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Keeper of the King's Peace: Colonel G.E. Sanders and the Calgary Police Magistrate's Court, 1911–1932

Thomas Thorner and Neil B. Watson

Résumé/Abstract

Au Canada, les historiens n'ont pris qu'un étroit intérêt à l'évolution juridique des tribunaux inférieurs. Puisque de nombreuses questions d'intérêt public furent tirées au clair par voie d'action en justice, il est évident que l'historique du tribunal de police de Calgary et, plus particulièrement, de l'administration de G.E. Sanders nous en font connaître plus long sur l'évolution de cette fonction publique et de la société urbaine. La peur du crime, voire de l'anarchie, qui accompagnait l'affluence ininterrompue d'immigrants, prêta au tribunal de police un caractère bien particulier. Lentement au début, ensuite par étapes rapides, il se transforma en un grand rempart de la défense conservatrice.

Canadian historians have shown limited interest in the legal development of the lower courts. The history of Calgary's police court and in particular, the administration of G.E. Sanders reveals much about the development of the office and urban society since many issues of popular concern came into focus through legal action. As fear about crime and even anarchy grew with the steady influx of immigrants, the police court assumed a special significance. Gradually at first and then with rapid strides it emerged as a powerful bulwark of conservative defence.

Controversy still surrounds the relationship between urbanization and criminal activity. Recent studies of nineteenth century cities in the United States and Germany dismiss the urban environment as the cause of certain types of crime. Other works, particularly by French scholars, still adhere to the traditional Chicago school that holds the urban setting directly responsible for high crime rates.[1] Unfortunately, less interest has been expressed in the judicial agencies dealing with urban crime. Whereas some respectable work on urban police forces has appeared, little is known about court systems especially the urban lower courts where most cases were heard. This is somewhat surprising since legal historians have long speculated about the effects of judicial behaviour upon social order.

Canadian historians, unlike their American and European counterparts, have shown little interest in the debate over the impact of urbanization on crime or in the urban judicial institutions responsible for social order. Nevertheless, the questions posed by other scholars are just as relevant to Canadian urban development.[2] This study examines police magistrate Gilbert E. Sanders and the Calgary police court from 1911 to 1932. During his career, Sanders dispensed justice to more than 80,000 individuals who appeared before him charged with offences ranging from bylaw violations to capital crimes. He was unabashedly outspoken and widely quoted on subjects ranging from drug addiction to the labour movement. This regular commentary and the response it provoked reveals much about a society coming to grips with the real and imagined results of urban growth. Gradually at first, and then with rapid strides, his court emerged as a powerful bulwark of conservative defence synonymous with critical social commentary and stern judicial decisions.

The office which Sanders assumed on 1 December 1911 had been introduced to the Northwest Territories in 1886.[3] However, few appointments had been made throughout the territorial period. As late as 1899 only two police magistrates served in the prairie west.[4] Despite their small numbers, the appearance of these officials marked an important transition in the style and philosophy of the lower courts. Previously Stipendiary Magistrates, civilian Justices of the

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FIGURE 1. Colonel G.E. Sanders, C.M.G., D.S.O., 1864-1955, c. teens.

SOURCE: Glenbow Archives

Peace and officers of the North West Mounted Police (in their capacity as ex-officio Justices of the Peace) administered justice. With the exception of the Stipendiaries, most of these officials had not received any formal legal training. Operating under severe financial constraints, the territorial government had ruled out the employment of legally trained, salaried professionals for the lower courts.[5] Instead, the position of civilian Justice of the Peace, or magistrate as it was also known, remained largely a patronage appointment, with members selected from a class which had the means to carry out their duties without remuneration. However, the increasing volume of legal business in the urban areas prompted concern over the abilities and availability of these lower court officials.[6] Inevitably some other arrangement were required.

Calgary adopted the office of police magistrate in 1894, but some of the incumbents failed to provide any judicial improvement.[7] Thomas Ede, for example, pocketed fines and often decided cases while intoxicated. In 1897 Sir Oliver Mowat, then Minister of Justice, intervened and cancelled Ede's commission.[8] Sanders' immediate predecessor, Crispin E. Smith, held the office for ten years but ultimately resigned under a cloud of controversy.[9] The interregnum between Smith's resignation and Sanders' appointment created a judicial vacuum. With no official magistrate, City Treasurer T.S. Burns and an assistant reluctantly presided over the court. Their efforts brought them scorn rather than thanks from local citizens since the new brand of justice was apparently too lenient.[10] This situation was further aggravated by rising crime.

Few Calgarians had anticipated the unprecedented levels of crime which accompanied urban growth in their city between 1908 and 1911 (See Table I). Some convicted offenders had to be released simply due to inadequate jail accommodation which gave the city the unenviable reputation as a soft spot and thus attracted still more criminals to Calgary.[11] Whether the rise in crime was real or artificial is, however, a matter of some conjecture. Rising crime coincided with a vociferous moral reform campaign directed against gambling joints in Chinatown, houses of ill fame on Nose Hill, hobo jungles on the outskirts of the city and various saloons throughout the area. Furthermore, women launched crusades against alcoholism and juvenile delinquency. Some contemporaries even despaired in the belief that a "cult of ciminality" had been spawned and that wholesale anarchy was an ever present danger.[12] Yet, residents refused to recognize increasing crime as a consequence of physical growth or the urban environment.

TABLE I

Cases Before Lower Court Officials

Year	Theft	Assault	Keeper and Inmate of Bawdy House	Vagrancy	Drunk and Disorderly	Population
1907	6	23	30	4	483	15,000
1908	1	21	10	3	475	22,000
1909	219	137	15	306	1,128	29,000
1910	213	212	21	389	1,890	38,000
1911	311	194	185	323	1,895	43,704
1912	415	367	383	623	2,829	49,906

SOURCE: Returns of Calgary JP's in the Provincial Archives of Alberta; Charges before the Police Court in the Calgary Police Department's Annual Report, G.A.I. Figures for 1909 represent only eleven months, while those of 1910 represent ten months.

Naturally the police were expected to sweep the streets clean of any symbol of moral decay and all crime. Although the force never fulfilled the expectations of the moral reformers, they did respond to public pressure with greater efforts at both detection and arrest.[13] These efforts alone may have been responsible for much of the increase in recorded crime. But the police did not stand alone against the pressure of public indignation, the courts were also expected to ensure that transgressors would be suitably punished and that their sentences would serve as a visible deterrent to others. Leniency in the police magistrate's court moved some critics to recommend that the police refrain from making arrests in a murder case until the appointment of a new magistrate.[14] Thus, as concerns over crime, morality and disorder grew, the police magistrate's court assumed a special significance.

