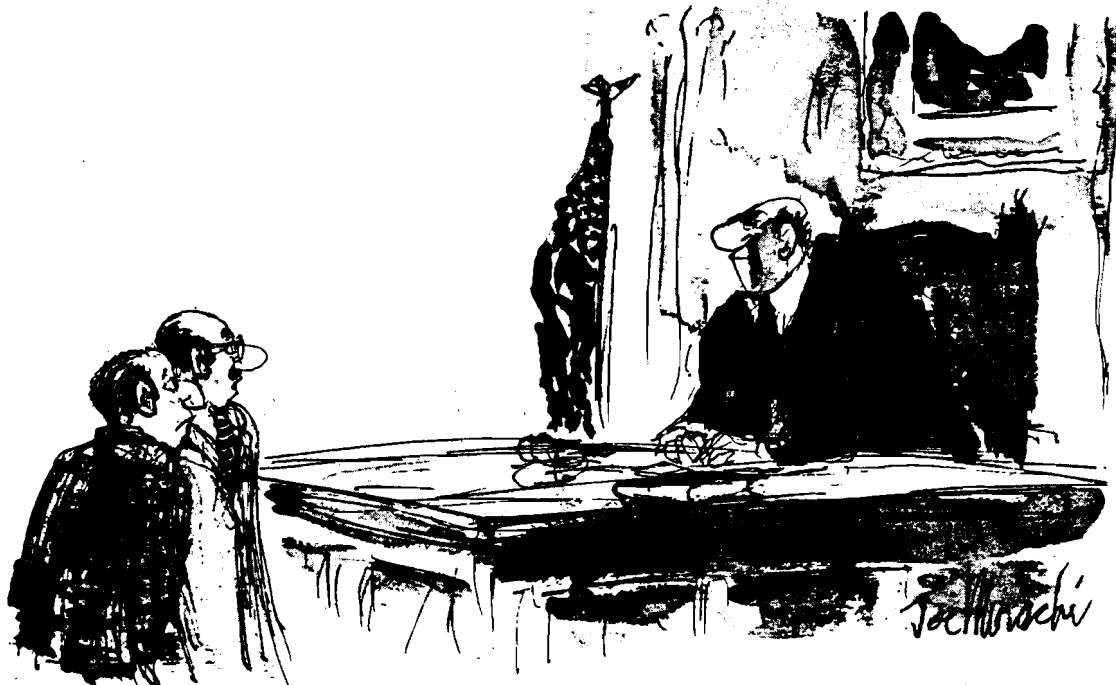


CRIMINAL LAW
SECTION B

Mid-Term Examination
December 12, 1986

Two Hours
2:15-4:15



*"My client would like to plead guilty if that
would make you feel any better."*

OPEN BOOK

Instructions

The two problems are of equal weight in grading. 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.

Consider the following facts:

[I]n the early evening of December 21, 1983, Willie Willis was shot while playing dice outside Peg's Bar in LaPlace, Louisiana. Willis had been gambling all day, winning several hundred dollars. At some time in the afternoon, he entered Peg's Bar, flashed his winnings, and purchased drinks for everyone on the premises. Willis then left the bar to participate in another dice game behind the bar. During the game, the lights in Peg's Bar suddenly went out. It later turned out that one of the dice game participants, Irwin Irving, turned out the lights. While the lights were out, Shelly Sharlow grabbed Willis from behind in an attempt to rob him. She did not succeed in taking any of Willis' money, however, because Willis had hidden it earlier in the evening behind the bar.

During the robbery attempt, Willis struggled with Sharlow, a gunshot went off, and Willis fell to the ground with a bullet injury to his head. Sharlow and Irving fled the scene, but several of the witnesses called the police. Willis died on the way to the hospital when the ambulance taking him from the scene skidded and careened into another car, killing Willis and the ambulance driver, Clara Campbell.

[Cf. State v. Sharlow, 493 So. 2d 213 (La. Ct. App. 1986).]

Fleeing from Pittsburgh winters, you have become a general practitioner residing in LaPlace, Louisiana, where you specialize both in representing restaurant owners charged with torts arising out of negligent cajun cookery and jazz malpractice cases. However, the local trial judge has appointed you to undertake the representation of Irving and Sharlow who have both been charged with the murder of Willis and Campbell, the attempted robbery of Willis, and conspiracy. What tenable defenses can you make to each of these charges? How successful are you likely to be with each defense? Why?

II.

Mom was sitting at home one Sunday afternoon, minding her own business just sitting there watching the Speelers football team lose another game on TV and knocking back one Iron Scity Light beer after another, when her son, Sonny, ran in, disheveled, crying, his nose bleeding, and told Mom that a bigger boy, one Randolph J. Bully, III, had just knocked him to the ground and punched him in the nose. Enraged, Mom jumped right up and ran straight into the wall. Mom jumped up again, a bit dazed, and ran outside looking for Bully. Since Mom had knocked off quite a few Iron Scity Lights and was also dazed after smacking into the wall, she found someone she thought was Bully, but who actually was not Bully. It was instead, Randolph J. Wooly, III (no relation to Bully although Wooly's uncle once sat next to Bully's aunt on a SPAT bus).

Mom yelled at Wooly that she was going to kill him for hurting her son and she raised her Iron Scity Light Beer bottle over her head in a threatening fashion. Wooly, a bit confused by this threat since he hadn't done anything to Mom, said he wasn't going to stand for being threatened like that and ran at Mom with his fists clenched. Although dazed, Mom's balletic training came in handy as she neatly sidestepped Wooly, who, trying to recover his momentum, slipped in a puddle of Iron Scity Light which had dripped from the bottle Mom held over her head. After slipping, Wooly fell to the ground, hitting his head against the Iron Scity Light bottle cap which pierced a weak spot in his skull, immediately killing him.

All of the foregoing facts took place in the State of Spennsylvania, City of Spittsburgh, Spallegheny County (#1 City in Rand McNally's Splaces Rated Almanac).

(1) You are an Assistant District Attorney in Spallengheny County. Your boss, District Attorney Scollville has asked you to write a memo to him advising him whether or not Mom can be successfully prosecuted for homicide. What will you write?

(2) You are an Assistant Professor of Law at Spitt Law School. District Attorney Scollville has called you, told you about Mom's case, and asked whether or not, if Mom is charged with homicide, the burden of proof in disproving all of Mom's possible defenses is on the prosecution or on Mom. What do you respond?

Professor Burkoff

