

John on a Botany Expedition in the Brazilian Jungle

John, on a botany expedition in the most remote regions of the Brazilian jungle, stumbles into a clearing where he finds two men with their guns trained on a group of ten South American villagers. The Captain, or the man who appears to be in charge, turns to John and announces that "Pedro here" is about to shoot "all the villagers," but as the result of John's unexpected arrival on the "scene," he, the Captain, has had a sudden bout of compassion and if John would be willing to take Pedro's gun and kill one of the villagers, he, the Captain, would allow the other nine villagers to go free. If, however, John refuses to accept the Captain's offer, "Pedro here will shoot them all." John, his mind racing, entertains several "Indiana Jones" fantasies (with himself as Indiana Jones), among them, the idea that he might appear to agree to the Captain's offer, take the gun from Pedro, and then turn it on Pedro and the Captain, back away into the jungle with all ten villagers at his side, and escape to a clearing down river where a small twin-engine Cessna is waiting and fly all the villagers and himself to Rio de Janeiro and freedom. But it is quite evident from the situation that if John were to try anything of the sort, his "heroics" will result not only in the deaths of all ten villagers but his own as well. What should John do? With great reluctance and a heavy heart, John elects to accept the Captain's offer. John shoots one of the villagers and the Captain releases all the others who promptly disappear into the jungle. With a somewhat inappropriate, i. e., all too cheery, farewell, the Captain and Pedro head off in the opposite direction. John slumps down. The body of the villager lies a few yards away. John wonders what he has done. Just then a helicopter swoops into view and lands in the middle of the clearing. Several Brazilian police emerge, their weapons drawn, and surround John. John is now in a small holding cell somewhere along the upper Amazon. He has made a phone call to Alice, letting her know that he has been charged with murder.

If you were John's attorney, would you argue his case on grounds of necessity? Why not? If John had refused the Captain's offer, would he have been subsequently accused of any crime? What crime would that have been? What do our laws presently encourage someone in John's position to do? If John refused the Captain's offer, would you find him guilty of causing the deaths of all ten villagers? Why not?

Perhaps John should not have gone on this botanical expedition after all; perhaps he should have stayed home with Alice or gone on that cruise with her to the Bahamas. Then, at least, he would not be in such a pickle. Some other pickle perhaps, but, at least, not this pickle. What's the difference between the two situations in which John finds himself as a trolley driver and now as a botanist? Why is necessity more likely to succeed as a defense in the former case than in the latter? Or perhaps it ain't so. What do you think? Before making up your mind, you may wish to discuss this case with your fellow Justices and to see if you can reach any kind of a consensus.

The necessity defense clearly involves more than just "doing the numbers," more than just adding up good and bad consequences and calculating whether the result comes out on the plus or minus side.