

**Evidence
Spring 2007
Judge James**

EXAM INSTRUCTIONS

Please be absolutely sure to fill in your ID number on both the Exam Book and the Scantron and RETURN ALL TEST MATERIALS TO THE PROCTOR.

This is a closed book exam consisting of 12 pages.

- Part I consists of an essay composed of 4 parts worth 100 points total. You should take 2 hours to complete Part I.
- Part II consists of 25 multiple choice questions worth 50 points. You should take 1 hour to complete Part II. Use the Scantron answer sheet for all the questions in Part II.

TURN THE PAGE AND BEGIN EXAM ONLY WHEN PROCTOR INDICATES.

PART I
Questions #1- 4
(100 points total, 2 hours)

The Grand Jury has charged Joe Mitchell with the first degree murder of his estranged wife, Leslie Thompson Mitchell, on September 10, 2006.

The state alleges that Joe Mitchell shot and killed Leslie on the front porch of her stepmother's house at 1751 Madison Avenue in San Francisco, California. An eyewitness, Leslie's stepmother, claims she saw a car like Joe Mitchell's drive up along the curb in front of the house and then saw a man who resembled Joe fire a pistol from the car. The shot struck and killed Leslie Thompson Mitchell. The shooting occurred at approximately 10:00 p.m., when it was dark and raining.

Joe Mitchell pleaded not guilty. At trial, he vigorously asserted his innocence and claimed that, at the time of his wife's death, he was at a Dodgers baseball game in Los Angeles, California. He testified the he stayed until the game ended at 10:00 pm. and did not return home until the next day. Joe also testified that the Dodgers lost the game. At the conclusion of testimony, the jury convicted Joe Mitchell of first degree murder.

Discuss whether the following testimony should be admitted.

Question #1:

Six months before the Leslie Thompson Mitchell's death, Joe believed she was being unfaithful to him. He went to the office of his attorney and close personal friend, but learned he was out for the day playing golf. The attorney's investigator, David, was in the office and offered to engage the law firm's services to ascertain whether Leslie was being unfaithful. Joe hired David, who discovered that Leslie was having an affair with her yoga instructor. Upon informing Joe of this during a private meeting, Joe exclaimed "What can I do? I am going to kill them both!" At the trial the prosecution called David as a witness to elicit the substance of Joe's conversation.

Question #2:

The prosecution offered testimony of Bobby, Leslie's favorite nephew, who is 5 years old. Bobby testified that Joe took him to a Giants baseball game in San Francisco last year for his birthday and told him that "he hated the Dodgers and would never go to a game when they were playing." The prosecution further request that the court take judicial notice that the Dodger's won the September 10th game.

Question #3:

The prosecution offered the testimony of Lisa, Joe's former girlfriend, who testified that she dated Joe and broke up before he and Leslie married in 1990. Lisa testified that they broke up because Joe stole her check book and forged a check, and that she later discovered he had a conviction for embezzlement. Lisa also testified that she thought Joe was a schizophrenic with paranoid delusions and she could recognize the symptoms because her father was schizophrenic. Additionally, she testified that Joe once shot a gun through her living room window and had a reputation for being violent.

Question #4:

The defense makes a motion for a new trial based on Juror #1's statement that during deliberations, the jurors could not agree and decided to take a vote. Six jurors voted to convict and six jurors voted to acquit. Juror #1 will testify that, after the vote, Juror #4 revealed to his fellow jurors that he went to the library during the trial and used the internet and Googled "Los Angeles Dodgers 2006 schedule." He determined that the game Joe Mitchell claims to have attended actually ended at 3:30 p.m., Juror #4 argued that this gave Joe Mitchell an opportunity to return home by 10 p.m. and kill his wife.