In this atmosphere of high expectations, Sanders began his term as police magistrate. As a former officer in the North West Mounted Police (N.W.M.P.) he had had extensive experience with crime and criminals. He had served against Riel, pursued Charcoal (the famed Blood Indian murderer) and supervised the apprehension of Ernest Cashel, an alleged member of the notorious Hole in the Wall gang. Despite a lack of formal legal education, there was little doubt about his knowledge of the law. By virtue of his 1887 commission in the police, Sanders had been an ex-officio Justice of the Peace. During the construction of the Crow's Nest Railway, the British Columbia government had appointed him Stipendiary Magistrate in 1897.[15] While in command of "E" Division, Sanders had acted as a magistrate in Calgary from 1896 to 1906. Lawyers such as W.W. Walsh viewed Sanders' administration of the criminal law as "exceedingly satisfactory."[16] His appointment was even sponsored by local law firms aligned with the Liberal party and under the leadership of Short, Ross and Selwood.[17]

Once in office, Sanders' attitude reflected many prejudices that he had acquired while working in the police. Until large numbers of immigrants began arriving, he had expressed little anxiety over the prospects of a peaceful society emerging in western Canada. But during his stay at Calgary in 1903, Sanders noted with disdain that rising crime rates were directly related to immigration. "The great influx of population," he wrote, "brings with it its proportion of the criminal element . . . from countries where the laws are more honoured in the breach than the observance."[18] According to Sanders, Canadian immigration officials were far too lax. More vigilance would be required to weed out undesirables since "statistics prove that a large majority of seasoned criminals convicted in western Canada came from the south (U.S.)."[19] He even suspected that American authorities were engaged in a systematic effort to direct undesirable aliens northward to Canada.

A common racist notion of the time, the propensity of foreigners to engage in crime became a recurring theme both in Sanders' early court decisions and his public speeches. He announced that the proliferation of Chinatowns meant "gambling dens, opium dens for other kinds of vice. It is absolutely necessary for the police to watch places of this kind continually to prevent white women from being spirited away and disappearing altogether and other crimes of various types being committed."[20] Frequently Blacks were objects of his wrath. Sanders proclaimed that there were "too many saucy 'niggers' parading the streets of this city, and from all indications living either by their wits or upon the avails of prostitution," "that the cells were the proper abode for many of the coloured men" and the Blacks were simply an "undesirable lot."[21] Occasionally these ethnic biases crept into courtroom proceedings. For example, Sanders felt that Jews could not be trusted to give accurate evidence under oath.[22] Public awareness of these biases lead to comic misrepresentation in the court. A perplexed Sanders noted that "Even Europeans who couldn't speak English would give their nationalities as Scotch when arraigned."[23]

At one point, Sanders conceded that foreigners were not simply more criminally inclined or violence-prone due to their native customs or ignorance of Canadian law. Environmental conditions, especially the overcrowded housing and unsanitary living conditions within Calgary's ethnic neighbourhoods could be partly to blame. He was appalled that people were "permitted to live under conditions which are contrary to the health bylaws" and argued that life in these "unsanitary hovels" could drive men and women to crime.[24] But Sanders' interest in the environmental roots of crime proved to be momentary. Far more often, his pronouncements echoed the prevailing middle class obsessions which placed the responsibility for crime upon a lack of both religion and discipline in the home.

This view was particularly apparent in Sanders' attitude toward juvenile offenders, a group which plagued the Mag-

istrate throughout his tenure on the bench. He remained firmly convicted that crime involving young offenders repeatedly took on "epidemic" proportions. According to Sanders, fifty per cent of all crimes of violence were committed by youths aged sixteen to twenty-one.[25] Thus Sanders became one of the chief sponsors of the local Boy Scout movement. He feared "to say what would become of the young men of this country unless something were done. The scout movement . . . would do great work in the community, for the movement taught boys to be patriotic, public spirited and obedient."[26]

Among the defendants who appeared in the police court, none received a harsher invective than drug offenders. Sanders offered them neither redemption nor understanding. While addressing two cocaine vendors, Sanders exploded in anger, proclaiming that he "would sooner see a man go around and murder people outright than have him peddling this sort of thing. It is apparently the greatest danger and menace against which we must contend. Once addicted to the habit, a man is never cured and is no longer a human being but a beast."[27] Yet Sanders was not alone in this belief. His admonishments echoed the more popular views of his fellow jurist Emily Murphy, who lead the anti-drug crusade of the early 1920s.[28]

In other areas of moral reform, the usually outspoken magistrate was surprisingly quiet. Though the primary targets of the morality lobby — gamblers, prostitutes, liquor offenders and vagrants — generally received harsh penalties in the police court, Sanders was neither a staunch supporter nor a mouthpiece for the cause.[29] In 1912 his position was tested in the "great ice cream case." Alexander Fundas, a local merchant, was charged with violating the Lord's Day Act by selling ice cream. The question before the police magistrate was whether or not ice cream could be considered food and if its sale thus contravened the Act. T.G. McDonald, medical superintendent of schools, testified that ice cream qualified as "an invaluable food containing properties capable of sustaining life for an indefinite period."[30] Even if ice cream was food, the defence claimed that it was purchased as a refreshment and not subject to the provisions of the Lord's Day Act. Citing numerous precedents, Sanders noted that the Act was "apparently an unpopular measure, and the cases already decided in other provinces provide conflicting precedents. The judges in many places have been ready to make a farce of the act, and it might be well to see what attitude this province will adopt."[31] With those words Sanders reserved judgment on this issue so dear to the moral reform lobby and he submitted the case to the provincial courts for consideration. But the Lord's Day Act continued to provide problems for Sanders. In the well publicized case of Rex v. W.H. Fairley, Sanders encountered the legal talents of R.B. Bennett who appeared for the defendant. Although Bennett's defence rested upon a legal technicality, he drew widespread attention to his allegation that the police magistrate did not understand the law.[32] In response, Sanders claimed that all he had to consider were the cases before him, and although he thought that the law was illogical, he had to follow it.[33] Not until 1925 was the law prohibiting the sale of food on Sunday finally overturned. Ironically, it was a Sanders' conviction which provided the test case quashed by Supreme Court of Alberta.[34]

When to the delight of reformers, prohibition finally returned to Alberta in 1916, Sanders expressed his displeasure. He regularly attacked the legislation, particularly its loopholes and the use of informers in its inforcement. "The whole country," he stated, "has been demoralized by this act . . . it appears as though a direct attempt is being made to satisfy the whims of the fanatic, the politican and the bootlegger and in the long run is making poor legislation."[35] Instead of creating social order, Sanders argued that Prohibition promoted disrespect for the law. Addressing his court, he asked if "some of those who are responsible for the passing of the Prohibition Act would come here and see the number of drunks."[36]

