Convicting the Innocent – Exam

Marcello Di Bello – due July 15th, 2016 via email

Write 2-3 pages answering 2-3 of the items below. Your answers should be crisply written, wonderfully clear, and carefully and elegantly argued. They should demonstrate original and independent thinking. **Feel free to disagree with me. Always motivate your claims. Do not quote verbatim from the readings, but use your own words.**

1. What are the distinguishing features of the adversarial and the inquisitorial system? How can we test experimentally whether one system is better at arriving at the truth than the other according to Damaska? Why does he think that this question cannot be ultimately answered using the experimental method? Do you agree with him?

2. Argue, for one, that the notion of a wrongful conviction must be merely procedural. Argue, for another, that it should also take factual truth into account. Compare and weigh the two arguments. Which one do you think is the strongest?

3. Explain why the case People v. Goetz could be an example of "extreme proceduralism". Do you think that appellate courts should address the question of self-defense in a different way than the court in Goetz did? In other words, do you think that appellate courts should address matters of fact rather than matters of law (at least when it comes to self-defense cases)?

4. Describe how Risinger arrives at the 3.3% wrongful conviction rate. Make sure you describe all the reasoning steps as carefully as you can. Can this figure be generalized to all types of crime and to other time periods?

5. What criteria can we use to assess whether the 3.3% figure represents a well functioning or a badly functioning trial system? Make sure you construct your answer around a set of criteria and show in what way those criteria help us decide whether 3.3% is an acceptable error rate. Please also say why you have chosen such criteria.

6. We have encountered three psychological theories: relative similarity (Gary Wells); memory malleability (Elizabeth Loftus); selective attention (Simons & Chabris). Why are they relevant for the criminal trial? Explain. Find articles that describe these theories more precisely and summarize the evidence in their favor. You may focus on one theory only provided your exposition is particularily detailed and thorough.

7. What is the difference between "raw evidence" and "synthesized evidence" according to Simon? Which errors occur at the level of raw evidence and which at the level of synthesized evidence? Use eyewitness testimony or eyewitness identification as an illustrative case.

8. What are some "surgical" measures to reduce the wrongful conviction rate and what are more "systemic" measures? Give at least one example for each type. On the basis of theoretical, economic, commonsense and empirical grounds, argue that these

measures will be effective. Consider objections by those who might want to resist the proposed changes to the trial system and answer their objections.

9. Describe Signal Detection Theory and Expected Utility Theory as two frameworks for modeling errors in the criminal trial. Are they adequate? Which aspects do they capture and which aspects do they fail to capture? How would you ameliorate these frameworks if necessary?

10. In what way does Hamer framework differ from Signal Detection Theory? Is it a better framework? Why does Hamer think that all defendants will be concentrated around the probability values close to the probability threshold? What consequences does this have for the management of error in the trial system by the standard of proof? Does this mean the standard should be set high or low?

11. What is Kaplow's main message? Is his framework more inclusive than Signal Detection Theory, Expected Utility Theory or Hamer's framework? What are similarities and differences? Assess his framework and determine whether it leaves something out or not.