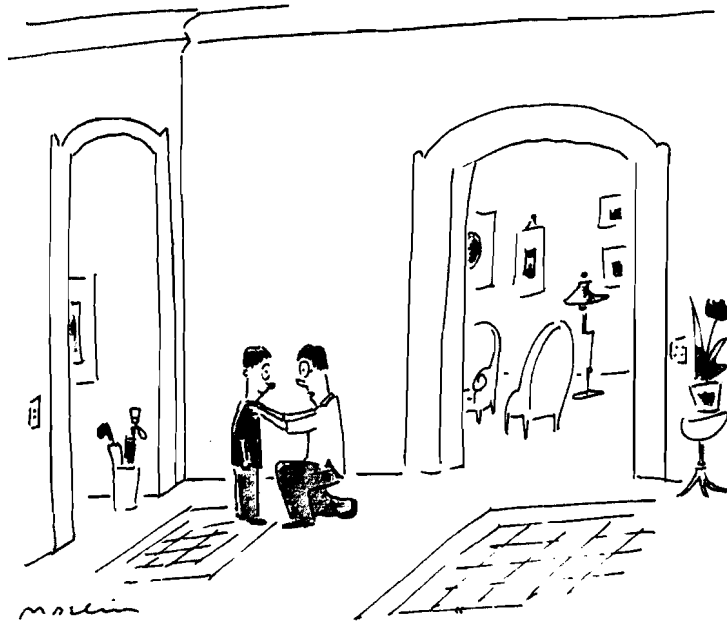


CRIMINAL LAW
Section A1Final Examination
December 8, 20032½ Hours
9:00-11:30

"You go back and tell your playground buddies that your daddy was only accused of committing a felony—he was never convicted."

OPEN BOOK
Instructions

The three problems are of unequal weight in grading. Each is worth a point value proportionate to its suggested 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 factual scenario:

“Christopher Goode, the victim, Che Goguen, and two other individuals were at a bar for a darts tournament. During that evening, defendant Cameron entered the bar, quickly drank three shots of whiskey, and then exchanged words with Goguen. Cameron pulled a knife, and the two struggled over the knife. Cameron then pulled out a handgun and pointed it at Goguen. Goguen and one of the other participants ran out the front door. During this time, Goode disabled Cameron by hitting him over the head with a glass jar. Goode then informed Goguen and the other man who had left the bar that it was safe to come back inside. These three men gathered Cameron’s belongings, keeping his knife and gun inside the bar, and put Cameron outside with instructions to leave.

“Goode and another man unloaded the bullets in Cameron’s handgun. A short time later, Cameron returned with a rifle and pointed it at the four occupants in the bar. Fearing for their lives, the group fled to a small kitchen located behind the bar. There was no telephone in the kitchen and only one way out. Cameron sat at the bar with the rifle pointed toward the only opening to the kitchen and demanded a beer. Cameron then demanded to see that ‘son of a bitch that hit me.’ Goode stepped into the doorway, and Cameron shot him in the leg. Cameron thought (mistakenly) that there was only one bullet in the rifle and that he was now out of ammunition.

“Cameron yelled, ‘Leave me alone. I won’t hurt you if you don’t hurt me.’ Goode then grabbed a kitchen knife, lunged at Cameron and darted back into the kitchen. When Goode ran in front of the door again, Cameron reflexively pulled the trigger and shot him in the stomach. Although he hadn’t realized it, there had been two bullets in the rifle, not one. Just to check and see if there were any more bullets in the rifle, Cameron tried to shoot into the kitchen, but nothing happened as there were no more bullets. One of the occupants managed to call 911 using a telephone behind the bar. Goode later died as a result of the two bullet wounds.”

Cf. Cameron v. State, 585 S. Ed. 209 (Ga. Ct. App. 2003).

After graduation, you moved to rural Georgia to practice peanut law. When that didn’t work out (you weren’t nuts about it), you became an assistant prosecutor in Bibb County, Georgia, the jurisdiction where the preceding events took place. The Chief Prosecutor has asked you to explain in detail what the chances of success are in prosecuting Cameron for: (1) homicide in the death of Goode; (2) attempted murder in the case of the three other bar occupants who fled to the kitchen. What is your response?

II. (60 minutes)

Two friends, Howard Dean and Al Sharpton, operated a small restaurant in Nashua, New Hampshire (8 tables), called "Cook For America." One evening, during the dinner rush (3 tables were occupied), Wesley Clark entered the restaurant and pointed a gun at a diner, Carol Moseley-Braun, who was just sitting there peaceably, eating her dinner special (curds and whey). Clark yelled at Moseley-Braun: "You broke my heart, you two-timer. What's this I hear about you and Joe Lieberman? My friend, Dick Gephardt, said that he saw the two of you together at the Soda Shoppe."

Moseley-Braun had no idea what he was talking about. She had never even seen Clark before. Clark had her mixed up with another woman who looked nothing at all like her, Hillary Clinton. Moseley-Braun responded: "Who are you calling a two-timer? I don't even know you, you idiot!" At that, Clark, enraged at this response, fired his gun at the ceiling of the restaurant. The bullet severed the cord that held the light fixture in place, the fixture fell from the ceiling and landed on another table, seriously injuring two diners, John Edwards (meat loaf special) and John Kerry (Irish stew).

Moseley-Braun yelled: "Someone call an ambulance." But no one did, even though everyone in the restaurant was carrying a cell phone. John Edwards died at the scene. Had an ambulance been immediately called and dispatched, paramedics might have arrived in time to save him.

