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Editorial

Letters help us better serve our readers

An unusually high number of letters to the editor appear in this issue of The Opinion.

That's good. This newspaper is intended to be a forum for students -a place for everyone, not just the staff, to speak out on issues of common concern.

One letter disagrees sharply with views expressed in an editorial in the last issue of The Opinion. That's good, too. This is the only newspaper at the school -but its views are far from being the only valid views at the school. As a monopoly newspaper in the William Mitchell community, The Opinion feels an especially keen obligation to provide a voice for opposing points of view.

Finally, several letters disagree with a comment made by another student in a letter published in the last issue of The Opinion. That, too, is good. Students who step forward to express a point of view must be prepared to have that point of view attacked by others. That is especially important for students who are future members of a profession that of necessity places a premium on marshaling arguments and presenting them effectively in an adversary arena.

The more letters you send us to publish, the better we reflect the-college community we strive to serve. Keep them coming. -G.M.

[SBA funding questioned](#)

The Student Bar Association funds many worthwhile and well-deserved organizations at Mitchell. However, it is the process of distributing these funds which deserves some review. When the SBA Board is able capriciously to determine who gets what, there is great potential for abuse.

When Intermural Sports receives \$4,000, an amount greater than almost any other SBA-sponsored organization, the time has come for more controls to be placed on the SBA Appropriations Committee.

As students at a professional school, we should primarily support those organizations which make it easier for working students to attend classes, study and further their education. Intermural Sports is not an unworthy cause -just not as worthy as some and definitely not worth \$4 000 a year. -K.S.

[Moot Court finals interesting](#)

Watching the fall finals of the Moot Court competition was an interesting and valuable experience. Both finalists were commended by the panel of ten judges, many of whom were Minnesota Supreme Court judges.

Equally valuable was listening to the judges critique and advise the prospective appellate advocates. The judges urged that future advocates keep in mind that the purpose of the oral argument is to help the court resolve the issues something that we often forget when writing a brief.

More students should observe their fellow students at moot court arguments you may even want to do it yourself, despite the recent changes in the program. -J .A.

[Image](#)

Photo by Jeanne Anderson. Stuart Goldenberg and first-place winner Virginia Bell were the fall Moot Court finalists.

[Bye, George; hello, Kate](#)

Kate Santelmann will become associate editor of The Opinion beginning with the next issue. Santelmann, a second-year student, will replace George McCormick.

McCormick, contrary to the expectations of many (including, at times himself), will graduate in January.

The staff of The Opinion takes this opportunity to thank McCormick for his contributions to the newspaper and to wish him well in whatever it is he thinks he can do with his rather eclectic legal education.

We also welcome Santelmann to the editorial board. She has some big shoes to fill -not because McCormick was all that good, but rather because he has unusually big feet for a rather small person.

Image

Single panel cartoon by Lala. A man stands in front of a judge in a courtroom. He says, "Ah, before I enter my plea...could you tell me if it's Stillwater or St. Peter that has cablevision?"

Top of the News

Sentencing guidelines still controversial

By Kate Santelmann

A year after taking effect, Minnesota's new sentencing guidelines are being evaluated. The guidelines, which chart the offense committed against the number of prior convictions, recommend to the judge the appropriate sentence.

According to Kay Knapp, director of the Sentencing Guidelines Commission, the guidelines have two objectives: First, increased uniformity in sentencing – those who commit more serious crimes are more likely to receive longer sentences.

A study released in February 1982 showed an increase in uniformity. This result was confirmed in a study completed this summer by the Sentencing Guidelines Commission. This latter study compared the years 1978 and 1981. When the 1981 figures were compared with the 1978 figures the result was a 52-percent increase in uniformity.

However, the study also revealed that minority people, even when convicted of the same crimes as whites, are more frequently sent to prison - and for longer terms. The same is true for the unemployed as compared to the employed, and men as compared to women.

The study further indicates that the attempt to achieve proportional sentencing has been successful. Specifically, the guidelines has attempted to increase the punishments of persons convicted of violent crimes. With a limited amount of prison space available, this has meant a concomitant decrease in the punishments of those convicted of property crimes.

The change in sentencing patterns has already made a significant change in the prison population. Before the guidelines, 45 percent of those convicted of crimes generally resulting in injury, or substantial threat of injury, with a few prior convictions, were sent to prison. In 1981, this figure had risen to 77 percent.

Conversely, of those convicted of minor felonies (generally crimes against property) and with criminal histories of three to five prior convictions, in 1978 percent were imprisoned, while in 1981 only 16 percent were imprisoned.

Before the guidelines two-thirds of the imprisonments were for crimes against property and one-third were for crimes against people. Last year the percentages changed to almost 50-50. Yet many judges are concerned that the distinction between crimes against property and crimes against persons is erroneous.

"It's a shame," said Judge Jonathan Lebedoff of the Hennepin County District Court. "Burglary is a crime against people."

Judge Patrick Fitzgerald, also of the Hennepin County District Court, agrees. To illustrate his position, he told of an elderly couple who were victims of a burglary.

"The man took the witness stand," he said. "I could see the fear exuding from his face. His wife had tears in her eyes as her husband shook while giving testimony. After the trial, the elderly couple sold their home and moved out of the area. These crimes (burglary and robbery) do not occur on just a statistical level. There is a human dimension that I feel the sentencing guidelines fail to see."

An additional problem raised by judges and attorneys alike, is the method used to compute an offender's prior criminal history. The criminal history index weighs such factors as prior convictions; an offender status - whether on probation or parole; prior misdemeanor and gross misdemeanor convictions; and prior juvenile offenses.

Despite the comprehensive formula used to compute an offender's criminal history index, "the reality of criminal history is usually not correct," said Chief Judge Harold Kalina of Hennepin County District Court. Several Hennepin and Ramsey County judges concur.

"A criminal can have a long juvenile record," said Kalina "but you can't consider that record when determining the sentence."

No offender may receive more than one criminal index point for prior juvenile adjudications. Furthermore, that single-point can be assessed only if the offender is less than 21 at the time of the crime and has two prior juvenile adjudications of a felony type after age 15.

According to Kalina, the structure of the history index is such that an offender could have been mugging and stealing for over 10 years and still "not receive a single point on his or her criminal history index single."

This dissatisfaction with the structure of the sentencing guidelines system has led many judges to disregard the guidelines. Such was the result in the Evans case. Evans was convicted of two counts of aggravated robbery. In both instances the victims, two elderly couples, were threatened with weapons, and in one case the victims were severely injured.

Despite Evans' alleged involvement in at least eight separate street robberies, most involving use of force against the elderly, Evans' criminal index score was zero. His juvenile record was not taken into account. Judge Lebedoff sentenced Evans to two consecutive terms of 15 years each. The Minnesota Supreme Court reduced the sentence to eight years - still double the recommended sentence.

Nowhere has the departure from sentencing guidelines been more frequent than in the Hennepin County District Court. According to a recent Minneapolis Star & Tribune article, in determining the length of a convict's stay in prison Hennepin County judges departed from the guidelines 28.2 percent of the time. The rest of the judges in the state departed in 20.7 percent of the cases.

Hennepin County judges gave longer sentences with the same frequency as the rest of the state -in about 8 -percent of the cases. But they gave shorter sentences in more than 20 percent of the cases compared with 15 percent in the other judicial districts.

In a recent opinion justifying the departure from the sentencing guidelines, Chief Justice Douglas Amdahl of the Minnesota Supreme Court wrote, "We believe that departure clearly was justified on at least two grounds: the vulnerability of the victims and the gratuitous cruelty inflicted on them."

In conclusion, Amdahl wrote, "Generally in a case in which upward departure in sentence length is justified, the upper limit will be double the presumptive sentence length."

Lebedoff said he feels such procedure is far too lenient, especially for the multiple offender with a criminal index score of four, five or six. Additionally, aggravated robbery carries a stiffer sentence than either simple robbery or burglary. Lebedoff, as well as many of his colleagues, contend that these guidelines must be changed.

