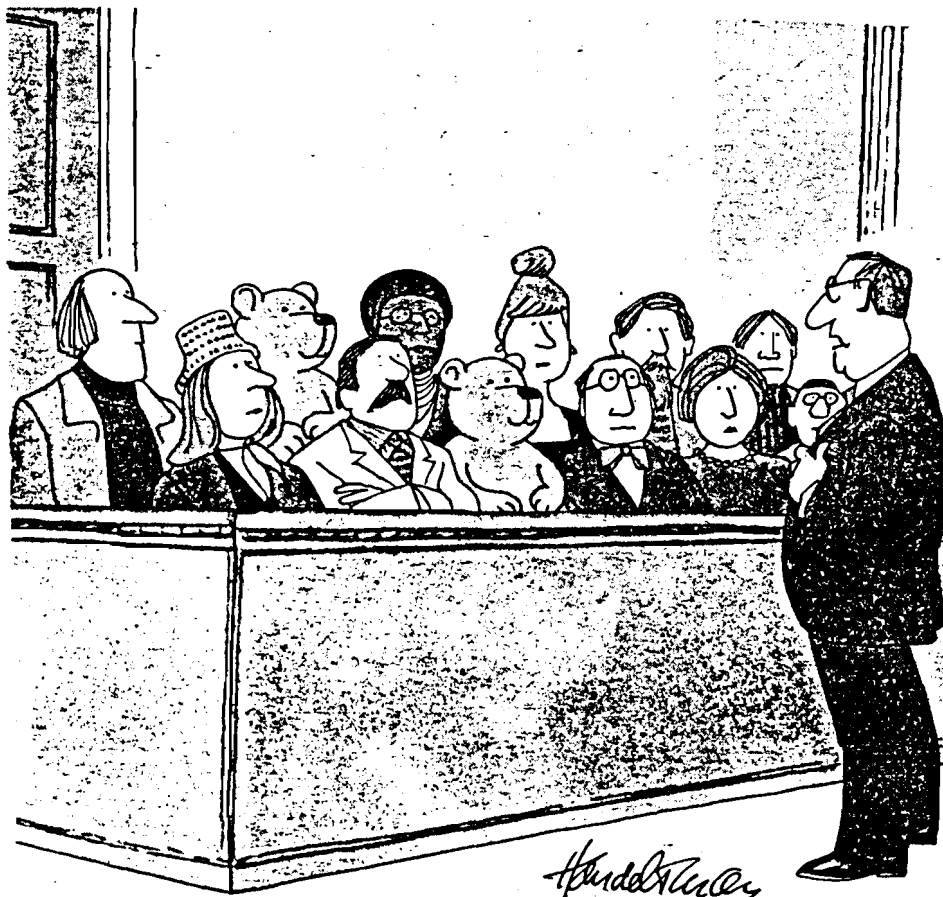


CRIMINAL LAW
SECTION B3

Mid-Term Examination
December 16, 1983

Two & ½ Hours
9:00-11:30



"Ladies and gentlemen and Teddy bears of the jury..."

OPEN BOOK

Instructions

Each of the three problems is of equal weight. 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.

I.

"In April 1981, defendant John Bottger was in Sparks, Nevada, living out of his truck and picking up occasional odd jobs. During that time he met Morris Wade. The two men passed the time drinking and talking. In one conversation, defendant told Wade about his relationship with Martha, a married woman in Fresno. Defendant remarked that Martha's husband Billy was 'in the way' and that he wished Billy were dead. He then offered Wade \$5,000 to kill Billy. When Wade expressed doubt that defendant would get anyone to murder Billy for that amount of money, defendant said he would talk to Martha about it. He subsequently offered Wade \$20,000 upon receipt of the proceeds from Billy's life insurance policy. Defendant also commented that killing Billy would be better than having Martha get a divorce because defendant would ultimately gain control over all the insurance and property, rather than only half of the property.

"Unbeknownst to defendant, Wade often served as an informant for various law enforcement agencies. Wade contacted an employee in the Criminal Investigation Division of the Internal Revenue Service in Reno and was ultimately referred to Walt Kubas, a special agent for the California Department of Justice. They agreed that Wade would introduce Kubas to defendant as an assistant capable of carrying out the arrangement to kill Billy.

