of the first question), Dwayne allows Sam Slick to represent him at trial. Sam is an internationally renowned mergers and acquisitions lawyer and just completed representing Microhard in its purchase of HAL. Microhard is paying Sam to defend Dwayne. Sam does not cross-examine any of the State's witnesses and calls no witnesses for the defense. After conviction and sentence, you have been appointed by the Court to represent Dwayne on appeal.

B. What are your arguments and how will the prosecution respond?

II. (20%) Ima Innocent is charged with possession of cocaine. The entire case centers around the testimony of Frank Fink who allegedly bought the cocaine from Ima and testified against her at trial. When Frank Fink was on the stand, he was asked by Ima's attorney whether or not he had ever been convicted of a crime. Frank adamantly denied any criminal record. Ima is convicted.

The week after the trial, the defense attorney is discussing the case with a colleague

and the other attorney informs him that she had represented Frank the year before when he was convicted of perjury and the year before that when he was convicted of possession of cocaine. The defense attorney now moves for a new trial [please note, THIS IS NOT a double jeopardy question]. **What arguments should the attorney make and how will the State respond?**

III. (20%) The defendant, James Bond, is appealing his conviction for espionage. He argues that the trial court erred by permitting the Government to peremptorily challenge certain jurors.

The trial record reflects that the first Government peremptory challenge was exercised against an unmarried white woman and the second against an unmarried black woman. The record reflects that in response to the Court's request to explain the second challenge, the prosecutor stated, "Because she was a single female and my concern, frankly, is that she, like the other juror I struck, is single, and given the defendant's good looks, would be attracted to the defendant." The judge permitted the challenges and struck the jurors.

The defendant now is appealing the conviction based on the judge's decision. **What arguments does he make and how does the Government respond?**

IV. (40%) Dan Defendant is charged with robbery and forcible rape on April 1. (The relevant statutes are set out below) At trial, the victim testified that the defendant forced her to have sex with him and then took her watch. She identified the defendant, but during cross-examination testified that she really did not remember 100% whether she was wearing a watch that night and whether any force was used against her. The defendant testified that he was home watching television at the time of the alleged crimes. The jury found the defendant not guilty of both charges.

A month later, the defendant is indicted on new charges of larceny and statutory rape on April 1 arising out of the same incident.

The trial starts and during the State's voir dire, the prosecutor asks a prospective juror, "Did you read anything about the defendant's confession in this case?" The judge, after the defense attorney objects, dismisses the jury. The next morning, when the case is set to start with a new jury, the defendant moves for a dismissal of the charges based on the belief that since the first case resulted in an acquittal and/or the second case resulted in a mistrial, the defendant cannot be tried.

Penal Code sec. 211 provides that "Robbery is the felonious taking of personal property from the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear."

Penal Code sec. 261 provides that "Rape is an act of sexual intercourse accomplished

against a person's will by means of force or fear."

Penal Code sec. 210 provides that "Larceny is the trespassory taking and carrying away of the personal property of another with the intent to steal."

Penal Code sec. 261.5 provides that "Statutory rape is an act of sexual intercourse accomplished with a female not the wife of the perpetrator, where the female is under the age of 18 years."

What are the arguments for and against the defendant's motion?

Extra Credit (to be used only if you fall precisely between the point spread of the curve).

You have read *A Man for All Seasons* and/or viewed the video. Please discuss any one principle or idea which you gleaned from this play.