In response Kay Knapp, director of the Sentencing Guideline Commission, said, "We'll only make minor changes for now. Constant revisions would make it arbitrary over a longer period of time. The primary issue of revision for now will be to expand the guidelines for use in conjunction with local jails and workhouses."

Editor's note: M. Chapin Hall also contributed to this article.

Images

Two photographs:

Kay Knapp heads the Guidelines Sentencing Commission.

Judge Patrick Fitzgerald expresses concern for victims.

Move to campus boosts Child Care Center

By Jeanne Anderson

The Child Care Center has moved on campus, and with that move the center has received great response from students, according to Director Deb Holtz.

"Within the first week alone several students signed up, and many came in and said they would use the center next semester," second-year student Holtz said. "Many students have brought in friends to see their children."

Holtz said that the administration has been very supportive of the Child Care Center move. "This has been a very positive move by the administration," Holtz said. "[Associate] Dean [Robert E.] Oliphant is very excited and is down here several times a week. The administrators know that the center is a good selling point for the college."

The college maintenance crew has assisted by moving in equipment, painting the walls and waxing the floors.

The center is currently licensed to care for as many as 21 children, but Holtz said that it is not being used to capacity. State licensing requirements also call for fire, zoning and building-code inspections for which the maintenance crew is assisting in preparation, Holz said.

The staff plans to expand center hours in the first week of December because of student requests. "We hope this will accommodate more students and faculty members with evening classes," Holtz said. The center is also open to members of the community.

But the future of the Child Care Center is in doubt. "We are in the hole," Boltz said. Currently, parents pay only \$1 an hour for the service, and the student Bar Association has allocated \$1,000 to subsidize

the cost to students. Oliphant has made proposals for funds from all major foundations in the country, Holtz said, "and we're waiting with our fingers crossed."

Because of the center's financial difficulties, the Mitchell Board of Trustees will decide whether to keep the center at all. Holtz said she thinks that the board will continue the center, but Dean Oliphant and I will be the only ones defending Child Care Center at the board meeting, so concerned students should write a letter to the dean indicating their general support for the program. I think that if we have lots of letters the board may be persuaded."

The board meets Dec. 7.

Images

Three photographs by Jeanne Anderson:

Tony Lopez and Kelly McCormack, daughter of fourth-year student Joan McCormack, like their new quarters.

It's snack time for Chad Plattes.

Part-time Child Care teacher Mary Lund hold Lindsay Peterson.

[Stillwater illustrates prison changes](#)

By Paul Knapp

During the last two years, there has been significant changes in the way correctional facilities are operated. American prisons in general have become centers of learning and rehabilitation rather than the human cattle pens that they once were. Emphasis is being put on helping prisoners learn to operate as productive members of society while they are in prison, so that they will not find it difficult to adjust to life outside prison when they are released.

The Minnesota Department of Corrections and the Minnesota Correctional Facility-Stillwater have a reputation for their progressive programs, in particular their prison education programs.

The Prison Education Department at Stillwater attempts to provide educational and vocational learning programs for its 1100 residents. Tom Daly, Assistant Director of Prison Education, described the average resident as a 28-year old man with something less than a high school education serving a 2 to 3 year sentence. This 'average' inmate may be in prison because of a variety of problems, and the prison staff attempts to provide services which address those problems. The one single problem that is most common and the one that is given the most attention, however, is the problem of the uneducated and unskilled inmate.

The Prison Education Department has succeeded in coordinating state-sponsored correctional programs with public and private educational programs so that inmates have a variety of academic and vocational classes available to them. Some of the institutions involved are The Metropolitan University, The University of Minnesota, the 916 Area Vocational-Technical Institute (916 AVTI), and Control Data Corporation.

The Adult Basic Education (ABE) Program offers instruction designed to improve a prisoner's basic skills in reading, writing, math, English, and other areas. This program is geared toward those prisoners who have less than a seventh grade education and are 'functionally illiterate'.

The ABE Program, like all of the educational programs at Stillwater is completely individualized. The students work from prepared written and audiovisual materials as well as computer-assisted learning programs. There is one teacher available for every eight students in each class, allowing the student to get additional personal attention when it is needed. Periodic testing is used to record the level of achievement so that the student and teacher know when the student is ready to move on to another educational program.

Any prisoner interested in acquiring a high school equivalency certificate may do so through the institution's General Education Development Program (GED). GED is designed to qualify men for high school equivalency certification through GED testing. High school equivalency certificates are awarded by the Minnesota Department of Education to all men who pass the GED test.

Any inmate interested in GED testing is given a pre-test to determine if he is ready for testing or if some review is necessary before testing. If review is necessary, the inmate may enroll in the GED Preparation Program. This program provides the opportunity to review and develop basic concepts needed to pass the GED test. Some of the subjects covered are English grammar, mathematics reading comprehens10n. science and social studies. The students use the same types of learning materials as those used in the ABE program, but with a greater emphasis on computer-assisted instruction.

Daly said the students in the ABE and GED Programs use computer terminals provided by Control Data Corporation as part of an innovative educational and vocational program called Fairbreak. The Fairbreak Program provides prisoner's access to Plato, Control Data's computer-based educational delivery system through which they receive instruction in academic and 'life management' skills he said. Job attitudes and personal relationships are discussed in group sessions. In the final phase of the program, students learn job seeking skills including how to interview for a job.

In return for establishing the Fairbank program Control Data's MCIC subsidiary was allowed to set up a magnetic disc drive peripheral assembly operation at the prison, Daly said. Prisoners working on the assembly line earn \$1.60 per hour. The program is intended to provide the prisoners with a real life work situation which demands responsibility and hard work, he said. Men who have completed Fairbreak are assured of receiving a priority interview for job openings in the MCIC plant.

The Fairbreak program and the MCIC assembly plant have only been in operation for a year. Daly said it is difficult to determine how effective the two programs have been; however, Control Data has made a survey of former participants which indicated that the prisoners who benefitted most from the programs were those who had lowest level of academic and vocational skills when they entered prison. As time goes on, the prison administration will be better able to evaluate the benefits of this partnership between private business and the correctional facility, Daly said.

One of the most interesting programs offered at Stillwater is the art class.

Bill Murray, a 916 AVTI instructor, established the program 6 years ago with "a broken pencil and some drawing paper." Since that time the class has developed into a 6-month program teaching painting, drawing, block -printing and art history.

The art class is different from the other programs offered in the institution in that it is not intended to provide students with practical academic or vocational skill, Murray said. While two of Murray's former students have won national prison art contests, the real purpose of the program is to provide inmates with an opportunity to express their feelings and receive immediate gratification from their work, he said.

There were a great variety of artworks hanging from the walls of the art rooms. On one wall hung a self-portrait collage which contained many separate pictures and phrases including the inscription: THOSE *!#! LAWYERS. A painting on another wall depicted a court in session, complete with judge and jury. The only thing in the picture that seemed out of place was the guillotine in the foreground.

Some of the better artwork ends up in art shows around the area, Murray said. About twenty pieces of the students' artwork will be shown at the Federal Reserve building in Minneapolis beginning February 1, he said.

Inmates interested in obtaining vocational skills while in prison have a choice of several programs at Stillwater. These programs are: Commercial Food Preparation, Auto Body Repair, and Machine Shop and Welding.

The Auto Body Repair Program is a twelve month program involving 1440 hours of work and training. Students work on police cars and autos owned by correctional department employees. Upon completion of the course, the student receives a certificate from the 916 AVTI. Some of the men who complete this program are hired by the Bus Body Repair Program which is located in the same building. The Bus Body Repair Program is a cottage industry at Stillwater. The prisoners working in the program can make as much as \$5 an hour, compared with the \$1.60 an hour paid in most other prison jobs.

The Commercial Food Preparation Program is a 12 month class which trains men to become cooks. Students learn everything from basic cooking techniques to food purchasing skills. The instruction includes practical experience in the employee's dining room. The course is taught by a 916 AVTI instructor and students are awarded a certificate from AVTI upon completion of the course.

The Machine Shop and Welding programs offer instruction and practical experience in the two areas. Both programs require more than 1400 hours of work. Certificates of completion are awarded to successful students.