"After Kubas was introduced to defendant, defendant began discussing the proposed murder plan. He described items of property, such as a gun collection and MG Roadster, which he expected to find at Billy's house and said Kubas could take whatever he thought he could resell. Although defendant acknowledged he did not have money to pay Kubas, he confirmed that he would be willing to pay him \$20,000 when he received the proceeds from Billy's insurance policy or the sale of Martha's mother's house. Defendant further specified he needed to be sure Martha would be out of town when the murder occurred and wanted the murder to look as if it had been committed during a burglary.

"Kubas, Wade, and defendant then drove to Fresno. During the ride, the three of them consumed three fifths of whiskey. In Fresno, defendant bought a map on which he wrote Billy's address and drew directions to the house. Kubas and defendant drove to Billy's residence and discussed how Kubas could enter the house without being observed.

"Defendant passed out in front of the house from his drunken state. Kubas revived him, took him to the bus station and bought him a ticket back to Nevada. They parted after agreeing defendant would call Kubas that Sunday at 5 p.m. and confirm that Martha was not at the Fresno residence before Kubas executed the plan. Defendant never called Kubas on the appointed day. The next day, defendant was arrested."

Bottger is charged with solicitation of murder, conspiracy to murder, and attempted murder in California. Bottger still possesses the \$5,000 he initially tried to pay Wade to kill Billy; he has now offered it to you to defend him on these charges. What defenses does he have? What are his chances of conviction or acquittal on each of these charges? Why?

[Cf. People v. Bottger, 142 Cal. App. 3d 974, 191 Cal. Rptr. 408 (Cal. App. 1983).]

II.

"On June 10, 1980, the victim, Robert Bruce Lindsey III, went to defendant Mark Clark's house for the purpose of selling defendant marijuana. Defendant purchased more than three pounds of marijuana and paid Lindsey approximately \$1,400. Defendant then tossed the marijuana into a small storage room adjoining the kitchen. Defendant and Lindsey then began discussing a \$200.00 debt owed by defendant to Lindsey from a previous drug sale. An argument erupted, and Lindsey brandished a small steak knife. Defendant convinced Lindsey to put the knife away and suggested they smoke a 'joint.' While defendant was rolling the 'joint' he looked up and saw Lindsey pointing a pistol at him. Lindsey ordered defendant to 'step into the back room. Nobody's going to know I was here.' Defendant stepped inside the doorway of the storage room, where he kept a rifle he thought was unloaded. He grabbed the rifle, aimed it at Lindsey, and told him to drop his pistol. Lindsey moved to put his pistol away but defendant thought he was about to fire, so defendant reflexively pivoted, and fired himself. The rifle was in fact loaded; Lindsey was struck in the temple by the shot, and was killed.

"Defendant wrapped the body in a blanket and loaded it into the trunk of the car that Lindsey had driven to the house. As he was driving up the highway he saw Steven Halter parked where they had earlier arranged to meet for a drug sale. Defendant stopped, told Halter what had happened, and asked him for help. When Halter refused, defendant got back into the car and drove to Busch's Wildlife Reserve, where he dumped the body. Halter never reported this incident to anyone.

"Defendant returned to his home and there told one Larry O'Brien he had killed a man over money. Later, O'Brien went with defendant to the wildlife reserve where defendant burned the body of Lindsey."

You are an assistant district attorney in St. Louis, Missouri, where the foregoing events took place. It is your job to defend the American way: to charge and convict bad people and put them in jail. For what crimes can these putative bad people, Mark Clark, Steven Halter, and Larry O'Brien, arguably be charged? What defenses can be offered in their behalf? Who will win at trial? Why?

[Cf. State v. Clark, 652 S.W.2d 123 (Mo. S.Ct. 1983).]

III.

The Pennsylvania General Assembly is considering enactment of a criminal statute making it a felony punishable by up to 5 years in prison "for any person to possess a radio in public which is emitting music at a level of audibility which would distract and annoy the reasonable pedestrian or motorist."

- (1) If such a statute is enacted, would it, in your opinion, be constitutional? Why or why not?
- (2) If you were employed by CLAMOR ("Citizens Lobby for Absurdly Loud Music on Radios") as a lobbyist, what reasons could you give the General Assembly for the criminological inappropriateness of such legislation?

Professor Burkoff

