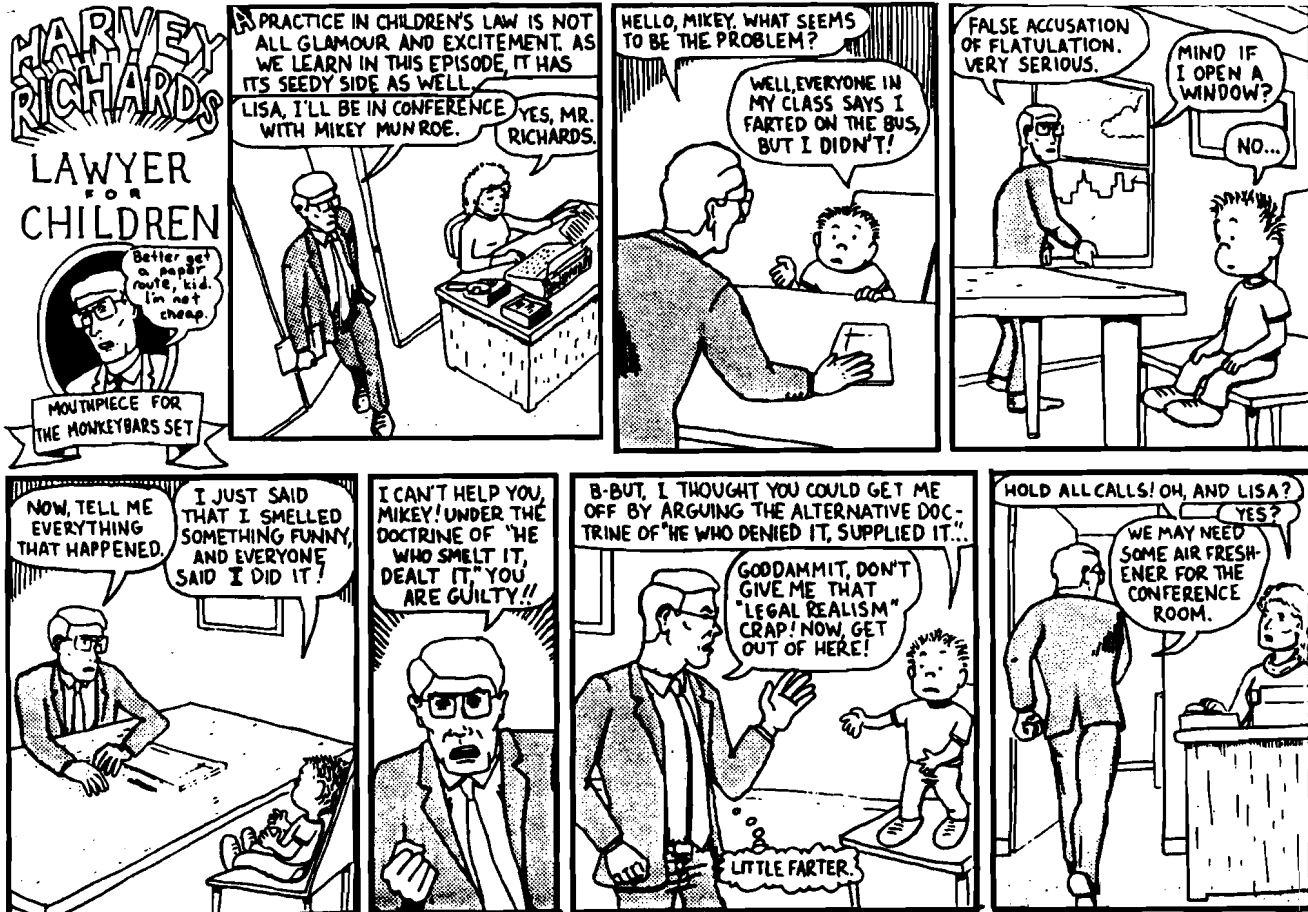


CRIMINAL LAW
Section A

Final Examination
December 9, 1992

Two and 1/2 Hours
1:00-3:30

THIS EXAMINATION MUST BE RETURNED WITH YOUR BLUEBOOKS



OPEN BOOK
Instructions

The three problems are of unequal weight in grading. Each is worth a point value proportionate to its suggested testing time. 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. (60 minutes)

Consider the following set of facts:

"After drinking with friends at a bar, Joseph Zekany decided to hold an early morning party at his home. Various people at the bar were invited, including the victim, Russell Bullwinkle, and his three friends.

"After the party was underway, the victim and Joseph engaged in a verbal argument and in a minor physical confrontation. More angry words were exchanged between the victim and Joseph as the victim left the residence with his friends.