To fully understand Sanders' style of jurisprudence it would be necessary to have his written judgments wherein his underlying philosophy might be revealed. Unfortunately, lengthy written decisions were not expected of police magistrates. Instead, most sentences were summarily passed and only recorded in the magistrate's docket book or in his monthly returns to the Attorney-General's Department.[37] Nonetheless, even an incomplete portrait of Calgary's Magistrate begs some comparison with Canada's best known police magistrate, George T. Denison. From 1877 to 1921 while serving as Toronto's police magistrate, Denison acquired a reputation for speedy deliberations and a unique view of the law.[38] A sworn foe of all lawyers who employed legal technicalities, Denison rarely allowed a point of law to be raised. "I never follow precedents unless they agree with my views," he noted in his autobiography.[39] He remained a staunch defender of the punitive nature of the criminal code but also fined offenders according to their status.[40] Particular contempt was reserved for offenders from the upper classes whom Denison expected to act as foundations of society.[41] Noted for his witicism, Denison drew large audiences to his daily hearings.[42]

Not only did the careers of Sanders and Denison overlap chronologically but both men shared similar attitudes. Sanders was not adverse to placing his own stamp on decisions. In one revealing case he observed that "I do not know what a supreme court judge might do, but of course I am sitting as a police court magistrate and it is my duty, I think, to take an ordinary common sense view of the law. I do not mean to get into subtle distinctions, but to view the law in a broad way.[43]

Like Denison, Sanders defended the punitive nature of the criminal code. This was particularly evident in Sanders

apparent penchant for prescribing the whip either as an appropriate form of punishment in itself or as a supplement to other provisions of a sentence. Judging from the case commentary in the local press, the allegedly salutary effects of the lash were applied to those convicted of robbery, common assault and even vagrancy.[44] At one point, the editor of the *Calgary Herald* concluded that the lash figured prominently in the majority of Sanders' cases.[45] Sanders' belief that punishment should serve as a deterrent was directed particularly toward impressionable youths.[46] He remained confident that maximum penalties would be of far "greater benefit to [them] than if [they] were let off lightly."[47] His objective was to provide both a lesson for the individual and an example for the community. With one young offender, Sanders tersely concluded that he did not care about his previous good character or what his parents had to say on his behalf, he was determined to make an example of him.[48] As his years on the bench passed, Sanders never relented in his efforts to deter juvenile delinquents through the imposition of harsh sentences. In an almost righteous spirit he even denounced fellow magistrates who fell short of this standard. In 1919, for example, he observed "that great harm was being done by juvenile courts, which, by liberating boys on parole without punishment effects no deterrent whatever. Sympathy too often takes the part of common sense."[49] Later in 1930 he added that "weak kneed methods of the administration of justice were largely responsible for the wave of juvenile delinquency and the general breakdown in the moral fibre across the continent. . . . Many people seem to feel that I should always be lenient with young men — possibly take them up here to the bench and pat them on the head like Judge Lindsay."[50] Clearly Sanders was not an advocate of Lindsay's school of "progressive" rehabilitation. Even during the worst years of the Depression Sanders' belief in the deterrent effect of harsh penalties remained unaltered. When a woman on relief with a dependent child appeared before him charged with shoplifting, Sanders rejected any mitigating circumstances as a reason for leniency. He simply told her that "shoplifting was a prevalent crime which must be controlled."[51] His focus, like Denison's, remained on the overt criminal act and not the social context or the individual's motives. Yet Sanders, the usually unyielding disciplinarian, was not without his sympathetic moments. To commemorate his appointment to the police court where on 3 December 1911 he was greeted with salutes from a docket of vagrants and drunks, he acquitted every offender appearing before him.[52] Likewise, a general jail delivery for drunks became an annual event in the police court on the King's birthday.[53] In the Sanders' style, even the opening of a new courtroom could be suitably christened with a dismissal or two.[54]

Like Denison, whose courtroom witicisms and pronouncements gained wide coverage in the Canadian and American press, Sanders used the bench as a public forum from which he expressed his views on issues both relevant and irrelevant to the cases before him. In some instances, Sanders offered individuals advice concerning their occupations. For example, in the David Champaigne assault case, Sanders observed that, "A bartender occupies a unique position and his ability to mix drinks is not half as important as an ability to maintain his temper. A bartender fills a man with liquor and when that man gets noisy or even abusive the bartender has no right to physically resent the abuse. He must realize that he or others of his profession, doled out the *raison d'etre* of the man's condition. A good bartender is a mild mannered man who can stand the gaff of his patrons without losing his temper."[55] In 1919 he also provided advice for the medical profession whom Sanders also felt had a duty to tell men when they had had enought to drink.[56] When Sophie McClusky, a local organizer of the unemployed, appeared before the police magistrate to lay a charge of non-support against her spouse, Sanders replied, "What should be done with the like of you, and some of the others who are seeking to organize such agitating bodies is to take you all down to the river and give you a good ducking."[57]

Of course, a man with Sanders' position and temperament attracted adverse commentary. Local Jews declared that he exhibited prejudice and that they did not receive a fair trial in his court.[58] The Calgary Trade and Labour Congress, meanwhile, objected to his censure of their activities.[59] But rarely was criticism directed against Sanders' interpretation of the law. Aside from R.B. Bennett's attack, only the 1914 Cardell case (in which a Sanders' conviction was eventually overturned) caused critics to observe that the magistrate "was hardly qualified to define so fine a point in law."[60] Meanwhile, on controversial subjects such as the Liquor Laws, his utterings often sparked public debate. One Calgary resident wrote to Sanders' superior asking:

> Can it be that a man set to administer a law is allowed with impunity to offer such public criticisms both on the law and the Government that employs him and that while he is sitting on the bench? There is no doubt whatever that the Magistrate is anxious to see the law changed and is taking every opportunity he can to cast aspersions upon it so as to arouse the opposition of the people to it . . . . It surely is little wonder that so many of the criminal class are learning to regard the law with disrespect.[61]

The *Albertan* also took exception to Sanders' commentary:

> (when) he from the bench tells a woman who is seeking justice from him that she and people like her should be taken down to the river and given a good ducking, he is encouraging lawlessness and inciting a mob spirit. The last thing we want in this country is precisely what he is advising, a departure from legal and constitutional methods.[62]

Opinions varied about the kinds of sentences that Sanders imposed. Letters to the Attorney General's Department mentioned his harshness with first offenders but also complained of leniency and favouritism.[63] Overall, his strong

views on corporal punishment provoked very little public debate. An exception was the 1914 Boardman case. Charged with assaulting and robbing a seventeen year old girl, Harold Boardman was sentenced to six months hard labour and twenty lashes. Imposition of the lash prompted both praise and sharp indignation. What some saw as the "cowardly nature" of Boardman's attack brought support for the magistrate.[64] Support also came from Edmonton. Commenting on the Boardman sentence, the *Edmonton Bulletin* prophesized that:

> If magistrates generally would prescribe the same remedy, and in generous doses, there would be fewer hold-ups and less thievery. Physical pain is the one thing that can induce regret in the minds of the average crook. . . . What occupants of the bench need to remember is that when they show mercy to a robber they put a premium on robbery, and a penalty on honest work as a means of getting a living. The lash will make stealing as uncommon as the rope has made murder; but not unless it is the punishment commonly imposed for the crime.[65]

But many letters which appeared in the *Calgary Herald* were far from laudatory. One warned of the "Return of the Dark Ages" and believed that Sanders had "the ancient Romans and brutal Spaniards bested when it came to brutality." Another angry citizen recommended that "If we do not soon hear that the lash sentence has been withdrawn, it will be time to call the citizens of Calgary together to an indignation meeting."[66] Much of the criticism, however, was not directed at the use of the lash itself, but the unique circumstances of the case. Though legally an adult at age eighteen, Boardman was still generally regarded as a "mere boy" who deserved leniency.[67]

Against the periodic criticisms ran a strong current of support for the magistrate. The community in general welcomed his appointment and as the years passed, he never failed to fulfill the expectations of his supporters.[68] John Blue, a compiler of local biographies, recordered that Sanders' decisions were "strictly fair and impartial and his course as a public official has been characterized by the highest integrity and marked fidelity to duty."[69] Sanders' reappointment in 1925 was well received. The *Albertan* reported that:

> The people of Calgary have complete confidence in the magistrate. Magistrate Sanders is not as learned in law as some magistrates, but even in legal knowledge, he is not frequently wrong. But he uses good, hard, common sense, in a practical sort of way. He never wavers from what he thinks is right, even if the heavens should fall. This is the first essential of a good judge.
>
> Sometimes we do not always agree with his little dissertations on current affairs, his criticism on methods of life, his fulminations against some later day innovations. His references are always interesting even if his sermonizing is not always what some think are right. The morals he draws, however he may do it, are generally sound.[70]

Similarly, on his return from service in World War I, the local bar association paid homage to the years of public service that Sanders had provided.[71] Naturally, the greatest tributes were reserved for his retirement in 1932 and his death in 1955. A retirement scroll from the Calgary police department emphasized Sanders' sense of public duty and justice. Both lawyers and policemen felt "It would be difficult to find a man who would administer justice so fairly, honestly, and without fear as the retiring magistrate had."[72]

If the public reaction to Sanders was mixed, so too was the official. Relations between Sanders and the Alberta Attorney-General's Department were generally amicable. The government never failed to reappoint him or express its respect for his work. Nevertheless, Sanders' statements from the bench occasionally embarrassed the department. In 1923, for example, the magistrate criticised the use of informants in liquor cases which brought a flood of complaints. In response, the Attorney-General, John Brownlee, cautioned Sanders that these kinds of remarks were "entirely unnecessary and irrelevant to the case before your Court. Whatever your personal opinion of the Liquor Act may be, it is on the Statute Books for citizens to obey and Magistrate to enforce and it must be quite apparent to you that remarks such as quoted not only foster a disregard for law, but among those who believe in the law arouses doubts as to your fair-mindedness and impartiality in hearing cases under the Act."[73] Regretting the effects of his comments upon the provincial government, Sanders defended his duty to speak out "on account of instances occurring which are quite contrary to the spirit of British justice and which tends to bring the administration of the law into disrepute. . . ."[74]

The Liquor Act remained a bone of contention between Sanders and his superiors. Objecting to the provisions of the new 1924 Liquor Control Act, Sanders continued to fine liquor offenders $5 instead of the new $20 rate. Apparently the new legislation provided a general penalty for all liquor offences, without "giving a Magistrate some discretion in these cases and some opportunity of being fair and just if he so desires."[75] Furthermore, Sanders argued that a $20 fine would result in "sending a whole lot of otherwise decent men who are poor to prison."[76] But unlike a Denison who would have fined offenders as he saw fit, Sanders provided a lucid argument which raised doubt over whether or not the new legislation had indeed repealed the previous provisions concerning intoxication in a public place.

A similar controversy erupted in 1914 over Sanders practise of charging drunk and disorderly offenders under the Calgary by-laws, instead of the criminal code. Once again it appeared as if Sanders disregarded the law in favour of

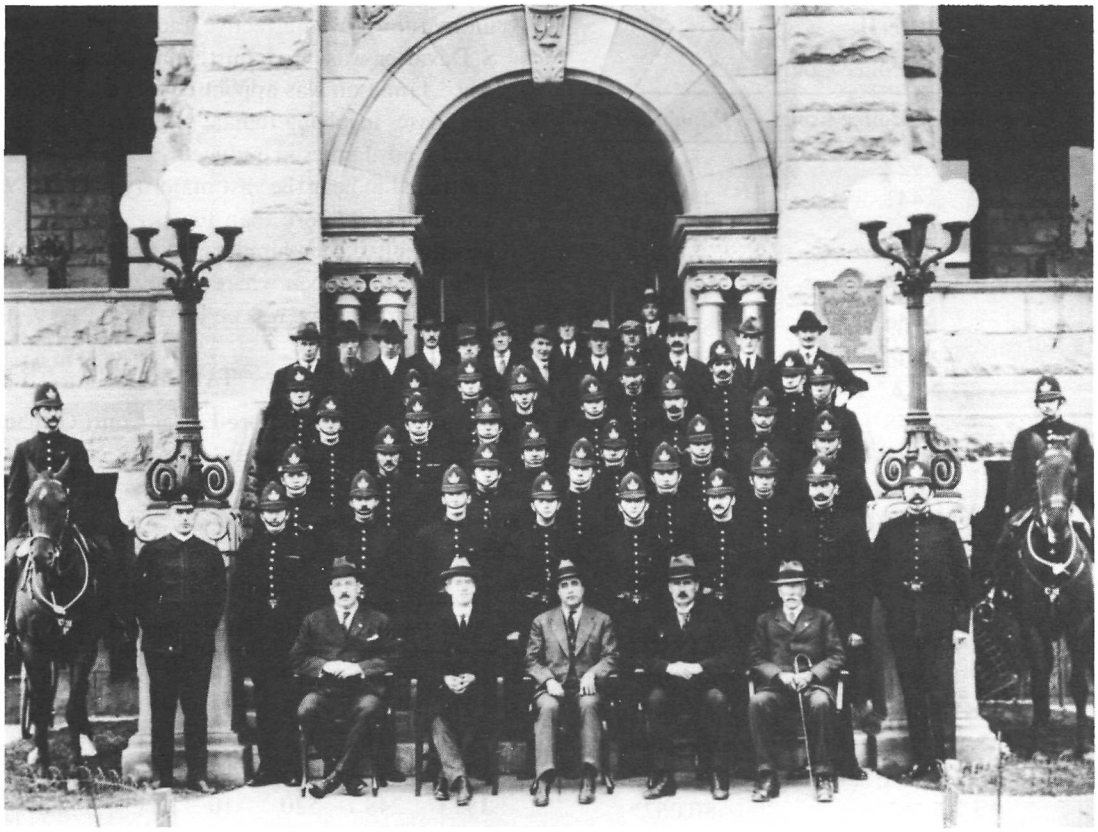

FIGURE 2. Group of Calgary city police at City Hall, 1919. Colonel Sanders seated on the right hand end of the first row.