The Welding Program has been in existence for more than 15 years and is considered to be one of the most successful vocational programs. The instructor said that about 50 percent of the inmates who successfully complete the program get into welding related jobs upon release.

Stillwater has three coordinated programs which are operated in cooperation with the Education Department and under the auspices of the institution but are independently funded. These three programs are: Insight, Inc.; Heart Of The Earth; and Rasmussen School of Business.

Insight is a post high school educational program based within adult corrections institutions in Minnesota. The program qualified inmates the opportunity to pursue a college education leading to a bachelor's degree. Members of the live together in Cell Hall 'D', have full time work assignments at the institution and carry a minimum of twelve hours of class each quarter. The program was originally begun with donations provided by Control Data Corporation.

Heart Of The Earth Education Classes are provided by the Heart of The Earth Survival School, a Twin Cities-based adult Indian education program. Heart Of The Earth classes provide the institution's Indian population (about 90 persons) with instruction in Indian languages, culture and arts as well as academic subjects.

The Rasmussen School of Business presents a 9 month course in basic business skills accounting and typing. This program is valuable to those students who have completed the GED program and are interested in business. The business school program is a fairly recent addition, having begun in Sept. 1981.

Inmates who are not enrolled in an educational or vocational program still have the opportunity to work in the prison's industries. One of these industries is a plastic doll-making program. The other is an assembly operation. for 3M print-drying equipment.

Stillwater has an impressive variety of educational programs. But what is the effect of these programs?

There is no statistical information available concerning the programs' effect on recidivism rates, placement rate after release, or any other factor that might be useful," Daly said.

"The institution has no way of keeping track of inmates once they leave prison, unless they end up returning to Stillwater."

Daly said he believes that a substantial number of inmates are , people who lack the necessary education and training to "unlock the doors of opportunity" in life. Their inclination towards crime is often created out of lack of alternatives – the "doors of opportunity" that are available to most people aren't available to them Daly said.

While the prison education system does not address the educational, and rehabilitative needs of the entire prison population, it does address the needs of those inmates who are in prison because of their lack of education and training, Daly said.

Images

Five photos by Steve Patrow:

This currently unused cell illustrates the small amount of private space Stillwater inmates are allowed.

Business-like wall of steel surrounds this wing of the Minnesota Correctional Facility in Stillwater.

Auto mechanics is one of the vocational-training programs the available to Stillwater inmates.

Stillwater inmate Chris Phelps displays his finished watercolor.

The shelving leaves something to be desired, but the Stillwater library books are a valued resource for inmates.

'Insight' offers Stillwater inmates changes to earn college degrees

by Steve Patrow

A state prison is not the most preferable institution to earn a college degree, but if it is the only possible place to earn such a degree, the Minnesota Correctional Facility- Stillwater offers an inmate the opportunity.

Inmates at Stillwater may apply to Insight to take courses eventually leading to a Bachelor's of Arts or Sciences degree. Insight is a nonprofit organization separate from the primary prison education system which provides class materials and instructors to the inmates for subjects such as literature and mathematics.

Fred Smothers, an inmate of the prison, supervises the Insight program. Smothers himself has just earned a B.A. degree through Insight.

"For an inmate to be accepted into Insight he must pass tests and hold a high school degree or GED equivalent," Smothers said. "This class system is much more structured than the other prison education system - it's more demanding and it's much more strict."

The Insight class room area and library is located inside one of the cell blocks of the prison. The blue carpet on the floor, book shelves and plants attempt to make the place look "homey" is in stark contrast to the grey, chipped-paint walls and bars of the rest of the cell block.

Behind one of the office divider walls was a student squinting at a cathode-ray tube and punching on a keyboard. The numbers and letters glowing on the screen of the tube represented an intermediate algebra problem, something a second-year college student would resolve for a test in Math 201.

"That's a Plato instructional computer manufactured by Control Data Corporation," said Tom Daly, assistant education director at Stillwater. "Insight subscribes to the Plato system at a cost of \$10,000, but that cost is offset by CDC donations to this prison education system."

Smothers said the Insight program also offers a homework program through CDC and the Plato system, which allows inmates to communicate with other students outside the prison via telecommunications.

"The same courses are offered here as those offered by the Control Data Institute," Smothers said.

Insight relies on donations and volunteer work from outside the prison. The \$130,000 budget for the program was largely supplied by the Control Data Corporation. Other donations funnel into the program from fundraisers.

"The program sponsors a golf and tennis tournament each year," Smothers said. "So far the response has been good and support has been relatively easy to get from outside of the prison."

Volunteer college professors from the University of Minnesota and other local colleges teach at the prison. Two to three courses are offered each quarter with a chance for the student to earn credits in each of these courses if he can pass required competency tests.

Letters to the Editor

Satisfied senior user defends Mitchell library

To the Editor: I resent Steve Patrow's opening sentence in his article "No plans to improve 'inadequate' library" (The Opinion, Nov. 1, 1982). It implies that all students agree with the author's assertions, I don't!

I am also, frankly, embarrassed by the somewhat sophomoric diatribe authored by the same editor on the preceding page, "Library is an embarrassment to college." The editorial was nothing more than sweeping generalizations that reflect personal aesthetical preferences followed by an ill-supported

sweeping conclusion that purports to tell one how to remedy the "problem." (Basically, just advertise and get lots of money.) Whatever thought went into the article evidenced, at best, extreme naivete.

In the three and one half years that I have been a Mitchell student, I've used our library almost exclusively. I've always found a seat with ample space around it. I have often tended to ignore the aesthetics surrounding me because I was too engrossed in what I was reading or researching. (On several occasions I have noticed the sun pouring through windows of the southeast periodical room and thought it was rather cheery.) Once I learned the numerical and alphabetical arrangements of the reporters, digests and periodicals, etc., I seldom experienced any difficulty in finding what I needed. If I did, the reference librarians never failed to steer me in the right direction.

I went to Hamline once because I was very near there. Two of the books I was looking for were missing. I found them at Mitchell the next day. And, as for aesthetics, I don't care for garish blue-and-purple striped carpeting surrounding some of the many holes in the floor that exemplify the modern architectural preoccupation with space and suspension construction. If I'm on the second floor I don't really care to watch all the pedestrians on the first floor. I didn't come to the library to see and be seen. I came to study.

In Mr. Patrow's article he quotes a first-year student who states that the Mitchell library "looked like a rejuvenated junior high." That is almost correct. Actually, it is a renovated grade school turned senior high. If one considers Mitchell's progress in the last ten years or so, so what! It's a far sight better than the small, cramped building Mitchell occupied across from St. Thomas and the library's card catalogue, I am told, was the size of a shoe box.

For the last year I have worked part time at the reference desk; however, I write this strictly as a student user, based on my early years here. I do find the library lacking in two areas, though. It badly needs air conditioning, and the smoking room should be re-established as soon as possible. Even without the latter, William Mitchell's name will be very prominent in my resume. -Seaneen Brennan, graduating senior.

[Letter-writer's attempted joke sparks reader comment, concern](#)

To the Editor: The recent issue of The Opinion (Nov. 1, 1982) contained two items that concern us greatly. The first was Tom Lowe's article "Sports Requires Sportsmanship" (editorial page), in which he advises the William Mitchell intramural football players to "lighten up" and release their aggression by "beating your wife and/or girlfriend."

This comment certainly did not lighten us up, Tom! We found it distressing. Even as a joke, it was an inappropriate punch-line. We hope you don't really think that abuse of women is "sportsmanlike" conduct.

The second item was J.A.'s editorial which raised the sore issue of minority misrepresentation on the Mitchell campus. We agree with the editorial's observation that the administration needs to address seriously the college's problems of minority recruitment and retention. We do not think, however, that it was in good taste for The Opinion to engage in name-calling in the process of alerting us to an existing problem. We refer to the description of the director of admissions as a "WASP secretary."

Not only was the label inaccurate, it displayed a classist, racist and sexist attitude which has no place in this school. We feel that The Opinion, as the students' newspaper, should reflect the views and concerns

of the entire student body. In this case, the editorial reflected our concern, but it did not reflect our perceptions of the personnel. -Tsippi Wray and Joan Peterson.