Luckily for John Kerry, however, an ambulance driver, Dennis Kucinich, walked into the restaurant just after all of this had occurred and seeing the injured Kerry, put him in his ambulance, parked outside, and immediately sped off to the hospital. Unluckily, however, because Kucinich had forgotten to put on his siren, Al Gore, who was crossing the street dressed in a yellow dog suit, did not see the ambulance coming. Kucinich saw the "dog" in the road, swerved to miss "it," and careened right into Arnold Schwarzenegger, who was sitting at a bus stop flexing his muscles, killing him instantly. By the time, Kerry arrived at the hospital, thirty minutes later, he was too far gone to save, and he died. (Had he arrived ten minutes earlier, he might have lived.)

You are an Assistant Public Defender in Nashua, New Hampshire, and you have been asked by your boss, the Public Defender, John Burkoff (played by Mel Gibson), to assess the likelihood of success of the charges that have been filed by the District Attorney, John Ashcroft (played by Rosie O'Donnell), based upon the facts set out above. Clark and Gephardt have both been charged with the murder of Edwards, the involuntary manslaughter of Kerry, and the attempted murder of Moseley-Braun. Dean and Sharpton have been charged with the involuntary manslaughter of Edwards by failing to call for the ambulance that would have brought paramedics to save him. Kucinich and Gore have been charged with the involuntary manslaughter of Schwarzenegger. So what do you think. Can you get these guys acquitted in time for the primary?

III. (30 minutes)

Consider the following newspaper article:

“After Natalie Babcock was found smothered and stabbed in her Lake Park home, the evidence pointed to one suspect: her ex-convict son, David Nelson. But the Palm Beach County State Attorney’s Office never charged Nelson. Prosecutors said there wasn’t enough proof.

“Police, however, thought they had a strong case: Soon after Babcock was found dead with a pillow over her face in 1991, Nelson was stopped by Massachusetts police for DUI and speeding. He was driving his mother’s brown Buick. He was using her credit cards. His pants were stained with her blood. He had her Bulova watch and pocket calculator. He was wearing her ‘I Love Elephants’ pewter pendant.

“Nelson had killed before. When his mother was murdered, he was out on parole after serving 14 years in Maine for the strangulation and stabbing of an attorney. Babcock was afraid of her son, neighbors said. She had the locks changed to keep him out of her house. Twice, Nelson had stolen her car. Twice, Babcock, 65, filed police reports. He stole \$150 from her purse. She called the cops for that, too. Nelson had a motive, police said. If his mother pressed charges, his parole would be revoked and he’d be back in prison.

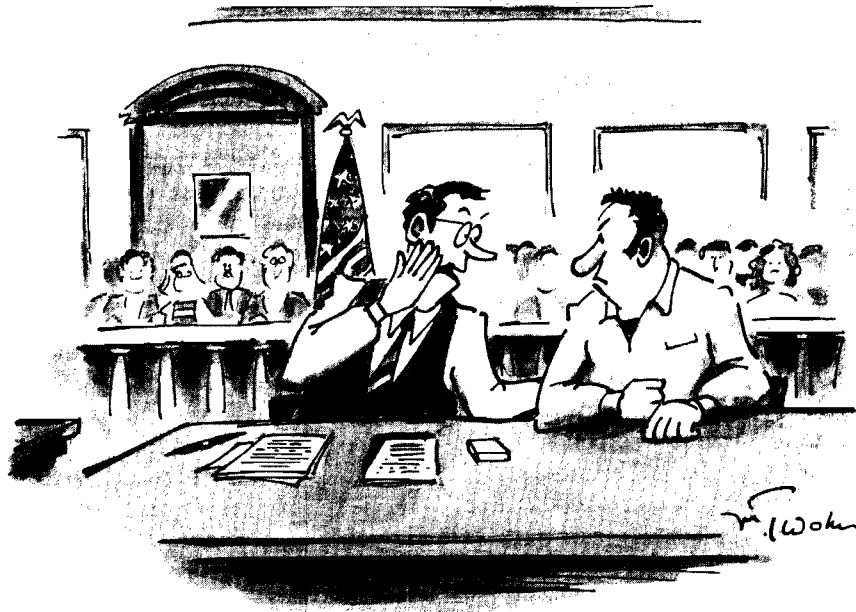
“But Mary Ann Duggan, the prosecutor in the state attorney’s office who has a major say on which murder cases are prosecuted, said there was too much reasonable doubt to charge Nelson for the murder. She gave these reasons: What if Babcock’s blood got on Nelson’s pants because he found her bleeding and he tried to give her CPR? What if Babcock gave her son the car, calculator, watch, pendant and credit cards? What if she had made up with her son after telling neighbors she was afraid of him?

“‘I have to exclude all reasonable doubts,’ Duggan said. ‘I don’t have the murder weapon. I have to have evidence that he killed her. He stole her property in the past and didn’t kill her.’”

Paul Lomartire, “*Detectives Contend State Attorney’s Office Stifles Prosecution on Low-Profile Murders*,” PALM BEACH POST 1A (November 16, 2003).

(1) Do you think that Nelson would have been convicted of Babcock’s murder if he had been prosecuted for it on the facts set out above? Why or why not?

(2) Do you think that Duggan could have and should have prosecuted Nelson for Babcock’s murder on the facts set out above? Why or why not?



"My incompetence will become the basis of your appeal."

Dean Burkoff