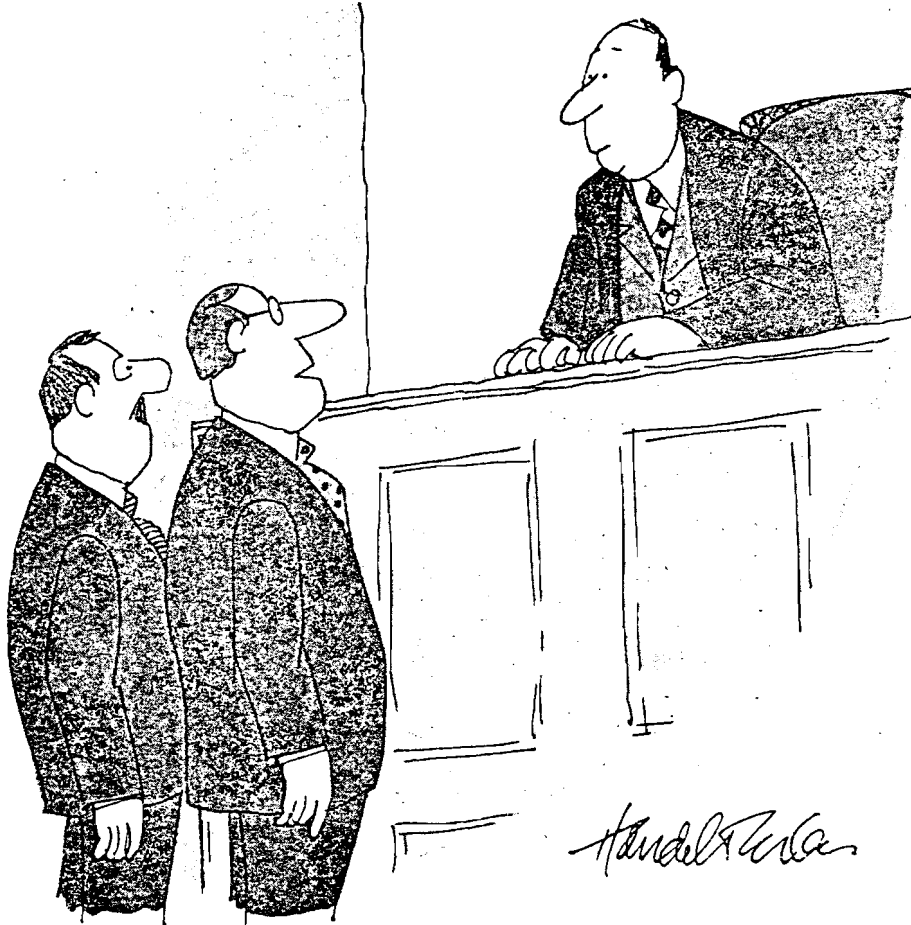


CRIMINAL LAW AND PROCEDURE
SECTION CJ

Mid-Year Examination
December 20, 1978

Two and 1/2 Hours
9:00 - 11:30



"If the larceny charge can be dropped, my client is prepared to plead guilty to the lesser charge of creating a climate of larceny."

OPEN BOOK

Instructions

The first two problems are each worth twice as much as the last one. Budget your time accordingly.

Answer all the questions reasonably raised in each problem even though your resolution of a prior issue in the same problem may technically make decision of the other issues immaterial. If you believe that you need more facts than are presented to adequately resolve an issue, indicate specifically what facts you believe you need and why.

Specific citations to cases are welcome but not as a substitute for thinking, i.e. do not use case citations instead of clearly stating the relevant point of law.

THE FOLLOWING SIX STATUTES AND STATUTORY PATTERNS APPLY TO BOTH PROBLEMS I AND II:

- #1. A federal statute provides as follows: "Whoever falsely and wilfully represents himself to be a citizen of the United States shall be fined not more than \$1,000 or imprisoned not more than three years, or both."
- #2. A statute in the State of Shock (a state within the United States) provides that: "No person under the age of 18 may register to vote in a national election." The Shock Criminal Code punishes as a misdemeanor registration by anyone not eligible because of age to vote.
- #3. Both federal and Shock state law contain attempt statutes exactly similar to § 901 of the Pennsylvania Crimes Code.
- #4. The federal conspiracy law, 18 U.S.C. § 371, provides as follows: "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both."
- #5. The State of Shock conspiracy statute is exactly similar to Pennsylvania Crimes Code § 903.
- #6. The Shock homicide statutes are exactly the same as California Penal Code §§ 187-192 found at pages 204-205 in the Kadish & Paulsen text.

I. - One Hour

Vladimir, from Yugoslavia, and Dmitri, from Bulgaria, are foreign exchange students and roommates living in the State of Shock and attending Shock State University. Late one evening in October of 1978, while quite drunk, they began arguing about the national congressional elections that were soon to be held in the United States. Vladimir, who was just short of his twentieth birthday asserted that anyone who felt as strongly as they did about American politics ought to register and vote, even if it involved posing as a United States citizen, and, in his case, posing as over 21 years old. Dmitri, who was 22 years old, said that that was "a good thought" and that he would register the next day. Vladimir said he planned to register the next day, too, and toasted Dmitri's courage and his own. Conversation then turned to other topics and continued far into the night.

Vladimir arose the next morning before Dmitri and headed off to register. He left a note for Dmitri reading: "Have gone to register, then to library. We're out of eggs."

On his way to City Hall, however, Vladimir had misgivings, fearing that if he was caught he might lose his scholarship. But, he decided to register anyway because, as he said later: "It would have been unmanly not to after I said that I would." At the Registration Office, he certified that he was a United States citizen and registered to vote.