To the Editor: In response to Tom Lowe's letter of Nov. 1, 1982, concerning intermural sports. Mr. Lowe's weak attempt at a joke involving wife beating was highly offensive. He has shown an appalling lack of sensitivity about the severity of the problem of battered women. The problem of violence in intermural sports is minute in comparison to violence in the home.

Men from all socioeconomic levels take their "pent-up aggressions" home and release them upon their wives or girlfriends, with results that make the incidents Mr. Lowe wrote of look like lighthearted fun. Wife-beating is not funny, and to jokingly recommend it is to condone the type of behavior that should be condemned by our society and our judicial system. -Elizabeth W. Bloomquist and Women's Law Caucus.

To the Editor: I was enraged when I read the last paragraph of Tom Lowe's letter to the editor on "Sportsmanship." I refer to the following statement: "If you can only release those pent-up aggressions from law school with physical abuse, stay home and beat your wife and/or girlfriends."

This author is a law student who someday will go out and stand for justice? A statement like that has no place in print, and it certainly has no place in a publication by what I thought was a progressive law school.

Lowe's statement serves only to trivialize the gross violence and hatred of women in our society, which is justified in the name of "pent-up male aggression." If this was some sorry attempt at humor, I may be called humorless, but I fail to see any humor in black eyes, fat lips and broken ribs.

I think Mr. Lowe owes an apology to the wives and girlfriends of male students and to all the female students of William Mitchell. I'm glad I'm not Lowe's girlfriend! - Julie L.

January graduates won't be forgotten

To the Editor: A law school without people is just mortar and bricks. So it seems fitting to pay tribute to the December graduates, for you helped make the "law school experience" for the rest of us.

Three and one half years ago we started William Mitchell as a group of individuals with diverse backgrounds. In fact, for most of us the only common thread was that we worked during the day and attended law school at night. As time passed, however, our bonds of friendship became stronger and stronger. During our tenure there were births and deaths, marriages and divorces, high grades and low grades. In each instance there was joy or sadness that we experienced together. We worked hard over the years to make William Mitchell a better institution for those that followed us.

It's going to be sad to see you, our friends, leave. We recognize that no matter how hard we attempt to stay together interests change and so do time commitments. However the "law school experience" will always remain throughout our lives.

As you venture out into the real world, we are confident that you will find that there is life after law school. Our hopes and good wishes go out to those who have found careers and also to those who are still seeking careers. Don't forget those of us who are left behind, because we won't forget you. -For the Class of '83:Dudley Ryan and Kevin Keane.

An evolving day school?

To the editor: A growing number of students (and a few alumni) have expressed a concern that William Mitchell is evolving into a day school. They cite as evidence of this shift, the following:

- The school catalog itself cannot fathom full-time employment for anyone, yet it has always been Mitchell's mission to provide night legal education for those who work in the day.
- Scheduling is increasingly emphasizing 4:30 elective courses. Trying to put together a 6:30 and 8:30 elective menu is very difficult. Taking a 6:30 class from a professor who already taught a 4:30 class is less desirable yet, if one has an 8-to-5 job what other choice is there?
- More and more elective courses require additional outside projects. Example: Mortgages (this semester) requires one to do an outside project worth 25 percent of the grade. That might be beneficial if one had time, if one didn't work all day. What if one is more interested in the law of mortgages and plans to do "projects" when one can charge a fee?
- It sure would be nice if various offices were either open later (7 or 7:30) or, if they claim to be open until 7, they do in fact remain open. Note: If I were on staff, I'd want to go home at 5, too. On the other hand, Mitchell caters to night students, doesn't it? -Kevin Keane.

International

Student gets rare view of Soviet justice

By Jeanne Anderson

A rare view of the Soviet justice system in action was seen by Mitchell student Jan Nielsen last summer.

Nielsen, a fourth-year student, visited Soviet courtrooms and met with judges and lawyers on a two-week tour sponsored by the University of Bridgeport Law School and orchestrated through the Citizen's Exchange Council.

Nielsen was the only Minnesotan in the group of 24 people, which included attorneys, a bankruptcy judge, two history professors, a librarian, a couple of undergraduate students and two law students.

The Soviet government arranged the tour, but Nielsen said that did not include visits to courtrooms.

"We wanted to see the courts, but when we got there all they had arranged was a standard tour of monuments, so we started to deviate from the tour," Nielsen said in a recent interview. "We thought this was pretty risky."

The group went to the American Embassy in Leningrad and found the location of the Soviet Regional Court, which Nielsen compared to a state district court in the United States.

Nielsen and the group were able to watch a murder trial in the Regional court. The trial, Nielsen said, "was right out of 'General Hospital.' The defendant killed somebody, cut him up, threw him in the river and claimed self-defense. He was from Soviet Georgia and had a wife there and one in Leningrad. Bigamy is illegal there, but both of the wives testified. Apparently the victim had quite a bit of money which subsequently disappeared and which nobody had accounted for."

Only relatives attended the trial. The judge did most of the questioning of the defendant, Nielsen said. "After the prosecutor did some very intense questioning, he turned it over to the defense counsel, who

asked just a few character-type questions. Then the judge asked the defendant if we wanted to question the witnesses. There was no jury, and the judge referred to the defendant as 'the Georgian,' according to the translator. Soviet Georgians are a bit darker and are discriminated against."

In Moscow Nielsen attended a trial in the People's Court, which he compared to a municipal court, bearing both civil and criminal actions like misdemeanors.

"The People's Court bench consisted of a judge and two laypersons. The judge is elected and has a legal background. The lay people are just ordinary citizens who are called in to serve for a certain period of time. All three voted on the verdict. I was told by the judge that the lay people almost always vote with the judge " he said.

"The defendant was being tried for assault. He had kicked an old woman and was not represented by counsel, but was fined and ordered to be on probation for a year."

Following the trial the group was able to speak with the judge, but a few days later another part of the group returned to the People's Court and was thrown out.

"They wouldn't start the day's session," Nielsen said. "Trials are supposed to be public, but they kept delaying and wouldn't say anything. The group waited and waited. Finally the police came in and ordered everybody out of the courtrooms. A judge in another city told me that they had no right to do that, but they did it. It just appeared that somebody got to that judge and told him he shouldn't be talking to people from the United States."

The most serious problem with crime, Nielsen was told by Russian lawyers, is 'hooliganism,' which is misbehaving. There are also many traffic problems, which is believable because the traffic in big cities is terrible. I'm surprised I didn't see someone get killed in Moscow or Leningrad."

The lawyers told Nielsen that black-market profiteering is also a serious problem.

"Another problem which I'm not sure is as legal as it is social is what they call 'parasitism.' Every person in the Soviet Union is obligated to work and perform duties for the Soviet state. People slough off and don't really commit themselves. They are thought to be parasites.

"Typically everyone tells on everyone else over there. That's how they find the 'parasites.' In addition to individual policing, there are regular police, the KGB and what they call community police. The community police are ordinary citizens who are selected to serve. You know them by their red armbands. One of them got after us for sitting on a curb," Nielsen said.

"The laws are strictly enforced, and you know that right away. You just don't get out of line. When you come into the airport the police look at your passport and then stare at you, and this goes on for five or ten minutes. No exaggeration: The whole time they just look at you and your passport. It's intimidating," Nielsen said. "You get the impression that there is a lot of unwritten law, a kind of paranoia."

The Soviet lawyers told the group that they are paid significantly more than the average worker. Their fee income is pooled and depending upon the amount of work each attorney has done, they are paid out of this fund.

Since Soviet lawyers are working for the state, Nielsen asked them whom they feel more loyal to, their clients or the state.

"The lawyers we asked were insulted by the question. It seemed to one lawyer that if your client has murdered someone, you have to be more concerned about the potential injury he will cause others. He didn't consider it to be a professional question. It seemed he was prejudging the defendant. "

Nielsen said that, according to the Russian lawyers, the Soviet system guarantees the same rights that the United States guarantees to its people. "But they don't," he said. "There's a lot written in the Soviet Constitution, but it doesn't work that way. For example, if you are arrested you don't have the right to counsel until after an investigation is done. It is quite elaborate and part of it is a psychiatric test. It could be months after the arrest before you have a right to counsel.

