

1 MS. AITKEN: You'll see, from Mr. Conley's
2 record, his record dates back to August of 1984. His most
3 recent conviction is September 15th of this year for
4 assault. Your Honor will see that he has three related
5 convictions for assault. First, in January of '86 he
6 received a hundred dollar fine, and in April of '88 he
7 received a 45-day imprisonment for assault causing bodily
8 harm, and he was just recently convicted in Justice of the
9 Peace Court for assault and received 14 days imprisonment.
10 That offense that he was just sentenced on related to an
11 incident that occurred on May 26th of this year. I can
12 advise Your Honor as well that Mr. Conley has been in
13 custody since this incident.

14 He appeared in Territorial Court on August the 26th and
15 entered his guilty plea and consented to remain in custody
16 -- pardon me, I believe there was a show of cause hearing,
17 and he was detained, and he's been in custody since that
18 date.

19 A presentence report has been prepared, and I'm not
20 sure if Your Honor has had an opportunity to read that.

21 THE COURT: I have.

22 MS. AITKEN: It would appear from the
23 presentence report that it's clear that alcohol is a problem
24 for this accused, but that he has appeared not to have
25 recognized his problem. He apparently -- it states that
26 he's considered attending Alcohol Anonymous meetings, but
27 feels that he doesn't have a problem. I suggest it's clear

1 from that report that he does have a problem.

2 I note that the writer of the report indicates that Mr.
3 Conley is not suitable for probation, that he fails to
4 report and fails to meet conditions.

5 I'd suggest clearly that a period of incarceration is
6 required here, and I suggest it should be a fairly lengthy
7 period of incarceration. This man has appeared in Court
8 before for violent-related offenses. I would suggest he has
9 been treated quite leniently in his past, and it's clear
10 that that has not deterred him from continuing to abuse
11 alcohol. It's clear when he does abuse alcohol that he
12 changes his disposition. He becomes violent. And as we've
13 seen here, a very serious assault occurred.

14 It would appear that Mr. Wilcom (phonetic) did not do
15 anything to provoke this incident. He was merely doing his
16 job, asking Mr. Conley to leave the establishment as he was
17 getting into trouble with someone else and, unfortunately
18 for Mr. Wilcom, this incident occurred, which is going to be
19 a factor of Mr. Wilcom's life for the rest of his life
20 because he's lost of the sight of that eye it would appear.

21 So, I would be suggesting, in view of the serious
22 nature of the offense itself, in view of Mr. Conley's
23 previous record for related offenses, that a lengthy period
24 of incarceration is required to deter Mr. Conley himself, to
25 deter others, so that others will know that these sort of
26 offenses are treated seriously by the Courts, and to protect
27 persons in this community from having to suffer harm such as

1 Mr. Wilcom had to on this occasion.

2 THE COURT: Thank you, Miss Aitken.

3 MS. AITKEN: As well, Your Honor, I would
4 suggest a Section 98 (1) order, of course, is mandatory in
5 these circumstances.

6 THE COURT: I'll hear from Defense counsel.

7 MS. LILLEGRAN: Yes, Your Honor. Mr. Conley is
8 quite a young man at 22 years of age. The presentence
9 report refers to, on Page 5 at the top, an incident, a car
10 accident that occurred when Mr. Conley was 18, which
11 resulted in head injuries requiring a metal plate to be
12 inserted into his skull. From that time, he started to
13 develop epileptic seizures, which appear to be exacerbated
14 by the consumption of alcohol, which appears to be much
15 lower. Mr. Conley's offenses would tend to bear that out,
16 that his experience with alcohol is worsening.

17 Finally, at the time of this offense, he was employed
18 by Kenting Drilling, and he was making a very good wage. He
19 was working as a roustabout -- a crane operator, pardon me,
20 and he was making approximately \$3,000 a month. That's to
21 support himself and his common-law spouse. Of course, he's
22 since lost that employment. He had been planning relocating
23 to Grovedale, Alberta, in speaking with his father, who
24 lives there on a farm. Grovedale, Alberta, is close to
25 Grande Prairie. It's a northern community. And what Mr.
26 Conley would be doing is he and his common-law spouse would
27 be moving there, and work on the farm, which is a very

1 healthy, outdoor kind of life.

