

Weaknesses found in criminal code

Editor's note: This is the second in a three-part series reviewing the Oregon Criminal Code.

By NAN HENDERSON
Of the Emerald

Despite the liberal changes in Oregon's new criminal code and its over-all contemporary quality, attorneys are finding the code has weaknesses and district attorneys and judges are anticipating some problems.

Two of the more obvious weaknesses in the new code were pointed out by Pat Horton, a local attorney and recently announced candidate for Lane County district attorney.

Both weaknesses relate to the use of narcotics or dangerous drugs, Horton reported in an interview.

"There is some faulty reasoning in the section that makes possession of less than one ounce of marijuana a misdemeanor," Horton said. "Hash is also marijuana, but because of its quality one ounce of hash is much greater than one ounce of marijuana."

"If kids are smart they will see they can possibly get off lightly dealing in hash. A kid caught with one ounce of hash would still only be charged with a misdemeanor," he added.

Robert Naslund, Lane County district attorney, when asked about this problem in the new code, said, "It is my understanding that hash and marijuana are the same. But when you change a whole body of law, you can't think of everything."

Helen Frye, a Lane County circuit court judge, stated during an interview about the new code, "This law is talking in terms of the quantity rather than the quality."

"If the marijuana happens to be of the highest quality, I'll still go on the basis of an ounce is an ounce."

Horton also pointed out perhaps a more serious problem in the new code—the way people addicted to narcotics or dangerous drugs are dealt with under the law compared to those addicted to alcohol.

"You still have the crime of illegal use of drugs but under another section of the new code a person who is addicted to alcohol, but is not creating a disturbance, is not violating any law," Horton said.

"Alcoholism is being considered as an illness, whereas drug addiction is being treated as a crime," he added. "There is a very obvious distinction."

Horton cited a bill passed by the last legislature, which will go into effect July 1, authorizing the use of detoxification centers and other means of dealing with alcoholism as a sickness.

"Maybe the legislators are also paving the way for legally regarding drug addiction as a sickness," he said.

Naslund stated he is "basically optimistic about the new code," but added that his office was anticipating numerous legal objections, called demurs, to wording in indictments under the new code.

"We haven't seen any yet because it takes two weeks for a legal demur to be filed after an indictment is issued," Naslund explained.

Under the old code, legally proven standard indictment forms were often used. Now demurs could be filed for each new wording.

The laws have been changed just enough that the old case laws and forms often will no longer apply, Naslund reported. He also felt that some sections of the new code may be ruled unconstitutional.

Naslund criticized the commission that drafted the code for not letting the people of Oregon "have a voice in the new code. Now we have to go backward," he said.

He also felt that legislators had the opportunity to insert their personal opinion in the code because they didn't ask for citizens' opinions.

Naslund called the code "very progressive" and said it was "a relief to have sex laws such as adultery off our back." He said his office hadn't prosecuted for adultery "in a long time."

Naslund felt, however, that certain groups such as "gay libbers or women's libbers" shouldn't get

every change they demand right away.

"Things shouldn't change too fast and change shouldn't be emotional," Naslund said. He felt that all "libbers" were following in the steps of the "Negro revolution" and "after all, gay libbers and women's libbers weren't ever slaves working like animals."

Naslund stated that the laws regarding marijuana were changed because a majority of people, including adults, wanted the change.

He admitted that Eugene and other metropolitan area judges have usually been treating possession of marijuana lightly for a long time.

"This flexibility of attitude regarding drugs really proceeded the legislature," Naslund said. He also noted that "Lint agents are solely going after the large dealers. But if an officer runs across someone smoking a marijuana cigarette, he has to arrest him."

Naslund said that "it is true it is still a crime to use drugs, unlike alcohol, but as a practical matter I don't think that many people are tried for just using drugs." He added, "I don't see any rhyme nor reason for using hard drugs."

"The problem of the alcoholic has been around since the year one," Naslund stated. "The problem of narcotics has just come up."

He felt that citizens should be made more aware of the new code. "A tremendous education problem now exists," he said.