"And there is potential for abuse. If there is an abuse during the investigation, you don't litigate that in court. You go to the prosecutor's office to complain. But they're the people who are trying the case and in charge of the investigation, so in that respect you don't have the benefit of an adversary system."

Nielsen says he hopes to return to the Soviet Union sometime. "The experience was invaluable for everyone on the tour, but especially for myself as a law student."

Image

Photos by Jeanne Anderson:

The elaborate onion domes of St. Basil's Cathedral tower over Red Square in Moscow.

Fourth-year Mitchell student Jan Nielsen visited the Soviet Union last summer.

[Who has Walter's 'best interests' at heart?](#)

By Lala Rybakoff

After three years and four attempts, Michael and Anna Polovchak secured a visa for passage into the United States from the Ukraine for themselves and their three children.

Walter Polovchak, age 12, was uncertain about going. He had learned in school that the United States was a terrible place to live. He knew that all black people were slaves, and all other people were starving. What Walter did not know was that his trip to the United States was going to change his life forever.

The Polovchak family was Ukrainian and lived in the Ukraine. The Ukraine is now occupied by the Soviet Union. It is located right over the Black Sea between Poland and Russia. The Ukraine is the second largest country in Europe and is famous for its fertile soil; it is nicknamed "the breadbasket of Europe."

Until 1917, the Ukraine was an independent country functioning as a democracy. But because of its proximity to Russia, and its prized resources, the Ukraine (along with many other Slavic border countries) was forcefully taken by Russia, and the Union of Soviet Socialist Republics was formed. Today, despite russification efforts by the Soviet Union, the Ukraine has managed to preserve its culture and its language.

The Polovchak family had relatives in Chicago. During the course of their visit in Chicago, Michael Polovchak (the father) decided that he wanted to return to the Ukraine and have his family join him there at a later date. The Soviet Union announced that if he went back, the entire family must return with him at that time.

So Walter and his sister Natalie (who was also a minor) ran away from home and stayed with a cousin. After four days, and with the help of the police, the children were located and Ukrainian attorney Julian Kulas took over their case. He was granted temporary custody of the children.

The juvenile court determined that it would not be in the children's best interest to return to the parents. At subsequent hearings, the children indicated that they did not want to go back to the Soviet Union and were placed in the state's custody.

The parents appealed the decision on the basis that they were denied the right of parenting. In a two-to-one decision, the court of appeals agreed with the parents and ruled in their favor. The court said that although Walter was beyond the control of his parents, he was in no imminent danger upon returning to them. This "imminent danger" test did not appear in the statutes along with the other criteria that the court used, and seemed to have no basis whatsoever.

The Illinois Supreme Court decided to hear the case. By this time, the Polovchak case had reached national attention and the American Civil Liberties Union came on the scene. Surprisingly enough, the ACLU was not interested in Walter's rights, but rather in the parents' rights.

The ACLU immediately sought a motion to reconsider, which was denied. Then, the ACLU sought to have Julian Kulas (Walter's attorney) removed from the case for conspiring, for advising Walter and Natalie to run away and for being unqualified. The judge said that these charges were unfounded (Kulas met the children for the first time after they had run away) and ruled that not only was Julian Kulas qualified, but he had done a better job with these children than anyone else could have.

Oral arguments are expected in January or February of 1983.

Natalie Polovchak turned 18. For this reason she was able to make her own decision as to what is in her best interest. She chose to stay in the United States.

Julian Kulas filed for asylum for Walter and within 48 hours it was granted. This issue is now in federal court in the discovery stage.

Time is Walter's best ally. If he can reach the age of 18 before this issue is decided, like his sister, he will be allowed to remain here.

If Walter returned as an adult, he would be guilty of treason and would face one of four possibilities: (1) He would be placed in a re-education camp so that his erroneous thinking could be corrected and geared towards a more proper course; (2) he would be placed in a government camp, so that his loyalty could be persuaded toward a more favorable direction; (3) he would be placed in a medical camp, so that his illness, which has obviously affected his thinking, could be cured; and finally (4) he would be placed in a training camp; so that his future behavior could be more acceptable.

These camps take time, often a lifetime, and most of them are located in Siberia.

Another point to consider is whether Walter's parents really have a right of parenting. A valid argument could be made in their favor - except that Walter does not really know his parents. He was raised by, and lived with, his grandmother for most of his life. If his parents did not feel that their right to parenting was that important, why should they feel that they even have such a right after 12 years? Can it really be in Walter's interest to return him to these people? And will their right to parenting really be

satisfied if upon arrival to the Soviet Union, Walter will be taken into Soviet custody, publicly denounced and then shipped off to one of those camps?

Why does the Soviet Union have such a strong interest in Walter? Why does it want him back? Why is the KGB willing to finance Waller's father's trip back to the United States so that he could testify here?

The answer may lie in the words of another man, Alexander Temkin, who also has a strong interest in the right to parenting: "The Soviet government worries about the children more than the adults. The children are the new generation. And if they do not believe in the Communist ideology the Soviet state cannot survive. They will re-educate Walter. Believe it. They will do it, because they must do it to survive."

The last time Temkin saw his daughter was in 1973, when she was placed in a "youth camp" a thousand miles from her home in Moscow. She saw him, ran up and pleaded, "Daddy, daddy, take me away from here. Take me away!" But he could not. The camp police took her away. To this day, the Soviet government has not allowed Temkin to have any communication with his daughter.

Temkin came to the United States from Israel recently, not only to fight for his daughter, but also to fight for Walter Polovchak.

"You cannot allow this to happen," Temkin said. "He [Walter] will not be returned to his parents ... children who are 'non-conformists' are taken from their parents to be made 'ideologically correct.'

"Do not be fooled. To send this child back to the Soviet Union is to send him to professional sadists."

Perhaps a favorable decision will be reached for Walter. Or perhaps Walter will turn 18. Julian Kolas says he believes that Walter's interest may best be served if the issue of what really is in Walter's best interest is reverted to juvenile court and decided there.

Chicago Sun Times reporter Roger Simon had handed Walter a paper during an interview. That paper contained a copy of an interview with a defector from the Soviet KGB. The defector detailed the punishment Walter would face if he returned to the Soviet Union. Walter read this carefully and handed it back to Roger Simon without a word.

"Are you afraid?" Simon asked.

"Yes," came the reply.

Image

Julian Kulas is Walter Polovchak's attorney.

[A graduate's 'road beyond the horizon'](#)

By Steve Patrow

Usually, after a law student struggles through years of study, fatigue and momentary thoughts of becoming a plumber, then graduates, he or she faces reality and scours the job market looking for work in the "real" legal world. But for Eric Nilsson, a 1980 graduate of William Mitchell College of Law, reality was temporarily sacrificed for a dream.

Nilsson set out on a world tour after graduation. Although he now works as an associate attorney for the St. Paul-based law firm, Briggs & Morgan, he still lives the year long trip, which placed him in the vastness of Soviet Siberia, the remoteness of the Himalayas, the political instability of Poland and the population instability and poverty of India.

Nilsson said his trip was the fulfillment of a dream, a dream to travel through the backroads of other countries to meet local people; consequently, this was no tour-guide trip advertised in magazines, he avoided tourist routes to experience the real societies not reproduced in travel brochures.

"Ever since I was a little kid I've always wanted to follow the road beyond the horizon," Nilsson said. "I wanted to escape the prison I thought I was in. My parents accused me of being an escapist, and to that charge I have to plead guilty.

"However, I had three objectives which I considered to be legitimate. First I wanted to seek out the natural beauty of the world. This led me to New Zealand, the Himalayas, the Aegean Sea. My second goal was to experience life in the Third World; I chose India, the most populated and least developed nation, and Egypt. Finally, I wished to observe economic, political, and social conditions in Communist Europe."