That evening, however, while waiting for Dmitri to return to the apartment, Vladimir decided he didn't care that much about who won the election and he thereupon wrote and mailed a letter to the Registrar of Voters saying he was neither a citizen nor 21 years of age and wanted his registration canceled. Unknown to him, however, his Slavic accent had already aroused suspicion in the Registration Office. His name was sent in to the Immigration Authorities, and it was discovered that he had entered this country under a Yugoslav passport. Therefore, ten days later, he was arrested by the FBI. An attorney was appointed for him, and after the initial investigation, Vladimir learned to his astonishment that the voting age in Shock was 18 years, and that, in fact, he had always been a United States citizen. A band of Slovenian gypsies had kidnapped him as a baby from the car of his parents, American anthropologists travelling across Yugoslavia.

When Dmitri awoke on the morning during which Vladimir had registered, he was badly hung over. He read Vladimir's note in some confusion. "Register for what?" he thought. A few minutes later, while reading the newspaper, he recalled the conversation of the night before and laughed at the recollection. The more he read the national political news in the paper, however, the angrier he became and by the time he finished he had resolved that he, too, would register. After walking one block toward City Hall, Dmitri, like Vladimir, had misgivings. He returned home to have a beer to build up his nerve. He drank not one beer, but seven, and set out again--this time, however, more unsteadily. When he reached City Hall, where the Voter Registration Office was located, he still remembered that he had come to register and that he had been apprehensive about it, but couldn't, as much as he tried, remember the reason for his apprehension. He asked a passerby where the Registration Office was and that he wished to register to vote. The passerby was a police officer who informed Dmitri that he was much too drunk to get to the Registration Office and fill out the forms, and then arrested him for public drunkenness.

You have been retained as defense counsel for Vladimir and Dmitri. Vladimir is charged in federal court with violation of statute #1 outlined earlier and in state court with violation of statute #2; Dmitri is charged in federal court with attempting to violate federal statute #1. Both are charged together in both state and federal courts with conspiring to commit criminal acts in each of the respective jurisdictions. What defenses do you have? What chance of success do you have with each defense? Why?

II. - One Hour

After sobering up for three hours in the County Jail, a kindly Desk Sergeant released Dmitri with a warning not to get so drunk in the near future. Dmitri thereupon returned home where Vladimir was waiting for him. "Look what trouble you got me into, you damned fool," was the least of the insults Dmitri screamed at Vladimir. He continued ranting and raving in this vein until Vladimir finally went into the kitchen to get away from him and to cook dinner.

Vladimir, by this time, was also extremely angry. He bitterly resented Dmitri's insinuations that he was responsible for Dmitri's arrest. Vladimir got so mad thinking about all this that he "saw red"--he could barely restrain himself from running back into the living room and throttling Dmitri. Rather than stand there fuming, he drank half a pint of bourbon to calm himself down. Then, still mad--but by this time, both drunk and mad--he poured an entire half-pound box of rat poison into the scrambled eggs he was preparing for dinner to get back at Dmitri. (Ever thoughtful, he had picked up a dozen eggs on his way home.) Stumbling drunkenly into the dining room a short time later, giggling maniacally, Vladimir put the poisoned eggs in front of Dmitri. Dmitri took one look at them--the rat poison had turned them a mottled gray color--and screamed: "I'll never touch these scabrous eggs!", whereupon he threw them out the window.

Unfortunately, a Mr. Daryl Lict was standing outside the window scavenging for food in garbage cans. Lict immediately ate the eggs he saw so providentially fall from the window, and just as immediately, he fell over drastically ill from the rat poison. Dmitri, who had been watching all this from the window along with Vladimir, turned to Vladimir and said: "I told you your cooking was terrible. Let's forget our quarrel and go out to the Colonel's to get some chicken." Whereupon the two of them left to have a finger-licking good time.

Neither Vladimir nor Dmitri notified the police or called an ambulance to help poor Lict who lay moaning on the ground. A good samaritan who happened to be passing by (there was a Good Samaritan Convention in a nearby hotel) did call an ambulance and within five minutes Lict was on his way to the hospital. However, it was not--to say the least--Lict's lucky day. On the way to the hospital, the ambulance driver neglected to use either his siren or flashing lights and, as a direct result, was hit by a driver who did not see or hear him coming. Lict died two hours later from internal injuries received in the traffic accident.

You now have the good fortune to represent Vladimir and Dmitri in Shock state court where they have been charged with an open count of murder. What defenses do you have to these charges--either complete or mitigating? What chance of success do you have with each defense? Why?

III. - One Half-Hour

Professor George Fletcher of UCLA School of Law makes the following argument:

"The flaw in treating cases of accidental homicide as murder or manslaughter, as well as the flaw in [those] statutory rape cases [where mistakes as to age are not recognized], is that these instances of strict liability ignore the principles of just and proportional punishment. Punishment should be gauged according to the gravity of the actor's wrongdoing; and the actor should be punished for the full measure of an objective wrong only so far as he is accountable for the wrong. It might be objectively wrong to seduce a young girl, but the actor is fairly punished for this wrong only if he can fairly be held accountable for the turn of events. And if he could not fairly have been expected to know of the girl's age, he cannot be held accountable for that feature of the case. If a robber negligently drops a gun, which discharges and kills a bystander, the robber is accountable for armed robbery, but not for the resulting accidental death. Punishment according to the degree of the objective wrong, regardless of the actor's accountability for the wrong, is to mock the classical principles of just punishment."

G. Fletcher, Rethinking Criminal Law 729-30 (1978).

Do you agree or disagree with Professor Fletcher's conclusions? Explain why or why not with reference to cases and/or policies discussed in this course.

Professor Burkoff