Ms. Frye, calling herself a "pragmatic judge," is very pleased with the increased flexibility of the new code.

Under the old code Ms. Frye always treated possession of marijuana "fairly lightly," usually putting defendants on probation. But she prefers "being able to completely discharge a person under certain circumstances and being able to treat drug felonies as misdemeanors."

"In some cases I think people that go through the traumatic experience of appearing in court, including hiring an attorney at their own expense, have made their retribution to society," she said.

Ms. Frye cited an example of a young man, who had appeared before her, that was retained for possession of marijuana. He had been traveling through the state when he stopped at the Renaissance Fair and acquired some marijuana there, Ms. Frye reported.

"He was from Missouri, and he made every court appointment during his case," she said. "This included traveling back and forth from Missouri. The court also held his car while his case was pending."

"In my opinion, this man should have been discharged," Ms. Frye said. "But this case was before the new code went into effect."

"There are many young people that are growing up in a culture inclined to be drug oriented," Ms. Frye said. She felt that young people often use marijuana without realizing the consequences.

"The new law protects the first time offender," she added.

Ms. Frye also likes the new code "because it will create a greater respect for the law. It has eliminated the crimes that weren't enforced or seldom enforced such as some of the sex crimes."

"Any laws that haven't had major revisions for 100 years need attention and probably change," she said.

Ms. Frye predicted that courts of appeal in Oregon will have a heavy load for several years, since the ambiguities in the new code will have to be clarified.

She said that trial judges will have a more difficult job since "we don't have Oregon case laws to go back to."

And, like others that are working with the new law, Ms. Frye is concerned about learning, and knowing, the new code.

"Circuit court judges had a small amount of instruction in the new code at the November judicial conference. A judge can learn the code, but I won't really know it until I work with it," Ms. Frye said.

"You really know the law after you have it in a case."

Ethnic Studies fights for program

"Obviously you are not of one mind," said University President Robert Clark. With that declaration, the Ethnic Studies Program was taken out of the hands of the Ethnic Studies Committee and turned over to the Dean of the College of Liberal Arts, Burton Moyer, for final formulation.

It happened at a budget committee meeting last term and at that time the Ethnic Studies Committee was made, de facto, an advisory committee to Dean Moyer.

Well, it is now winter term and the Ethnic Studies Committee will, in early February, meet with Dean Moyer to discuss a definite program and they intend to be "of one mind" this time.

Members of the Ethnic Studies Committee met yesterday and voiced solidarity, for the time being at least, behind the program that was drawn up for funding in 1970. To that end a number of people, both students and faculty, have been put on a list of possible candidates for the position of director of an Ethnic Studies Program—a list which will be submitted along with the program proposal when the committee meets with Dean Moyer.

Those on the list are: Martin Acker, professor of CSPA, Alfonso Cabrera, associate coordinator of SESAMEX, Agnes Goes-In-Center, graduate student in education, Manuel Rivera-Ortega, graduate student in curriculum and supervision, Donald DeNorval Tate, ASUO administrative assistant, Barre Toelken, associate professor of English and Marjorie Wright, assistant professor of CSPA.

Until the meeting, committee members intend to formulate the criteria to be used to evaluate candidates for the position of director for an Ethnic Studies Program. They will also use that time to define the committee membership so that only duly appointed members will meet with Dean Moyer.

The committee needs to be fully prepared for the meeting and with good reason.

According to James Klonoski, committee chairman, Dean Moyer is already considering an alternative proposal to an Ethnic Studies Program. This alternative calls for using monies set aside for a program to fund a part time teaching position, in the department of history of the College of Liberal Arts, in the area of Black history.

Ron Rousseve, a faculty member of the committee, said that such a proposal should at least be considered along with similar proposals for funding part time teaching positions in other departments and in other ethnic areas. Rousseve also said that, as far as he was concerned, if such a proposal were finally initiated instead of an Ethnic Studies Program that the functions of the Ethnic Studies Committee would be at an end.

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