Nilsson said he found his travels to Eastern Europe and the Soviet Union the most interesting and eye-opening adventures and that Poland was the most interesting country he visited!

Nilsson said he visited Poland because of a conversation with a Dutch citizen he met in Greece. "This man told me that there were only two countries which a person can be homesick for: your own and Poland," Nilsson said.

"I went to Poland from Sweden. It was such a shock to go from Sweden which has a high standard of living, to Poland where there was economic ruin and the peoples' faces were so sad. In Sweden everything is very efficient and well-run. In Poland it's absolute chaos.

"But the people there showered me with generosity; then I realized Polish culture was very warm and inviting - they treated themselves and others with warmth."

Nilsson said that the Poles do not like all foreigners however.

"There was so much anti-Russian sentiment," Nilsson said. "Poles hate Russians so much that I started to hate them too, until I went to Russia."

Nilsson visited the Soviet Union after his travels in Poland. He said the Soviet people also treat visitors with respect and warmth.

The American view of the Soviet Union is very misdirected Nilsson said. He said that the Soviet people are very proud of their state and nation and that most of the Soviets he met said they loved their country and would never leave it.

"Dissidents are the minority in Russia; we are led to believe all Russians want to leave their country," Nilsson said. "Russians are very patriotic and they are very proud of the suffering they endured before and after the revolution to build the Soviet nation."

Nilsson traveled in the Soviet Union for most of his trip via the Trans-Siberian Railroad. He said he was treated well by the Russians who, when conversing with Nilsson, said they thought the United States was a very exotic place, filled with crime, drugs and inflation. Nilsson said they probably developed their conceptions about the US the way most Americans developed their concepts about the Soviet Union - through propaganda.

During Nilsson's trip to the Soviet Union, he said he was not traveling in the obscurity he had thought he enjoyed.

"There was an (Soviet) officer on the train and I suspect he was there to watch me," Nilsson said. "He didn't let on that he knew English, so I spoke in English to a Swede on the train, with whom I had been speaking in Swedish. I said, 'These Russians are SOBs.' The officer's face turned bright red and I knew he was probably following me."

Nilsson speaks fluent Swedish and some French and German. However, he said those languages did not help him through most of the trip. He said if English and language dictionaries did not help, he had to use sign language either by hand or by drawing pictures on pieces of paper. He said he would show the paper to a native who would return the paper with more drawings or gestures to get across the meaning. The procedure was time-consuming but effective, he said.

"Time didn't matter for most of the trip," Nilsson said. "The train trip lasted seven days and the people on the train were more than willing to spend time talking to an "Amerikanski."

Nilsson bought an airline ticket which would take him to jumping off points at each country he visited. But after landing at an airport, he said he was on his own. Nilsson said he used several modes of transportation to get to planned destinations – horse-drawn carts, hiking boots, rickshaw and shikaras (a cross between a dug-out canoe and a Venetian gondola). Nilsson slept in youth hostels and what he said were "frightfully dirty and primitive" huts.

"Often I found myself sharing accommodations with a host of insects, rodents and other unidentifiable creature peculiar to that part of the world," Nilsson said.

Food was an important factor when trying to fit in with the local people of each country, Nilsson said.

"One of the easiest ways to gain acceptance in a strange land is to adopt, enthusiastically, local tastes and eating customs," Nilsson said. "Thus, I sampled everything from delectable New Zealand lamb to the hottest of Indian curries, to lethal Russian vodka. Miraculously, I never got sick on food or drink, and I attribute that entirely to chance; sanitation was utterly lacking in India, Egypt, Turkey and in much of Easter Europe and Russia."

Nilsson said he had so many adventures during his year of travel that it is hard for him to distinguish what experience had the greatest impact on him. He said that seeing Lech Walesa in Gdansk, Poland, attending the Solidarity National Congress, and being involved in a Warsaw demonstration, were memorable events. He said that having a machine-gun-armed guard meet him at the Bombay airport was thrilling ("They had just had a hijacking or something"), and that New Zealand had the most "awesome scenery" of any country Nilsson had visited.

"I most honestly believe that after God practiced on Heaven and Earth, he went down and created New Zealand," Nilsson said. "A camera just can't go wrong in New Zealand."

The most depressing country Nilsson visited was Czechoslovakia, Nilsson said. "Czechoslovakia is in a demoralized state," Nilsson said. "I don't ever think it recovered from the Soviet invasion in 1968. Political suppression is severe. When I returned to Czechoslovakia this past June, I was struck by the remarkable deterioration of economic conditions."

Nilsson said he returned to Czechoslovakia to help some friends defect from that country. He said his friends explained to him that there is no future in Czechoslovakia that the continuing feud between the Czechs and the Slovaks make resistance to communist domination futile. Nilsson said his friends still live in Czechoslovakia.

Not many law students would have the money or the time to tour the world after graduating from law school. However, Nilsson said his trip cost about a year's tuition at Harvard. He said that he was able to meet the expense by saving money during law school.

"I lived in a hole in the wall, rode the bus instead of driving a car, ate beans, rice and vegetables," Nilsson said. "I eschewed all luxuries including television, stereophonic music, and nights on the town. That austerity brought rewards beyond calculation."

Nilsson said the world tour was an education well worth the money – an education no school can offer.

"A trip like that extends your life," Nilsson said. "I have more awareness of what's going on around me. The experience is ongoing, it doesn't stop when the trip stops."

Images

Photos by Steve Patrow:

Mitchell graduate Eric Nilsson traveled widely before starting his job search.

Solidarity poster is a reminder for Eric Nilsson of his travels in eastern Europe.

International Law Society sets ambitious goals

By Brian Bolkom

The success of the William Mitchell International Law Society's inaugural seminar on Nov. 11 has been reported elsewhere in this issue of *The Opinion*. The executive board and the membership were pleased with the interest shown by students and local attorneys practicing in the field who participated.

The society plans to hold such seminars on a monthly basis in an effort to provide information on international law and practice to Mitchell students who are interested in the area. Its primary aim now is to let students and local attorneys know that the society exists. Members are becoming more aware every day of the number of Mitchell students who are interested in international law and of the number of students here at Mitchell who have traveled or lived abroad.

The society invites every student who has an interest in international law to become involved in the organization. That includes students with interests foreign culture politics and international affairs, as well as those who have plans to work in international business.

The society has applied for membership in the Association of Student International Law Societies (ASILS). Through this membership it will become part of a network of informational services in international law.

ASILS provides member schools with speakers lists and keeps member societies informed of activities and news of international law through its ASILS Newsletter.

The association coordinates two international law-writing competitions and publishes the quarterly ASILS Journal of International Law. Finally, the association administrates the Philip C. Jessup International Law Moot Court Competition which includes participants from 120 U.S. law schools and some 25 foreign countries.

The Mitchell society will administrate the Jessup Moot Court Competition here on campus. It will also press for the development of a clinical experience in international law for Mitchell students through local firms and businesses.

Neither the University of Minnesota nor Hamline law schools has organized international societies. The development of international studies here at Mitchell can be a plus for students as well as for the law school itself.

Many avenues are open to students with international interests and knowledge of international law. International business is only one of these. Immigration practice, government practice with departments involved in policy formation, international human rights work with organizations such as Amnesty International and work with various United Nations organizations are other examples.

Developing familiarity with other systems and cultures is more than an arcane academic exercise. It is a challenge that goes beyond the confines of libraries and law school campuses. Now, more than ever before, it is crucial for future members of the legal profession to prepare themselves to deal with problems and situations which involve not only our own law, but the law of other nations as well.

(Editor's note: The writer is executive secretary of the William Mitchell International Law Society.

[The Islamic criminal Justice system is much misunderstood in the West](#)

By Aziz Ah-san

As I walked to my Constitutional Law class, I told one of my fellow law students that I was going to Chicago to attend the International Conference on Islamic Criminal Justice System.

He facetiously asked, "Isn't that the legal system where the accused is guilty until proven innocent?"

I smiled, and we walked into our class. But that remark prompted this article. Islamic justice system is the only system in the world where the accused is innocent, until he himself, without duress confesses his guilt and provides conclusive evidence to support it.