SOURCE: Glenbow Archives

greater leniency. However, in this instance he was convinced that the law allowed no other course:

> The informations are sworn by the city police and if they charge a man who is drunk and disorderly with being drunk and incapable, thus making it a charge under the By-Law, I cannot very well see how I am to prevent it. The offender, if any evidence is taken which is very seldom, would be proved to be drunk and incapable of looking after himself; therefore, it was necessary to arrest him under the By-Law. The evidence might also disclose that he was disorderly, a condition which . . . goes with drunkenness, but could I after having fined him for being drunk and incapable under the By-Law, have him recharged under the Criminal Code for causing a disturbance by being drunk?[77]

Despite the argument, both the Attorney-General's Department and the Calgary police chief concluded that Sanders was far too lenient whether it was in Liquor Act cases or criminal code offences.[78]

Like other magistrates, Sanders experienced his share of setbacks from the higher courts. In the Boardman case the ruling was appealed and whipping subsequently removed from the sentence.[79] Although the appeal court decision satisfied local discontent and discredited Sanders, Chief Justice Harvey expressed considerable respect for Sanders noting that "We would not think of venturing to criticize the sentence of the police magistrate in this case. The magistrate of any important city has so much more experience in dealing with this sort of case, than any judge can have that if he is a man of sound sense and discretion, his judgment of what is a proper sentence ought not to be lightly interfered with. Then when the magistrate has had the experience with crime as a police officer that Mr. Sanders has, his opinion is entitled to even greater weight."[80] Despite overturned convictions such as this, the police magistrate remained unperturbed and, in some instances, simply continued the same practice. In 1914 when a series of his convictions against keepers of disorderly houses and individuals living on the avails of prostitution were quashed, Sanders' simple response was "I'm going to keep on sentencing."[81] Furthermore, cases were not always overturned in the District and Appeal Courts due to judicial errors of the police magistrate. In cases where no costs were paid, witnesses received no remuneration. Thus they were reluctant to appear and the higher courts apparently took a rather dim view of cases in which the police provided the only evidence.[82]

TABLE II

Cases Before Police Court

Year	Cases Before Police Court	Population
1910	3,922	38,000
1911	5,441	43,704
1912	7,191	46,906*
1913	6,868	50,108*
1914	6,060	53,310*
1915	4,109	56,514
1916	2,636	57,646*
1917	N/A	58,778*
1918	3,775	59,910*
1919	4,123	61,042*
1920	5,090	62,174*
1921	5,057	63,305
1922	3,659	63,702*
1923	5,151	64,099*
1924	4,007	64,496*
1925	4,124	64,893*
1926	4,534	65,291
1927	5,301	68,965*
1928	6,511	72,679*
1929	8,213	76,373*
1930	7,757	80,067*
1931	6,978	83,761
1932	5,145	83,670*

SOURCE: Compiled from the Annual Reports of the Calgary Chief Constable, City Clerk's Papers, G.A.I. Population figures have been based on Dominion and Municipal censuses. Census figures produced through interpolation have been marked with an asterisk (*).

During the twenty years that Sanders presided over the police court, the population of the city almost doubled.[83] In view of this substantial increase one would have expected the number of cases before the police court to rise steadily. But cases rose only moderately, from almost four thousand in 1911 to just over five thousand in 1932 (See Table II). The annual volume of cases remained erratic, rising and falling sharply more than once during this period. In 1912 alone, the number of accused offenders jumped from fifty-five hundred to almost seventy-two hundred (See Table II). Considering that in 1912 Sanders served on the bench alone, the increased case load must have represented a prodigious amount of additional work. A request to the Attorney General for help brought no relief and the ever lengthening court sessions became more irritating to Sanders.[84] In 1911 the court convened at 9:30 a.m. and rarely required the whole day to complete its business. By 1915 the extra work demanded extended sittings and, as hearing dates were often revised, annoyance among witnesses, defendants and the Magistrate increased accordingly.[85] Finally, in February of that year, Sanders refused to extend the court hours until the Attorney-General provided him with an assistant.[86] The ultimatum proved effective and shortly thereafter, William S. Davidson was hired. Further assistance came in 1916 when Alice Jamieson was appointed as an assistant magistrate to hear cases involving female offenders. The addition of Davidson and Jamieson reduced Sanders' work load, but he continued to hear the vast majority of cases. Women seldom accounted for more than ten per cent of all offenders and Davidson had been hired on the understanding that he would only be called upon where there was an inordinate amount of work or Sanders was on leave.[87]

TABLE III

Cases Before Lower Court Officials

Year	Common Assault	Theft	Fraud	Vagrancy	Drunkeness, Drunk and Disorderly Behaviour	Keepers, Inmates, and Frequenters of Bawdy Houses and Those Charged with Procuring
1909	137	219	3	306	1,128	15
1910	212	213	5	389	1,890	21
1911	194	311	4	323	1,895	185
1912	367	415	12	623	2,829	383
1913	248	520	10	823	2,425	260
1914	289	465	44	826	1,744	421
1915	187	365	34	550	920	246
1916	123	199	N/A	266	388	103
1917	86	221	N/A	199	181	303
1918	132	274	N/A	152	263	195
1919	146	320	17	275	497	314
1920	137	303	N/A	554	814	330
1921	104	298	N/A	521	708	115
1922	113	222	115	336	403	90
1923	98	342	130	436	511	58
1924	120	270	128	385	514	34
1925	130	222	170	481	454	27
1926	N/A	N/A	N/A	N/A	389	N/A
1927	N/A	N/A	N/A	N/A	N/A	N/A
1928	135	300	229	808	693	53
1929	185	380	373	802	695	92
1930	164	443	416	795	669	134
1931	173	461	370	567	476	139
1932	132	415	281	540	376	71

SOURCE: Charges before the Police Court found in the Calgary Police Department's Annual Reports, G.A.I. Figures for 1909 represent eleven months only, while those of 1910 represent ten months.

