

Legal Lite

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The most popular question which face lawyers from an inquiring public is "Oh, so you're a lawyer! Well, how can you stand to defend a person you know to be guilty?" The question which is as much a moral statement as it is an inquiry, is an important one for those attempting to understand the nature and function of the criminal justice system under which we live.

The question arises in the public's mind serves to underline a principal confrontation - a confrontation between an individual's concept of justice of generally accepted modes of "doing justice" and the legal principles underpinning our criminal justice system. That such a conflict exists is not surprising if one considers that legal principals are checked constantly by a judicial hierarchy culminating in the Supreme Court of Canada whereas on an individual basis our sense of justice often reflects our changing moods and considerations resulting from our personal experience. This is precisely what places our sense of justice in the realm of opinion, whereas legal principles, made predicatable to a degree by the force of accepted authority are backed by what in most cases will be the high point of our society's judicial wisdom. This is obviously not to argue that the law is or should have permanent and everlasting features-but change of fundamental principles should come only with due consideration of the consequences involved.

What are these principles which deserve to be so highly espoused, particularly if we know the truth in a particular case of criminal involvement? In that case, should the principle serve to protect the guilty? To begin with, some of these principles are household phrases in our society "Innocent until proven guilty" beyond a reasonable doubt' and 'every person has the right to a fair trial' are three such common principles. The rules of evidence and procedure which surround these principles are supposed to ensure a modicum of respect for them and an adherence to them.

An example might be the restricted use of hearsay evidence. Although admitted in some situations, the general rule is that if the accused does not have an opportunity to question the source of the evidence (i.e. person who made the statement but who is not now in court) then it should not be admitted against him. The crown has the favour of the same rule, of course.

Even if the community has judged a person's guilt or innocence before trial, this should have no effect on the outcome of the trial. Sometimes, despite concrete and reliable information presented in court, the accused goes free. Naturally this situation is looked upon by the public as a mockery of justice, a facade and a reason to dispense with some if not all of our principles. What is often not considered however, is that these principles so deftly used by the accused's defence counsel, do not simply function to guarantee that no innocent person suffers, but they also function to eliminate resort to community violence. If a rapist or murderer poses a certain threat to the community, a lynch mob, summary execution or a kangaroo court would make life generally intolerable not to speak of being nasty, brutish and short for the innocent and guilty alike.

Within this context the defence lawyer's duty is quite simple really, and that is to give his client the best defence the law offers.

No question of morality can enter into this framework and the lawyer is never to assume the role of the judge. This is so even if your client tells you, yes, he was the person who committed the crime - if there is a defence at law then the lawyer has an ethical duty to present the defence. If a lawyer doubts his own ability to perform this function, then he shall remove himself from the case, and probably from practicing criminal law altogether, for there are very few accused who need a silent judge for counsel.

Defence counsel can and should demand from their client a full disclosure as to the charge in question, and no client who holds back information from their lawyer can expect that the lawyer has an obligation to continue representing him. Such disclosure, of course, is privileged and given not for the purpose of morally judging the accused, but the for purpose of allowing the lawyer to suitably prepare an adequate defence.

In conclusion it should be remembered that no accused is guilty at law, until so found by due process. Moral guilt is another question, and is only imperfectly reflected in our criminal law. The reason for this is that there are more considerations which should have priority in a mature society, other than that of reaping vengeance on the basis of moral outrage. Far from suspending our moral feelings, we should attempt to recognize the moral quality of living in a society relatively free from spontaneous violence and personal vengeance.

W. Richards

If you wish to inform us of your ideas and comments or if you have a question please contact us in writing via campus mail at the following address:

Legal Lite
UNB Faculty of Law
Box 4400
E3B 5A3

Items may also be dropped off care of Legal Lite in the Brunswickan Office, in the SUB, or the first floor of the Law School, Ludlow Hall. The authors reserve the right to rephrase the questions to fit a general information format. Legal Lite this week, D.G. Bell and W. Richards.

All major winners from UNB

Last weekend's UNB Winter Open saw all major winners coming from UNB for a change.

In Section A, Masters of Computer Science student, Fred McKim, edged out three others by one-half pt. to take first with a score of four out of five.

Fred's only loss came at the hands of pre-tournament favourite Robert Hamilton. It looked like Robert was header for a share of first place, but he was only able to draw his last game when he fell into a perpetual check. Another second place finisher, Phil Brunet also need a win in his last game to tie for first, but he too was held to a draw.