2 Mr. Conley has, although it's not set out in the
3 presentence report, attended some A.A. meetings last year,
4 but not on a regular basis.

5 Mr. Conley was certainly drinking excessively that day,
6 and had been drinking since the early afternoon hours with
7 his common-law wife. And speaking to him and considering
8 the circumstances, it would appear that certainly Mr. Conley
9 never intended to cause the harm to Mr. Wilcom that
10 resulted. It's a case of an extremely unlucky punch, but
11 it's results were very, very serious. He certainly pled
12 guilty at the earliest opportunity -- the offense date is
13 the 24th of August -- and has accepted responsibility
14 quickly for his action.

15 He is a young man. He does, and the presentence report
16 bears this out, have the ability to work and be a good
17 worker. He lacks controls in his life; the ability to
18 control his behaviour when problems or frustrations arise.
19 He abuses alcohol as opposed to dealing with them. I note
20 there is a mention he would benefit from counselling.

21 But it would appear that he has a reasonable work
22 history for someone of his age. Prior to obtaining the job
23 at Kenting Drilling, he worked '86 and '87 off and on for
24 the Esso station here in Inuvik. He worked for Kenting
25 Drilling in 1985 and Forestry in '85. As well, Shell in
26 '85. So, he has a pretty good employment history for
27 someone of his age. And he obviously is not a person that

1 one should consider locking up and throwing away the key.

2 I'd be asking Your Honor to take into consideration the
3 fact that a lengthy gaol term at this point -- I presume --
4 I think my friend was probably referring to general
5 deterrents as relate to this. I know Mr. Conley, from my
6 conversations, is individually deterred. A general
7 deterrent is obviously a consideration because assaults by
8 patrons being ejected from bars for unruly behaviour often
9 results in fights, and that's certainly to be discouraged.
10 But Mr. Conley here, I think, never in his wildest dreams
11 would have thought he would cause that kind of injury to Mr.
12 Wilcom. It certainly wasn't his intention. However, he
13 still has to accept responsibility for his actions.

14 He did have what appeared to be a good future. His
15 father is very supportive of him, and they have not be able
16 to see much of each other due to the geographical distance.
17 But he does have a life planned for himself that he feels
18 would be a good, positive one for both himself and his
19 common common-law spouse. His common-law spouse also spoke
20 to me and indicated she's very supportive of Mr. Conley, and
21 she's willing to take part of in any alcohol programs as
22 well, along with Mr. Conley. She cares for him very deeply,
23 and would provide whatever support that she could.

24 Those are my submissions.

25 THE COURT: Thank you.

26 I want to comment on the facts briefly. Of course, the
27 offense is causing bodily harm, and I've learned from the

1 summary that Mr. Wilcom, as a result of this unprovoked
2 attack upon his person, has lost the sight of his left eye.
3 And I guess there may even have been a point where it was
4 questionable as to whether or not they were going to save
5 the eye at all, and there may still be some question on that
6 very point.

7 But as a result of the behaviour of the Defendant, Mr.
8 Conley, Mr. Wilcom has been left with a permanent
9 disability, and that's certainly -- on the scale of
10 seriousness, would range, I would guess, fairly high as
11 opposed to a fracture, which can be repaired and returned to
12 its original condition, as compared to the cut that can be
13 sutured and returned to its original condition. We have a
14 situation where this man is left, as I said, with a
15 permanent disability whereas before had the benefit of two
16 good eyes and now left with only one.

17 Touch upon the offender. At least three prior -- or
18 three prior convictions involving an assault upon a person.
19 A number of other convictions, which indicate a disregard
20 for the law.