During the mid-1920s the cases before the police court declined from their high pre-war levels. Nonetheless, the business of the court remained steady, necessitating still other reforms. Compared to the volume of cases before the superior courts, the police court continued to be the real work horse of the judiciary. In the Twenties when less than two hundred cases came before the Alberta District and Supreme

courts annually, the police court heard from four to five thousand (See Table II). But neither the remuneration for police magistrates nor the official status of the police court reflected this fact. Though painfully aware of the inequity in salaries, Sanders was reluctant to pursue the issue too vigorously. Anxious to work beyond the retirement age of sixty-five, he feared that if his services became too expensive, the government would not be inclined to extend his term.[88] Sanders was less reserved on the question of police court status. In law, the police court had no clearly defined existence. With his fellow police magistrate, P.C.H. Primrose of Edmonton, Sanders argued that the police court, unlike the superior courts, had neither been properly constituted by provincial statute nor been established as a court of record.[89] Such ill-defined authority was, of course, completely incongruous with the enormous amount of legal business that this court handled. Primrose and Sanders discussed the matter in great depth, eventually producing a draft bill for the creation of a properly constituted police court.[90] Their objective was not realized until 1971, long after both had passed away.[91]

Sanders' significance cannot be measured in landmark decisions or progressive rehabilitation schemes. The way his office responded to the city's growth and change is, however, revealing. Sanders appeared on the Calgary police court bench at a time when a serious increase in crime and general loss of confidence in the lower courts demanded a strong judicial presence. Sanders survived the high expectations set by the community and served on the bench for twenty-one years, far longer than any of his predecessors. If the Sanders style met with the community's approval, his administration fell short of the original purpose of the police court. By avoiding legal technicalities and nuances, he offered little more than what he himself described as "common sense" justice. His pronouncements on issues of the day and often irrelevant case commentary simply reinforced the image of "plain speaking" western man rather than a learned and polished legal practitioner. Ironically, it was this very quality which commanded the greatest respect. As T.M. Tweedie K.C. observed: "Perhaps it was fortunate he was . . . inclined to over-ride a mere technicality. Men who deserved punishment were generally punished."[92] But Sanders and his court represented more than a strong and visible judicial presence in Calgary. All of the evidence characterizes him as an unrepentant Tory in the classic sense. His blatant views of racial inequality, his anti-labour stand, his faith in the positive influence of punishment and religion, his sermonizing on public issues, his suspicion of political reform, his elevation of the interests of the community above the interests of any individual and even his impatience with the subtleties in the law, all support this conclusion. Whether the issue was drugs or an alarming increase in juvenile delinquency, he expressed no liberal notions of "progressive" rehabilitation. Thus, Sanders' court does not appear to have reflected any notions of urban reform or given significant recognition to the urban environment as a factor influencing criminal behaviour. Instead, at least in the case of Calgary's police court, urbanization seems to have prompted a re-assertion of basically nineteenth century Tory values.[93]

NOTES

1. See E.H. Monkkonen, *The Dangerous Class: Crime and Poverty in Columbus, Ohio, 1860-1885* (Cambridge: Harvard University Press, 1975); R. Lane, "Urbanization and Criminal Violence in the 19th Century: Massachusetts as a Test Case," in *The History of Violence in America*, ed. H.D. Graham and T.R. Gurr (New York: Sage Publishing, 1969), 445-459; T.N. Ferdinand, "The Criminal Patterns of Boston since 1849," *American Journal of Sociology* LXXIII (1967): 84-99; V.E. McHale and E.A. Johnson, "Urbanization, Industrialization, and Crime in Imperial Germany," *Social Science History* I (1976): 45-78; A.Q. Lodhi and C. Tilly "Urbanization, Crime and Collective Violence in Nineteenth Century France," *American Journal of Sociology* LXXIX (1973): 296-318; L. Chevalier (trans. F. Jellinek), *Labouring Classes and Dangerous Classes* (New York: Princeton University Press, 1972); D. Szabo, *Crimes et villes* (Paris, 1960); D. Cohen and E.A. Johnson, "French Criminality: Urban-Rural Differences in the Nineteenth Century City," *Journal of Interdisciplinary History* XII (1982): 477-501; H. Zehr, *Crime and the Development of Modern Society* (London: Croom Helm, 1976). By far the most ambitious recent work on this subject remains T.R. Gurr, P.N. Grabosky and R.C. Hula, *The Politics of Crime and Conflict* (London: Sage Publishing, 1977).
2. Some of the very limited Canadian data on this issue still remains unpublished. For example, S.E. Houston, "The Impetus to Reform: Urban Crime, Poverty, and Ignorance in Ontario, 1850-1875" (Ph.D. thesis, University of Toronto, 1974) and E.J. Jarvis, "Mid-Victorian Toronto: 1857-73 — Panic, Policy and Public Response" (Ph.D. thesis, University of Western Ontario, 1978). Also see G. Homel, "Denison's Law: Criminal Justice and the Police Court in Toronto, 1877-1921," *Ontario History* LXXIII (1982): 171-187. The best analysis of urban crime and the lower court response is found in M.B. Katz, M.J. Doucet, and M.J. Stein, *The Social Organization of Early Industrial Capitalism* (Cambridge, Mass., 1982), Chapter 6.
3. *Statutes of Canada*, 1886 cap. 49, s. 1 extended the authority exercised by two Justices of the Peace to the Police Magistrate.
4. *Canada*. Sessional Papers (C.S.P.) 1897, No. 13, Pt. V, p. 13. Also see T.M. Reynolds, "Justices of the Peace in the North West Territories 1870-1905" (M.A. thesis, University of Regina, 1978), 132.
5. Reynolds, "Justices of the Peace," 67-68. In time the jurisdiction of the Stipendiaries evolved into the District and Supreme Courts.
6. Reynolds, "Justices of the Peace," 101, 102, 132 and *C.S.P.* 1897, No. 13, Pt. V. "Annual Report of the Department of the Interior for the year 1896," 13. In the eastern provinces the office of police magistrate had, of course, existed for some time. In the 1890s a salaried police magistrate was appointed by the Lieutenant-Governor for every Ontario town with more than 5,000 inhabitants. If the population was less, an unsalaried police magistrate could be appointed. See J. Crankshaw, *A Practical Guide to Police Magistrates and Justices of the Peace* (Montreal, 1895), 14.
7. Before the appointment of a police magistrate, the administration of justice in Calgary left much to be desired. The half dozen local JP's commanded little support or respect. Critics described them as "third class men," unfit to perform their appointed duties. See *Calgary Herald* (C.H.), 20 April 1895, 2. When the law required two JP's to sit together to hear a case, the results could be disastrous. Justices Creagh and Boswell openly quarrelled about procedure. Worse still was the repeated spectacle of JP's presiding over court while intoxicated. See *C.H.*, 17 August 1893, 2; 20 April 1895, 2; and *Calgary Tribune*, 26 July 1893, 1. With respect to the appointment and selection of a police magistrate see Calgary City Council Minutes, 10 August 1894, City of Calgary Papers, Glenbow-Alberta Institute (G.A.I.) and M.