"As the victim and his friends approached the victim's pickup in Joseph's front yard, Joseph was told by his brother, Zachary Zekany, that someone in the group had a martial arts weapon and had threatened to kill Joseph and that he should get a bat to defend himself. Instead, Joseph asked Zachary to get his .300 calibre military-type rifle for him. Zachary ran and got the rifle.

"The victim and his friends entered the pickup and started to drive away. Joseph fired the rifle, shattering a window in the pickup. Apparently, the bullet went through the window, hit the rear view mirror, ricocheted off the mirror into a set of plastic dice hanging from the mirror, splintering the plastic and sending a shard of plastic straight into the victim's left eye socket and through to his brain, killing him immediately. In addition to the occupants of the vehicle, the record reflects that other people were in the vicinity of the pickup at the time the shot was fired.

"There was a contradiction in the evidence as to where Joseph was located when he fired the shot. Some witnesses placed him at the front door of his home while others placed him at his front bedroom window. Joseph claimed that he did not believe the rifle was loaded and, in any event, it accidentally discharged when he was pushed

from behind by an individual attending the party.

"After Joseph was in custody, a blood alcohol test was administered which revealed that the alcohol content of Joseph's blood was .193 grams of alcohol per 100 milliliters of blood."

Cf. People v. Zekany, 833 P.2d 774 (Colo. Ct. App. 1991).

The facts set out above occurred in Arapahoe County, Colorado, where you presently work as a part-time public defender and part-time Coors Beer taster. As part of the former position, you have been assigned the defense of Joseph and Zachary Zekany who have been charged with homicide in the shooting of Russell Bullwinkle. What are your chances of successfully defending the Zekany's against this charge? Explain.

II. (60 minutes)

Barbara Sbush and Marilyn Squayle, distraught over their husbands' defeat in local elections for Spresident and Vice Spresident of the local Sewage Authority decided to take out their frustrations on the winning candidate's (Bill Sclinton's) cat, Socks. They decided they would kill the cat in a drive-by shooting. Barbara had her drivers' license renewed so that she could drive the car while Marilyn shot at the cat. However, before they could act on this plan, Barbara thought better of it and sent a note to Marilyn saying she did not think their plan was "prudent." However, Marilyn continued to plan Socks' demise. An expert homemaker, Marilyn baked two dozen poisoned chocolate-chip cookies which she had her husband, Dan, send Express Mail to the Sclinton household in Little Rock, Sarkansas, with a note enclosed: "A post-election treat for Socks from a secret feline admirer."

The cookies never reached Socks, however. Indeed, had the cat eaten them, nothing would have happened in any event. The particular poisoned chocolate chips used by Marilyn (containing the drug RU-85) only cause ill effects in humans.

A Secret Service agent, Ralph, did eat one of the cookies and, two hours later, feeling deathly ill from the effects of the poison, was taken to a hospital emergency room. His stomach was pumped and he fully recovered.

Tipper Sgore, wife of the new Vice Spresident, returning to the Sclinton home from an Ice-T rap concert dressed in a dog suit, also ate one of the cookies; she suffered no ill effects, however.

Chelsea Sclinton, Bill Sclinton's daughter, ate the remaining twenty-two cookies. One-half hour later, writhing in pain from the effects of the poison, Chelsea fell on top of the Sclinton family dog, Checkers, crushing and killing it.

The Secret Service, investigating all of the incidents described above, quickly discovered who the culprits were as Dan Squayle had inadvertently written his name and return address on the Express Mail package with the cookies inside.

The Secret Service has turned this matter over to the Little Rock, Arkansas law enforcement authorities to handle. You are an Assistant District Attorney in Little Rock and the only governmental official in Little Rock planning to stay in town and not run off and take a Sewage Authority Cabinet position in Swashington. Before she left for Swashington, the District Attorney filed charges of conspiracy to murder, assault, attempted murder, cruelty to animals (the dog), and attempted cruelty to animals (the cat) against Barbara Sbush, Marilyn Squayle, and Dan Squayle. What chance do you have of successfully prosecuting these charges? Explain.

III. (30 minutes)

"When a malicious witness comes forward to give false evidence against a man, and the two disputants stand before the Lord, before the priests and the judges then in office, if, after examination by the judges, he be proved to be a false witness giving false evidence against his fellow, you shall treat him as he intended to treat his fellow, and thus rid yourself of this wickedness. The rest of the people when they hear of it will be afraid: never again will anything as wicked as this be done among you. You shall show no mercy"

Deuteronomy 19:16-22 (The New English Bible 1970)

(1) To what extent does this Biblical imprecation reflect the approach taken to criminal conduct in American criminal law? Explain.

(2) To what extent does this Biblical imprecation reflect the approach which should be taken to criminal conduct in American criminal law? Explain.

Professor Burkoff