Islam is the religion of over 750 million Muslims. Sixty-nine countries of this world have a significant fixed population of Muslims, with 37 countries having Muslims constitute the majority of the population. The reemergence of Muslim and Islamic states in the world community, and the adherence of some of Islamic law as a basis of their legal system, emphasizes to us the importance of understanding the values and attributes of Islam and the Islamic law.

In order to have a good understanding of the Islamic law, we must first look at the sources of law in Islam. Then one could look at the categories of crime, the evidentiary requirements, the procedure and

other aspects of the Islamic criminal-justice system. After basic understanding of the Islamic law, the analysis can be readily understood.

The Qu'ran (The Holy Book of Islam), is the principal source of Shari'a (Islamic law). It contains the rules by which the Muslim world is governed (or should govern itself) and forms the basis for relations between man and God, as well as between man and all aspects of God's creation. The Shari'a also contains the roles by which Muslim society (or societies) is organized, and it provides the means to resolve conflicts between individuals and between the individual and the state.

The Sunna is a complementary source to the Qu'ran and consists of both the sayings (Hadith) of the Prophet Mohammad and accounts of his deeds. The Sunna explains and amplifies the Qu'ran, and it cannot be interpreted in any way that alters the Qu'ran or is inconsistent with the meaning of any of its specific provisions. The Qu'ran and Sunna thus constitute the very substance of the Shari'a.

Following is a list of primary sources of law, adopted by the majority of Muslim jurists:

- a. The Qu'ran
- b. The Sunna
- c. The Ijma, or the consensus, based upon a method of interpreting the principles and norms of the Shari'a.
- d. The Queyas, or the judgement upon juristic analogy.
- e. The Ijtihad, or independent reasoning: a secondary source of interpretation of the law in the absence of other primary sources.

Other supplementary sources that are used in the Islamic legal system include Al-istishsah, or the deviation from certain rules based on precedents derived from other rules based on relevant legal reasoning: Al-istislah, which is an unprecedented judgement explicitly covered by the Qu'ran or the Sunna and necessitated by public interest: and Al-urf, or the custom and usage as practiced in the Islamic state.

Besides the Qu'ran and Sunna, other sources of law make possible the application of Islamic law to contemporary situations. Muslim scholars do not consider Islamic law to be evolutionary, but rather a legal system which applies to all times. It is therefore the application that is susceptible to evolution.

According to the Islamic criminal law, crimes are divided into three major categories. These are the crimes of Hudud, crimes of Qesas and crimes of Tazeer.

For Hudud crimes, prosecution and punishment is mandatory, and the penalty has been prescribed in the Qu'ran.

Qesas, the second category of crimes, are specifically listed within the Qu'ran, but a specific and mandatory criminal definition or penalty may not always be given there. In Tazeer offenses the punishment is discretionary, and the judge has to make that decision.

Hudud crimes are serious crimes, and they are the ones that are geared towards attacking the basic foundation of the Islamic society or the harmony of a Muslim family. Because these are serious crimes

the penalty or punishment is also very severe. Accordingly, evidentiary requirements are also very rigorous.

Islam recognizes seven Hudud crimes. They are adultery, defamation (also referred to as slander), consumption of alcohol without any medical reasons, theft, brigandage (also referred to as highway robbery), apostasy and rebellion and corruption of Islam.

The penalties for a Hudud crime could be met by either flogging the offender or by amputating the hand, thus leaving a permanent scar, or through the imposition of the death sentence. These penalties are designed to bring about a deterrent effect on a habitual offender, who may become accustomed to imprisonment if that were the only penalty available. These penalties are not to frighten people, but to deter those who are easily tempted or those who have a tendency to commit crime.

Where the Islamic system provides "harsh" penalties, it also requires conclusive proof that a crime has in fact been committed by the accused. The accused, if he confesses to the crime, must give full and exact details of his criminal act, and request the penalty. The confession has to be without duress. If there is any doubt, the Hudud penalty cannot be applied. The Hudud penalty also cannot be applied if it is found that the Islamic state neglected its obligations towards its citizens.

The word Qesas means "equality" or "equivalence." From the meaning of this word it can be implied that a person who has committed the crime be punished in the same manner that he used to harm his victim. There are five Qesas crimes: murder, voluntary manslaughter, involuntary manslaughter, intentional physical injury, or bodily harm against the person, and unintentional physical injury or bodily harm against the person.

Qesas crimes are considered violations of the rights of individuals; therefore the victim or his family must decide the penalty to satisfy or compensate for their grief. After the punishment has been decided by the victim or his family, the judge then, before imposing the penalty, makes sure that the penalty is within the bounds of Islamic law.

The sanctions prescribed for Qesas crimes are either Qesas -the infliction of equivalent physical or bodily harm against the person who committed the act -or the payment of Diyya (money damages). The victim or his family could also forgive the accused, and in that case no Qesas punishment would be applied.

The third category of crimes in the Islamic criminal system is the Tazeer crimes. Tazeer literally means to admonish or punish (with a view to correcting). These offenses are against the public welfare, safety or morals, or harmful acts against persons or private interests that are neither Hudud or Qesas crimes and for which prosecution and punishment is discretionary. The discretionary penalty of Tazeer is left to the assessment of the ruler or the judge.

It is important to note that Tazeer crimes encompass all offenses for which the Shari'a does not prescribe a penalty. Therefore, in its legal sense, it signifies criminal punishment that is not legally fixed.

Some of the penalties applicable in Tazeer crimes are the death penalty, flagellation, imprisonment or pecuniary damages. The death penalty, which is rarely imposed, may be imposed in case of espionage, or could be imposed on a habitual criminal who poses a serious and grave danger to the society.

Flagellation is recommended most often on the grounds that it can be readily imposed and thereby causes a minimal deprivation of liberty for the accused. The recipient may thereafter attend to his business and serve the interests of his family.

Imprisonment may be sanctioned for the first offenders or common criminals and the time limit can vary from a single day in a prison to six months or even a year. Resorting to imprisonment may become imperative only when flagellation is ineffective.

Imprisonment is usually not desired because it severs the ties of the accused and his family, regardless of how short the duration of imprisonment is. Secondly, the delinquent may be further corrupted by the influence of incorrigible prisoners.

Muslim jurists have, with reservations, accepted pecuniary damages as punishment of a Tazeer crime. If a fine is imposed in lieu of other punishment, it may be later returned to the person if, over a certain period, he improves his standing in the community and repents for his crime.

The principle that the accused is presumed to be innocent is fundamental in Islamic law. Therefore the burden of proof is on the complainant.

In order to support a conviction, three evidentiary requirements must be met. The first, which is also the most important, is that the evidence must be conclusive. This means that the evidence must clearly and explicitly prove the occurrence of the criminal act without need for explanation or interpretation.

The second condition necessary to support a conviction requires that the evidence remain conclusive until the execution of punishment. If the evidence loses its conclusiveness during any stage of the trial, then neither the evidence nor any verdict based on it is valid. The same is true when the evidence loses its conclusive quality after sentencing, but before execution. Under these circumstances, if punishment has been imposed, it must cease immediately.

The third condition is that the presentation of evidence should not be delayed. The delay of evidence is considered equivalent to doubtful evidence and some jurists go so far as considering it a sufficient reason to preclude the accused from the punishment for Hudud crimes.

These restrictions require the judge to render a decision not whenever some of the evidence would be sufficient but rather when he is sure that all the evidence clearly and convincingly proves the commission of the crime.

One of the paramount objectives of the Islamic criminal justice system is to preserve the human dignity of the accused.

Thus the system prefers to presume the accused to be innocent from the time he is accused of the crime until he is convicted.

Under Islamic law the accused has the absolute right to answer or refuse to answer the question imposed by the judge or the prosecutor. If he answers, he is not obligated to speak the truth. If he admits guilt, he has the right to change his mind. Should he do so, his admission becomes invalid and cannot be used against him at the trial.

The underlying principle is that the society should develop and foster responsible citizens. It is better to let a criminal redeem himself by correcting his temporary mental derangement, rather than take him

out of society into a prison, where he is placed in a "protected" environment and where he cannot fully appreciate his mental problems.

