

Sunday April 14, 2013

When a guilty plea is a cop-out

By Jim Taylor

The verdict was described as a first in Canadian justice – Vernon lawyer William Mastop, 46, was sentenced to a year in jail for collaborating with members of a local criminal gang known as “The Greeks.”

By pleading guilty, Mastop saved the over-burdened justice system from producing parades of witnesses, mountains of documents, and who knows how many days or weeks of court hearings.

I’ve watched enough re-runs of *Law & Order* to recognize that plea bargaining is inevitable in our justice system – perhaps in any justice system. Let’s make a deal, it says. You save us the cost of a lengthy trial; we’ll let you off with a lighter sentence.

A guilty plea may serve the needs of the justice system; I question whether it truly serves justice.

Opportunity for cover up

We hold public trials for a purpose. Contrary to some conservative viewpoints, it is not simply to punish suspected wrongdoers – secret trials and firing squads can do that far more efficiently. The purpose of a public trial, I argue, is to reduce the likelihood of the same thing happening again.

Execution does that, of course. So does imprisonment, although less permanently.

But that solution deals only with one offender. The exposure of a public trial has an educational function, as well as a punitive one.

Punishing Kenneth Lay in private, for example, would do nothing to deter some other CEO from pulling another Enron.

But effectively, that’s exactly what a guilty plea achieves. It buries the evidence that might have led to cleaning up a flawed system.

Sub-Lt. Jeffrey Paul Delisle, an intelligence officer in the Canadian Navy, pleaded guilty to three charges of selling security information to a foreign power. Any potentially embarrassing information about how well the Canadian intelligence system works – or doesn’t work – came off the table.

The Navy will conduct its own examination, of course. But even if Delisle spills all he knows about his foreign contacts, don’t expect any internal probe to conclude that the Navy might value gold braid over intelligence.

Documents all sealed

To my mind, however, the most glaring example is the B.C. Rail trial.

In 2001, Gordon Campbell promised never to sell B.C. Rail, 2330 km of rail line running from Vancouver through Squamish to the central and northern interior of the province.

And it’s true, he didn’t actually sell Canada’s third-largest railway. He leased it to Canadian National Railways. For \$1.1 billion. After tax breaks and refunds, around \$500 million, less than two years’ worth of railway revenues at the time. For 990 years -- 43 years longer than the entire history of England since William the Conqueror invaded in 1066.

Then the RCMP, while investigating a drug ring, heard of potentially shady dealings by government agents. (I’m simplifying the saga considerably.) The RCMP raided the legislature in 2003, and took away truckloads of documents.

The provincial government appointed a Special Prosecutor, William Berardino. It paid him \$10.7 million to investigate the case, while at the same time spending the next seven years trying to make sure that he could not use any of those government documents to prosecute the alleged criminals because disclosure might implicate the government ministers who had hired the prosecutor to bring the guilty to justice in the first place.

Did you follow all that? Does it sound as if the government might have had a conflict of interest?

Because of all the preliminary jousting, mostly hidden behind a publication ban, the actual trial didn't start until May 2010.

Five months later, two defendants – David Basi and Robert Virk – unexpectedly entered guilty pleas. A third defendant, Aneal Basi, had his charges dropped.

Slam! Case closed!

The crooks have been found guilty. All's well that ends well.

Except that all three had their legal costs -- \$6 million – aid off by the province. And any evidence that might have proved – or disproved -- indiscretions by cabinet ministers or senior civil servants never got brought into the open. Boxes of documents were sealed, perhaps forever.

Privileged positions

Speaking of conflict of interest, spare a flicker of sympathy for lawyer William Mastop. His profession requires him to make every effort to get his clients acquitted. Half-hearted efforts constitute malpractice.

Perhaps he thought that sharing information from police warrants with his gangster clients fell under that umbrella. Except that they used that privileged information to track down and murder some suspected informants.

Are lawyers really accountable for the sins their clients commit? If so, I suspect a lot of other layers might also face jail.

By pleading guilty, Mastop may have saved the lawyers' union from examining their own sanctity.

I lived in Ontario when that province stripped confidentiality rights from doctors, priests, psychologists, and other professionals. Courts could compel them to reveal the content of their private counseling discussions.

The only profession retaining client confidentiality was – no surprise – the one that drafted the new law.

That too feels like a conflict of interest.

In some circumstances, a guilty plea can be a cop-out.

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YOUR TURN

It seems a long time ago now but the last Sharp Edges column with any substantive content was the Easter Sunday column, in which I mused about the Resurrection from the perspective of the donkey. The next day, I fell off that #\$\$^&* wall and would have welcomed a miraculous opportunity to rise again!

Wayne Irwin wrote, about that donkey column, “Brilliant! Thank you!” Similarly, Vern Ratzlaff called it, “Powerful and evocative--many thanks.”

Like me, Stephani Keer revealed a soft spot for those humble donkeys: “When I was in Israel in the 1980s, on a media trip, I looked into the soft brown eyes of many donkeys. Literally, because donkeys are still used in the cities as well as in the country. I would have traded our ‘lightly armoured’ Benz, prevalent in Israel, for a donkeyback ride or a ride in a donkey-drawn cart in a second, although our driver also had gorgeous eyes. I have a photo of a donkey resting against our car ... I looked at the car with the armaments I found so frightening and grinned when I said ‘What would Jesus do?’”

And Fra Ota recalled professor Leif Vaage at Emmanuel College once doing “a sermon from the viewpoint of the great-great-great-grandson of the original donkey -- including how their lot in life had improved since the original humble donkey carried Jesus. The donkey telling the story was quite a snob, as I recall...”

Since then the mail has been almost entirely Get Well Soon wishes. My computer tells me there were 61 of these (not counting the mail that came in from the Soft Edges list) and I'm grateful for every one of them. Thank you all...

TECHNICAL STUFF

This column comes to you using the electronic facilities of Woodlakebooks.com.

If you want to comment on something, send a message directly to me, at jimt@quixotic.ca.

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You can access several years of archived columns at <http://edges.Canadahomepage.net>.

I write a second column each Wednesday, called Soft Edges, which deals somewhat more gently with issues of life and faith. To sign up for Soft Edges, write to me directly, at the address above, or send a note to softedges-subscribe@quixotic.ca

PROMOTION STUFF...

If you know someone else who might like to receive this column regularly via e-mail, send a request to jimt@quixotic.ca. Or, if you wish, forward them a copy of this column. But please put your name on it, so they don't think I'm sending out spam.

For other sources worth pursuing, try

- David Keating's "SeemslikeGod" page, www.seemslikegod.org;
- Alan Reynold's weekly musings, punningly titled "Reynolds Rap" -- reynoldsrap@shaw.ca
- Isobel Gibson's thoughtful and well-written blog, www.traditionaliconoclast.com
- Wayne Irwin's "Churchweb Canada," an inexpensive service for any congregation wanting to develop a web presence, with free consultation. <http://www.churchwebcanada.ca>
- Alva Wood's satiric stories about incompetent bureaucrats and prejudiced attitudes in a small town are not particularly religious, but they are fun; write alvawood@gmail.com to get onto her mailing list.
