

## **SENTENCING GUIDELINES CORRODE JUSTICE**

### **Appellate judges should dream of Kipling**

**February 7, 2007**

**FOR several decades judicial avant-gardism, manifested in the imposition of inadequate sentences, has corroded Canada's system of criminal justice.**

The judiciary, as an independent, appointed branch of government, must be constantly reminded that its first duty, shared equally with members of parliament, is preservation of order and public safety to enable us to go about our lives without constant fear of mayhem and burglary.

Ordinary law-abiding citizens are entitled, indeed are obliged, to be vociferous in demanding that the sentencing of criminals, in totality, become what it once was, a prime deterrent of physical violence and property crime.

The late Denny Boyd, a fine journalist and passionate Vancouverite, spoke volumes when in December 2004 he said, "What you get outside our courts are shocked people, relatives weeping, shouting, wailing about what they see, with emotion rather than objectivity, as injustice is perpetrated by a soft, lenient court system that seems lacking in spine and concern for the victims of crime, the families of the dead."

Today, in Greater Vancouver, the extent of public disorder and criminality, including street gangs, is reminiscent of London in the late 18<sup>th</sup> and early 19<sup>th</sup> Centuries.

On Feb. 5, the Province reported that "two men were sent to hospital with stabwounds after being attacked by a group of youths on Kingsway near St. Georges Street at 8:45 p.m. on Saturday (Feb.3).

Just a week ago, the Province published a warning from RCMP Cpl. Roger Morrow, of the Surrey Detachment, to residents of Surrey, Richmond and Burnaby "about groups of roving, hooded hoodlums who have been terrorizing residents ... (with) at least seven (attacks) in December and January. They are targeting just about anybody – teenagers, women, men. And the injuries – one lady had a serious head injury."

In his book *At Day's Close: Night in Times Past*, Roger Ekirch described London's predicament in the early 19<sup>th</sup> Century.

"Whether or not perceptions of mounting crime were always correct, at stake, in the view of civic functionaries, was the sovereignty of the public arena. Who, at night should rule: thieves, prostitutes, and other riff-raff, or instead their natural superiors, including members of the burgeoning middle class.

"Authorities in London ... took a variety of steps to impose greater discipline. ... The late hours kept by alehouses became a favourite target for government regulation. ... The powers of watchmen and constables were increased.

“By 1823, nearly 40,000 lamps lit more than 200 miles of London.”

Ekirch described the ongoing introduction of gas street lighting as a significant factor in the reduction of crime and for emphasis relied on Jane Austen’s 1817 novel, *Sanditon*, in which one of her characters says “gas was doing more for the prevention of crime than any single body in England since the days of Alfred the Great.”

In 1829, with lighted streets and Home Secretary Sir Robert Peel’s newfangled Metropolitan Police, the citizens of old London, beset for centuries by thievery and thuggery, had their first taste of disciplined behaviour in a civil society. Peel’s instincts were right: that to curb crime, a criminal justice system must consist of four sequential components: police, prosecutors, judges and jails; synergetic links in a law-and-order chain.

In a letter to the prime minister, Peel’s description of London in 1829 fits Greater Vancouver today.

“I want to teach people that liberty does not consist in having your house robbed by organized gangs of thieves, and in leaving the principal streets of London in the nightly possession of drunken whores and vagabonds.”

I sit at the keyboard, glancing over at an inches-deep accumulation of clippings from our local and national newspapers, all dealing with crime in Greater Vancouver, and I wonder – do any of our judges have a similar pile of reality on their desks?

Not likely.

Rampant crime in Greater Vancouver carries with it a Russian-roulette risk of victimization. The odds are you won’t be victimized, but if you lose the gamble you will have to endure physical, mental and financial punishment that eclipses the criminal’s sentence.

To get your dander up I give you a few thunder-and-lightning headlines from the Vancouver Sun published over the past several years: Property Crime Rate Worst After Miami – We’re The Bank Robbery Capital of Canada – Vancouver Is Canada’s Drug-warehouse Distribution Centre – A City’s Illegal Guns: A Real Firestorm – U.S. Says Vancouver Is A Hub For People Smuggling.

On Dec. 6, 2006, the Sun published unvarnished truth on its front page concerning the festering sore of Skid Road: *Our Four Blocks of Hell*, and over the accompanying story gave us another dose of reality – Welcome to hell: Enter at own risk.

Beginning in 1983, one by pitiful one, sixty-five of the most vulnerable of women, pathetic drug-addicted street prostitutes, vanished from the streets of Skid Road, kidnapped and sadistically murdered by one or more psychopaths.

On Nov. 1, 2002, Dateline NBC aired *The Vanishing*. It included the following commentary: “It’s hard to fathom that in the midst of this 21<sup>st</sup> century Pacific Rim paradise you could find a 19<sup>th</sup>-Century Victorian hell such as this – known mundanely as the Downtown Eastside. Prostitutes nearing withdrawal lean against car windows and hustle desperately for business ... heroin and rock cocaine are openly and aggressively pedaled on the street ... addict shoot up in back alleys huddled near doorways and dumpsters.”

Again I look at the pile of clippings on my desk and realize that it is a paper trail leading to a monolithic court of appeal.

In the 1950s and '60s hardnosed prosecutors and judges, including appellate judges, reacted forcefully to the onslaught of drug trafficking and major crime.

Today's trial judges and front-line prosecutors seem indifferent to our version of crime-ridden old London. Notional punishments are sought and meted out and criminals shrug them off as a reasonable price to pay for drug trafficking, stealing and violence.

One explanation for this sad state of affairs may be the fact that British Columbia's appellate judges have stipulated sentencing guidelines that trial judges must adhere to.

Consider the too-often perpetrated offence of aggravated assault that carries a maximum sentence of 14 years. So far as I can determine, the approved range is probably five to eight years. No matter how horrific the violence – and though judges may talk tough – within-the-range jail sentences, softened by credit for pre-trial custody and early parole, have little or no relationship to the plight of victims.

The whole process corrodes criminal justice and the corrosive effect is even greater when judges rubber-stamp plea-bargained sentences.

I leave you with a dream: that one day, in a moment of torpor, an appellate judge will fall asleep during a sentencing appeal and be confronted by the wild-eyed ghost of Rudyard Kipling who, with fire and brimstone, reads from his poem Tomlinson.

Jolted awake, but still under Kipling's spell the judge shrieks:  
"Tomlinson! For the sin ye do by two and two ye must pay for one! And may the devil be yer keeper!"

Wallace G. Craig – [wallace-gilby-craig@shaw.ca](mailto:wallace-gilby-craig@shaw.ca) – North Shore News – February 7, 07