Tom Gibson had the best chance of all as held one-half pt. lead after four rounds, but lost to McKim in the last round to fall into the second place tie.

Section B was won by two UNB players who were ranked only seventh and eighth at the start.

First-year law student, Doran Hallett and PhD candidate in Chemistry Min-Jen Shiao each scored four out of five for the tie. Finishing one-half pt. back was Dave Clarkson of Saint John.

FINAL STANDING

A	
4 -	Fred McKim
3 1/2 -	Robert Hamilton, Tom Gibson, Phil Brunet
3 -	Dan Elman, Robert Didiodato, Nathan Jewett
2 1/2 -	Blair Spinney
2 -	Bill Bogle, Corey Stephen, Ken Duff
1 1/2 -	Walter DeJong
1 -	Pierre Therrien
1/2 -	Ken Salmon
B	
4 -	Doran Gallet, Min-Jen Shiao
3 1/2 -	Dave Clarkson
3 -	Werner DeJohn, Mark Keirstead, Alasdair Turnbull, Ken Mills
2 1/2 -	Victor (VCC), Chess Challenger 10, Robert Doerksen
2 -	Mark Duplissen, Andrew Sullivan, Stephen Sussey
1 -	Glen Mowat, Mike Bransfield
0 -	Lorey Jewett

Some openings may still exist on the UNB Chess Teams. If interested call Fred McKim at 455-6516.

CHESS PROBLEM
White to move and win (best solution!)

Awarded STU bursary

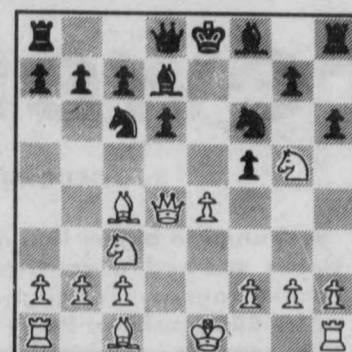
Elizabeth Shaver, a Bachelor of Education degree candidate at St. Thomas University has been awarded a University bursary of \$500. The University made the award in recognition of Miss Shaver's participation in a development seminar sponsored by the World University Service of Canada (WUCS).

Miss Shaver was one of 31 students across Canada chosen to participate in the seminar held last summer in Sri Lanka. The seminar was aimed at helping students understand the problems facing developing countries.

Seminar participants were required to research one aspect of Sri Lankan culture during their six week stay in the island republic. Miss Shaver studied Ayurveda - traditional Indian medicine.

Miss Shaver is a native of Westmount, Quebec.

Last week's solution 1...R-K6 a(2. BxR QxPch 3 PxP B-R6# (similar lines for several Q moves by White or such as 2. N/1 - B3) b) 2. N/2-B3 RxPth 3.PxR QxP# c) N-B4 Q-N3 (unavoidable mate on White QB2 or QN1 square) d) 2.QxR RxQ (lines now similar to a,b,c) e) 2. B-Q4 QxB 3.PxQ (3.N-N1 or B4 3...Q-K5 mates; 3. N-K2 Q-Q6# mates) R-B1 ch mates f)N-K2 RxN (with the threat of R-K6 or Q-N3 or if 3B-Q4 QxB 4PxQ R-B1 ch mates)



Blood donor clinics next week

The Red Cross team will be operating three days of blood donor clinics at the SUB next week.

The clinic will be open Monday, from 1:30 to 4:30 and from 6:30 to 9 p.m.

Tuesday, the hours will be from 1:30 to 4:30 and 6:30 to 9 p.m. On Wednesday the clinic will be open from 9:30 to 12 in the morning and 1:30 to 4:30 in the afternoon.

The daily quota is 200 donors. All local residents are invited to attend.

HAYES



St Valentine's Day Massacre Sale

15-50% OFF

Everything in the STORE

SALE ends Sat Feb 16 5pm.

Kings Place 455-0834

YE OLDE CHESTNUT INN

ALL THIS WEEK

McGinty

sings your favorite Irish songs

Sunday Feb 17

Peter Alan

Hosts Open stage -

C'mon down & join in the fun

Feb 18-23

Welcome Back

Guinness

Celtic Melodies

Monday - Tuesday - Wednesday

are Happy Days

11:30am-1:00am