The system of law is based on an honor system. If the accused refuses to confess the crime, he may get a less-physical punishment, but then for the rest of his life he will have to carry that guilt. Moreover, the accused knows that if he escapes his punishment in this life, he will have to face the punishment in the hereafter. Because of deep-seated religious feeling, the accused usually comes forward and helps in his own conviction.

In the Islamic criminal-justice system the judge plays the key role. He is the judge and jury and everything in between. It is his responsibility to find evidence that convicts the accused and also to find facts that prove his innocence. If during the trial he thinks that one party is dominating in its legal representation, he can postpone the trial in order to allow the underdog to strengthen its case.

Islamic legal system allows the establishment of an appeals court. If a case is appealed, the parties can either submit briefs on issues of controversy, or relitigate the whole case or a portion that is in controversy. It must be noted that, throughout the trial either at the lower level or the appellate level, the judge, plaintiff and the accused must all be physically present in the court room, and no statement is taken in the absence of any one of them. The concept of default judgement does not exist in the Islamic justice system.

In cases where the victim or his family drop criminal charges against the accused, the state can still prosecute the defendant. In that case the accused can be charged only with the violation of a Tazeer crime. That is because he has not paid the "loss" to the society. Here, once again, we see that the right of the victim or his family comes before the right of the society or the public interest.

Furthermore, the Islamic system encourages the two parties to come face to face and resolve their differences or problems among themselves in front of an impartial party, the judge. It also allows the victim or his heirs to be part of the decision-making process that results in the final verdict. This process also allows the people involved to air their grief, thus reducing further violence.

The penalties, even though they sound harsh, are imposed only after strict legal requirements have been met. For example, the legal penalty for the Hudud crime of theft -amputation of the hand -has been given to only five people in the last 20 years in Saudi Arabia, a country where Islamic law is religiously practiced.

Regardless of which category of crime is involved, the right to life, liberty and property; the right to petition for redress of wrongs and grievances; the requirement of a fair and impartial trial without distinction of color, creed or origin are all fundamental to the Islamic justice system.

I would like the readers who feel that the Islamic legal system imposes harsh and cruel penalties to reflect on whether it is cruel and inhuman to confine a person behind bars for the rest of his life, or it is better to flog or amputate his hand and let him continue to live as a free person.

The writer is one of the founders and is the current president of the William Mitchell International Law Society. He is a second-year law student in the evening program. He is originally from Karachi, Pakistan.

Image

International Law Society officers include, from left, President Aziz "Ah-san, Treasurer Larry Radden and board member Rodney Otterness.

Insanity defense stirs debate once more

By Lea De Souza

Ever since the James Hinckley trial, the insanity plea as a defense has been seriously questioned.

However, many lawyers and psychiatrists in Minnesota support it, and that includes Mitchell Prof. Maynard Pirsig. "You cannot treat sick human beings like criminals," Pirsig said. "Of course you can't leave them on the streets - they must be put somewhere, like institutions - but to say that prison is the place for them is a sad mistake."

The Minnesota standard is different from the one used in the Hinckley case in the District of Columbia. There the burden of proof rested upon the government to show that Hinckley was sane.

Conversely, in Minnesota the burden of proof rests on the accused to prove his insanity – he has to prove by a fair preponderance of evidence that he is insane, and if any doubt remains then he is considered sane.

The M'Naughten standard is relied upon in Minnesota. It says that a person is mentally ill if he either did not know the nature and quality of the act or did not know that it was wrong. This is a strict standard, which makes it very difficult to prove one's insanity in this state.

The most recent case that illustrates this difficulty is the Craig Jackson case. Jackson was charged with the murders of two women and his two sons. Jackson pleaded not guilty by reason of insanity.

A psychiatrist that Jackson hired said that he was mentally ill at the time of all four killings. A court-appointed psychiatrist differed a little in view - he felt that Jackson was sane when he murdered the two women, but insane when he killed his two sons.

After 11 hours of deliberation, however, the jury rejected Jackson's plea for each of the murder charges. They were not convinced that Jackson had proved by a fair preponderance of evidence that he was insane.

Regardless of the difficulty involved in proving one's insanity, there are many critics of this law who say the insanity plea can be used and manipulated to let dangerous people go free.

This argument is countered by the contention that those found to be insane are put in institutions until recovered, and not allowed to go free. Nevertheless, those who oppose the law hope to have it abolished by the next legislative session.

Pirsig was quoted in the St. Paul Pioneer Press as saying, "Fear of letting dangerous people go free indicates a lack of faith in the jury system, in psychiatrists and legal procedures - those are all correctable.

"A mature-society cannot deal, should not deal, with mentally ill people in such a cruel manner as to send them to a penal institution for conduct which is a product of mental illness," Pirsig said.

Image

Mitchell Prof. Maynard Pirsig sees value in the insanity defense.

Arbitrators honor Pirsig

The American Arbitration Association this month awarded its Whitney North Seymour Award to Mitchell Prof. Maynard Pirsig. Pirsig headed the committee on arbitration of the National Conference of Commissioners on Uniform State Laws when the Uniform Arbitration Act was approved in 1956.

The American Arbitration Association encourages the voluntary resolution of disputes through arbitration, mediation and elections.

Equitable Relief

Q: I trust that The Opinion is dissecting the rationale behind changing the moot court rules for the second time. The point made in the first issue of The Opinion -why does everybody have to write a law review style long paper-is a good one. Why indeed?

It may surprise some people, but the real reason many people did moot court in the past was not to sharpen oral-argument skills. Many of us break into a cold sweat just thinking about that prospect. The reason we would put up with the discomfiture caused by the oral argument portion is that one could write a practical brief and not an arcane law review note. If the chief justice is correct (The Opinion, Sept. 30, 1982), then a "lawyers' law school" ought to emphasize the practical and not the arcane. Will The Opinion set out the rationale of those who view "law-review style" as so important? -Kevin Keane.

A: Prof. Russell Pannier, one of the faculty advisors for moot court, explained that the main purpose behind the long paper requirement is that it be at least one occasion in a law student's career to do a policy evaluation of one area of the law. It is a rigorous attempt to argue the pros and cons of a law and possibly suggest a better solution. In this sense the long paper requirement is not really like a "law-review article" but rather more of-a systematic policy analysis.

Pannier said that, although a good brief would take just as much time to prepare as the long paper, the problem with having students write a brief is that it would necessarily be tied to one side of a lawsuit, since one would not be free to argue the pros and cons of a law.

What Pannier seemed to emphasize was that since so much of law school is dedicated to advocacy, this is one assignment in which the student doesn't have to take an advocate's position. He further contended that it is "important to encourage lawyers to be more than just advocates. I see William Mitchell as more than just a trade school."

The long-paper requirement helps to achieve this goal, in a sense, because it forces one objectively to study and form conclusions about a certain law, rather than simply picking a side first and then trying to make the law work in one's favor. -Lea De Souza

Postscript: The long-paper requirement is currently under review. Many faculty members would like to see the long-paper requirement kept on in the program and would like to strengthen it. There is, however, the possibility that it will be done away with within the next two or three years. -L.D.S.

Notice

The Opinion welcomes letters to the editor. It will present the views of any student, faculty member, alumnus or administrator. Because of space limitations all copy is subject to editorial review. Turn in letters typed and double-spaced, including your name and position, to The Opinion mailbox in the communications center.

OPINION deadline Jan. 31, 1983

College administrators veto SBA plan for library

The Student Bar Association proposal for new library shelving was vetoed by the college administrators at the October SBA meeting. The reason, according to Associate Dean Robert Oliphant, has to do with long-range planning and fund-raising.

"We don't want to ask local law firms to donate money for shelving. In turn, the firm would have its name on a plaque at the end of the stack. The SBA was to buy the first stack.

Associate Dean Melvin Goldberg, who also spoke at the meeting, suggested that funds raised for scholarships be diverted to the library shelving project. But SBA members did not consider the suggestion and instead allocated \$50 for preliminary work done for the project.

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