21 There was a predisposition report compiled, and as I
22 indicated at the outset, I read same. But I want to refer
23 you, in particular, to the last paragraph on the last page:

24 "In the recent past the subject was on
25 probation, and the prognosis of the probation
26 officer was that he was unsuitable for
27 probation. The problem is that he failed to
report accordingly and meet the conditions
appropriately. The subject appears to lack
responsible motivation for plans about his
future. As a result, the subject would be a



1 candidate for a period of incarceration where
2 he would get some help for his alcohol
3 problem and provide a period of time for him
4 to develop his plans for his future."

5 That tells me that this individual has an attitude
6 problem. And the report of this Miss McDonald (phonetic),
7 which I assume was objective, her conclusion is that this
8 individual should be the subject of a custodial term.

9 Now, in addition to looking at the offense and the
10 offender, I'm guided by certain principals of sentencing,
11 and I'm sure those principals are familiar to both counsel.

12 Reformation and rehabilitation. Well, even though the
13 Defendant has a fairly substantial previous record, he's
14 still fairly young, and we have to assume that he can be
15 rehabilitated and returned to the community as a law-abiding
16 individual.

17 The public interest is a factor. Well, we certainly
18 can't have, can't condone this kind of behaviour where the
19 management of an establishment are exercising their right to
20 have somebody vacate the premises, and the response is an
21 attack upon his person. I think it's certainly in the
22 public interest that we try and discourage that kind of
23 behaviour.

24 Deterrence is certainly a factor. Individual
25 deterrence is particularly important because in the past the
26 sanctions imposed have not been effective, because the
27 Defendant still demonstrates a propensity towards violence
against the person.



1 General deterrence is certainly a factor because, as
2 I've already stated, we can't have people responding to a
3 request that they remove themselves from business
4 establishments with an attack on that person.

5 Retribution is something that Courts are reluctant to
6 acknowledge in the sentencing process. But I think it is
7 indeed a factor when a person behaves as Mr. Conley has,
8 that he has to incur certain punishment as a result of his
9 behaviour.

10 Defense counsel says that he didn't intend to cause
11 that injury. That may be so. He certainly intended to
12 strike Mr. Wilcom, and if death had resulted, he would have
13 been the subject of a charge of manslaughter. There are
14 lots of people who get in these similar situations, and
15 there's an altercation, and somebody ends up dying as a
16 result. This behaviour is totally unacceptable. It has to
17 be discouraged, and I'm in agreement with Crown counsel when
18 they say that a substantial period of incarceration is
19 warranted. My conclusion is that the Defendant, Bill
20 Conley, will serve two years in the correctional facility
21 for his offenses.

22 MS. AITKEN: Your Honour, I would ask that
23 Section 98 (1)--

24 THE COURT: Yes. Under Section 98 (1), this
25 being a second conviction, I believe I'm required to make
26 the order for ten years.

27 MS. AITKEN: I believe he hasn't been served

1 with Notice of Intention for that purpose, so I believe --

2 THE COURT: It's five years

3 MS. AITKEN: Five years. And it would be
4 required under under 98 (13) that there be a period of time,
5 either forthwith or within a period of time, for him to
6 surrender any firearms.

7 THE COURT: Okay, I'll make the order then for
8 five years that he's not to possess any firearms,
9 ammunition, or explosive substances for a period of five
10 years. And I don't know if it's necessary -- how would you
11 facilitate the surrendering of any device that -- he's right
12 into custody, so...

13 MS. AITKEN: A family member could take care of
14 that, if that --

15 THE COURT: Within seven days; would that be
16 reasonable?

17 MS. AITKEN: Yes, that would be reasonable.

18 THE COURT: And an order that any firearms
19 owned by the Defendant, ammunition, or explosive substances
20 be turned over within seven days.

21 (PROCEEDINGS CONCLUDED)

22 -----
23 I, Jane Heerema, Court Reporter, hereby certify that I
24 attended the above Examination and took faithful and
25 accurate shorthand notes and the foregoing is a true and
26 accurate transcript of my shorthand notes to the best of my
27 skill and ability.

Dated at the City of Calgary, Province of Alberta, this
1st day of December, A.D. 1988.

Jane Heerema

Jane Heerema
Court Reporter.