Foran, "The Civic Corporation and Urban Growth: Calgary 1884-1930" (Ph.D. thesis, University of Calgary, 1981), 73. The 1893 City Charter, N.W. Ordinance No. 30 1893, provided that council pay the salary of the police magistrate which suggests that the 1895 appointment had been anticipated for some time.

8. Charles McMillan, Calgary City Clerk to Hon. Sir O. Mowat, Minister of Justice, (5 May 1897), Calgary City Clerk's Papers, f. 39, G.A.I.
9. J.P. Jehson to Sanders (21 October 1911) and James Short to Sanders (October 1911), f. "Appointments as Magistrate," Toole Papers, G.A.I.
10. *Calgary Albertan,* 27 November 1911, 3.
11. *Calgary Herald,* 29 November 1907, 1; 21 March 1910, 1. The leniency of sentencing which resulted from a lack of jail accommodation was also found in the *C.H.,* 24 November 1911, 1; 22 July 1910, 15; 22 June 1909, 1. Calgary's reputation as a "soft spot" can be found in the *C.H.,* 23 November 1911, 1; 6 January 1913, 1; 19 November 1912, 6; 24, 26 July 1913, 1.
12. *C.H.,* 21 November 1911, 6; 28 November 1911, 6. Reference to the reform movement, see *C.H.,* 11 July 1910, 1; 16 April 1910, 1; 4 April 1913, 1; 14 February 1913, 6; 12 September 1912, 6; 14 June 1913, 1; 11 December 1911, 13; 9 June 1909, 1; City Council Minutes, 10 February 1908 and 26 February 1907, City of Calgary Papers, G.A.I.
13. Raids on houses of ill-fame were noted in the *C.H.,* 6 January 1911, 6; 15 August 1912, 12; 14 June 1913, 14; 7 October 1911, 1; 18 March 1911, 31; 2 September 1911, 24; Calgary City Police Department Annual Report 1913, 2, City Papers, G.A.I. Raids on gambling joints were recorded in the *C.H.,* 10 February 1913, 16; 5 January 1913, 4; 3 August 1907, 5.
14. *Calgary Albertan,* 27 November 1911, 3.
15. Box 3, Toole Papers, G.A.I. Also see R.C. MacLeod, *The North West Mounted Police and Law Enforcement, 1873-1905* (Toronto: University of Toronto Press, 1976), 158-159.
16. W.W. Walsh to Sanders, (14 November 1911), f. "Appointment as Magistrate," Toole Papers, G.A.I.
17. Political endorsement was crucial due to the openly political nature of the appointment. See James Short to Sanders (21 October 1911) and J.P. Jehson to Sanders (21 October 1911), both in f. "Appointment as Magistrate," Toole Papers, G.A.I.
18. *C.S.P.* 1904, No. 28 "Annual Report of Superintendent G.E. Sanders," App. E., Calgary, 30 November 1903, 55. Similar views were also found in *C.S.P.,* 1905, No. 28 "Annual Report of Superintendent Sanders," App. B, Calgary, 1 December 1904, 29.
19. *C.H.,* 23 June 1913, 6, 16. Similar evidence regarding Sanders' objection to immigration regulations was located in the *C.H.,* 4 March 1926, 10, 11; Memo to G.E. Sanders from the Department of the Interior 6 March 1914, Sanders papers, G.A.I.
20. *C.H.,* 28 February 1913, 1. In another address Sanders referred to the Chinese as a "law unto themselves," see *C.H.,* 9 April 1912, 11.
21. *C.H.,* 24 July 1912, 1; *C.H.,* 22 August 1912, 1; and *C.H.,* 11 December 1911, 20.
22. *C.H.,* 19 January 1914, 7.
23. *Albertan,* 27 December 1946.
24. *C.H.,* 7 August 1912, 1.
25. *C.H.,* 16 April 1919, 7; 19 April 1930, 19; 29 May 1929, 17. Also correspondence n.d. Sanders' papers, f. 29, G.A.I. This is a note entitled "Provincial Statistics dealing with Juveniles." The Juvenile Delinquency Act of 1908 did not remove all children from the criminal courts. Any youth over the age of fourteen who was charged with an indicatable offence was tried like any other criminal.
26. *C.H.,* 3 March 1914, 12.
27. *C.H.,* 15 January 1913, 12. Also see *C.H.,* 16 January 1913, 1; 25 July 1912, 1 and 17 January 1913, 6.
28. E. Murphy, *The Black Candle* (Toronto: Thomas Allen, 1922).
29. General aspects of the "clean city" movement were discussed by Sanders in the *New Telegram,* 4 February 1912. Stiff penalties for gamblers were mentioned in the *C.H.,* 6 February 1915, 1; 8 February 1915, 6; for liquor offenders see *C.H.,* 30 July 1912, 1; 14 June 1919, 6. for prostitutes *C.H.,* 19 June 1914, 7 and for vagrants *C.H.,* 27 August 1912, 14; 31 July 1914, 9.
30. *C.H.,* 19 July 1912, 1.
31. *C.H.,* 24 July 1912, 1.
32. *C.H.,* 20 November 1913, 18; 21 November 1913, 6.
33. *C.H.,* 21 November 1913, 1.
34. *C.H.,* 28 January 1925, 8.
35. *C.H.,* 21 June 1923, 10; 18 September 1923. Also see *C.H.,* 26 June 1923, 9.
36. *C.H.,* 3 July 1919, 6.
37. Apparently Sanders' earliest records did not even indicate the nature of the proceedings, see *C.H.,* 11 March 1913, 1.
38. Denison's speed for adjudication was noted in D. Gagan, *The Denison Family of Toronto* (Toronto: University of Toronto Press, 1973), 64; C. Berger, *The Sense of Power* (Toronto: University of Toronto Press, 1971), 18; H.M. Wodson, *The Whirlpool* (Toronto: University of Toronto Press, 1917), 26-27; Homel, "Denison's Law," 173.
39. G.T. Denison, *Recollections of a Police Magistrate* (Toronto: Morang, 1920), 9. Also in Gagan, *The Denison Family,* 64-65; Berger, *Sense of Power,* 18, and *Recollections,* 198; Homel, "Denison's Law," 178.
40. Denison, *Recollections,* 12.
41. Gagan, *The Denison Family,* 65; Denison, *Recollections,* 86-87.
42. Gagan, *The Denison Family,* 64; Wodson, *The Whirlpool,* 39.
43. *C.H.,* 21 November 1913, 1.
44. Examples of various offenders sentenced to the lash can be found in the *C.H.,* 27 August 1912, 14; 11 April 1914, 15; 27 August 1912, 6; 29 May 1912, 1; 10 August 1913, 1. During Sanders' administration the criminal code provided that whipping would take place within a prison under the supervision of a medical officer or physician. Females were not subject to the lash. Punishment by whipping under sentence of the court extended to the following offences: assault on the sovereign, male party to incest, gross indecency, choking or drugging to overcome resistance, indescent assault on a female, assault occasioning actual bodily harm to a wife or other female, indescent assault on a male, rape, attempted rape, carnal knowledge of a girl under fourteen years, attempt to obtain carnal knowledge of a girl under fourteen years, robbery and armed burglary. It should be emphasized that this list does not include vagrancy.
45. *C.H.,* 24 January 1914, 6. This claim remains hard to believe since the majority of cases before the police court were by-law violations and liquor related offences. The law in both of these areas did not include provisions for imposing the lash. Perhaps the editor was simply referring to those cases in which whipping was legally applicable.
46. *C.H.,* 17 September 1919, 6.
47. G.E. Sanders to R.A. Reid Sr., (7 May 1920), Justice of the Peace Files, 29, v. 26, Provincial Archives of Alberta.
48. *C.H.,* 13 July 1914, 1. A similar statement is found in the *C.H.,* 23 May 1919, 17.
49. *C.H.,* 17 September 1919, 6.
50. *C.H.,* 13 January 1930, 9.
51. *C.H.,* 13 June 1932, 9.
52. *C.H.,* 4 December 1911, 1.
53. *C.H.,* 3 June 1913, 1.
54. *C.H.,* 29 October 1914, 4.
55. *C.H.,* 30 July 1912, 1.
56. *C.H.,* 18 July 1919, 6.
57. *C.H.,* 3 February 1925, 11. For further Sanders commentary on the "Reds" see *C.H.,* 4 March 1920, 10.
58. *C.H.,* 19 January 1915, 7.
59. J.C. Young, Secretary of the Calgary Trade and Labour Congress to J.F. Brownlee, Attorney-General (7 January 1925), Justice of the Peace Files, 29, v. 33, Provincial Archives of Alberta.
60. *C.H.,* 25 September 1914, 2. The Cardell case centered upon the importation of foreign women for the purposes of prostitution. The Alberta Court of Appeals quashed the conviction due to a lack of evidence.

61. Name withheld to Attorney-General (23 June 1923), Sanders Papers, f. 22, G.A.I. This letter was enclosed with another to Sanders (26 June 1923) as an example of the protest letters received by the Attorney-General's Department. The matter of concern was the liquor laws.
62. *Albertan,* 4 February 1925, 4.
63. See for example, R.A. Reid to the Attorney-General (28 April 1928), Justice of the Peace Files, 29, v. 26; J.A. Wyley and J.J. Ryan series of 1925 complaints, also in J.P. Files, 29, v. 28; Provincial Archives of Alberta (P.A.A.) and *C.H.,* 14 June 1919, 6.
64. *C.H.,* 10 March 1914, 6; *Calgary Albertan,* 14 March 1914, 1.
65. *C.H.,* 9 March 1924, 4.
66. *C.H.,* 17 March 1914, 6 is filled with numerous letters critical of the decision. See also, *C.H.,* 10 March 1914, 6; 14 March 1914, 6.
67. *C.H.,* 10 March 1914, 6.
68. *C.H.,* 4 December 1911, 1; 15 November 1911, 6; *Albertan,* 15 November 1911, 2.
69. J. Blue, *Alberta Past and Present* v. III (Chicago: Pioneer Historical Publishing, 1924), 5.
70. *Albertan,* 16 January 1925, 4.
71. *C.H.,* 1 February 1919, 13.
72. *C.H.,* 14 June 1932, 9. Also see *C.H.,* 30 June 1932, 11; *Albertan,* 13 June 1932, 4. The scroll was located in the Toole Papers, Box III, f. 89, G.A.I. Regarding his death, see *Albertan,* 23 April 1955, 24.
73. J.E. Brownlee to Sanders (26 June 1923), Sanders Papers, G.A.I. A similar incident is recorded in the Attorney-General to Sanders, (22 July 1922), J.P. Files, 29, v. 29, P.A.A.
74. Sanders to Brownlee (29 June 1923), J.P. Files, 29, v. 31, P.A.A.
75. Sanders to the Deputy Attorney-General (11 August 1924), J.P. Files, 29, v. 32, Provincial Archives of Alberta. This correspondence continued with letters on 15 August 1924; 23 September 1924; 25 September 1924; and 27 September 1924.
76. *Ibid.*
77. Sanders to the Acting Deputy Attorney-General (14 May 1914), J.P. Files, 29, v. 16, P.A.A.
78. Aside from the Liquor Control Act and By-Law problems in which the issue of leniency was raised, the matter was expressed in a Deputy Attorney-General's report of 25 July 1914; J.P. Files, 29, v. 16, P.A.A. Similar views from the chief of police were recorded in the *C.H.,* 23 November 1911, 1.
79. The appeal ruling charged that the warrant of conviction was inadequate since it had not specified where the whipping should have taken place or that it should be done under medical supervision.
80. *C.H.,* 30 June 1914, 1. The filing for appeal can be found in *C.H.,* 16 March 1914, 1.
81. *C.H.,* 23 February 1914, 1.
82. Sanders to the Deputy Attorney-General (6 October 1925), J.P. Files, 29, v. 33, P.A.A.
83. Calgary Municipal Manual 1911, 1932, G.A.I.
84. *C.H.,* 5 February 1915, 1.
85. *Ibid.*
86. *Ibid.*
87. J. Blue, *Alberta Past and Present,* v. III, 5; also Sanders to the Deputy Attorney-General (12 November 1914), J.P. Files, 29, v. 16, P.A.A.
88. Sanders to P.C.H. Primrose, n.d., f. 22, Sanders Papers, G.A.I.
89. P.C.H. Primrose to Sanders (27 January 1922), f. 22, Sanders Papers, G.A.I.
90. The three page draft bill is entitled "An Act to Aid the Establishment of Provincial Magisterial Courts," f. 22, Sanders Papers, G.A.I.
91. See *Statutes of Alberta,* cap. 86, 1971, "The Provincial Court Act."
92. *C.H.,* 29 October 1914. The sound common sense of his decisions was also noted in the *C.H.,* 30 June 1932, 4.
93. A similar interpretation of Denison is presented by Homel, *Denison's Law,* 1. This view may also concur with M.H. Haller's study of Chicago from 1900 to 1930 in which he concluded that reformers "lived largely outside the world of criminal justice and often held values and expectations that were incompatible with the expectations of persons who were a part of the system." See "Urban Crime and Criminal Justice: The Chicago Case," *Journal of American History* LVII (December 1970): 619.