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Tuesday, May 1, 2007

Chair

Mr. Bernard Patry

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● (1010)

[*Translation*]

The Chair (Mr. Bernard Patry (Pierrefonds—Dollard, Lib.)): With your permission, I'd like to call the meeting to order. This is our 5th meeting on Bill C-35, An Act to amend the Criminal Code (reverse onus in bail hearings for firearm-related offences)

[*English*]

Our witnesses are, as an individual, Monsieur Anthony N. Doob, professor, from the Centre for Criminology, University of Toronto; and from the Canadian Centre for Abuse Awareness, Monsieur John Muise, director of public safety.

I want to remind my colleagues that we need to be finished by 11 o'clock. There is another committee here at 11 o'clock.

We'll start with Mr. Doob's presentation, please.

Dr. Anthony Doob (Professor, Centre for Criminology, University of Toronto, As an Individual): Thank you for inviting me to appear before you.

I'm obviously aware of the fact that this bill has received wide support from various political parties and individual politicians at various levels of government. Notwithstanding this support, I'd urge you, in your decision about this bill, to think about the message that you're giving Canadians about the operation of the justice system.

Over the past 25 years or so, I have carried out research on, among other things, the public's understanding of the criminal justice system. My concern about this bill has less to do with its direct effect on the operation of the criminal justice system than it does with the clearly incorrect messages that it gives Canadians about the relationship between crime and the criminal law, and the false pictures it paints of the operation of the criminal justice system.

The first message you are communicating is simple. You are telling the Canadian public that by making a few changes in one of the 849 sections of the Criminal Code, Canadians will be safer from firearms-related offences. I wish it were this easy. I wish that by making these changes in the Criminal Code, gang, gun, and drug crime would be reduced and that you would be contributing to protecting Canadians. Unfortunately, it isn't that simple. But the message emanating form Parliament with this bill is that by toughening up on bail, you will have a measurable impact on the rate of serious crime with firearms. It won't.

I say this for a number of reasons. Our data in Canada on the operation of the bail courts are rather impoverished, but from the Ontario data that I have seen, serious cases of violence involving firearms are already almost invariably going to court for a bail hearing, and fewer than one-third of all non-trivial violent cases result in the accused being released prior to trial.

I have not seen data that deals specifically with violent offences involving firearms. It's very reasonable to assume that the release on bail rate for these cases would be even lower than the overall release rate for serious violent offences. If fewer than a third of all non-trivial violent cases result in a person being released, what effect should we expect a reverse onus provision would have on some of the most serious cases involving firearms?

The only data that I am aware of on the actual impact of reverse onus situations in Canada relate to a quite different type of judicial decision. In the mid-1990s the Young Offenders Act was changed such that, in certain cases, a youth would be presumptively transferred to adult court. We tracked the number of transfers to adult court for these offences during this period, and the changes in the law had no effect.

The studies that I am aware of on the operation of bail courts suggest that most releases from bail courts are with the consent of the Crown, and they're not the result of contested bail hearings. This is another reason one would not expect Bill C-35 to have a real effect on the operation of the bail courts. Crowns are not now likely to consent to the release of people accused of serious crimes involving firearms. Changing the law will therefore not change anything in terms of who is on the street.

Said differently, although you may tell your constituents that Bill C-35 will make them safer, I can assure you this is very unlikely to be the case. If you want to make your constituents safer, you would best spend your time looking at something else.

The problem is that solutions to the crime problem are not going to be as easy as making a few changes to one section of the Criminal Code. The evidence that has been repeatedly cited in support of this bill is interesting, largely because it does not address the relevant issue. We are told that in Toronto nearly 40% of crime involving firearms in 2006 was committed by someone who was on bail, parole, temporary absence, or probation. That may be an interesting statistic, and from my perspective it isn't terribly surprising.

The question one might ask of this statistic, however, is this. How many of these almost 40% were committed by people who had been released on bail for a firearms offence that would be captured by Bill C-35 and for whom the reverse onus might have made a difference? Though obviously available from the data used in that study, those who cite this study in the context of this bill do not provide more appropriate information.

More importantly, what we would like to know is that of all of those charged with firearms offences covered by Bill C-35, how many are released on bail, and of those who are released on bail, what proportion commits serious offences while on pretrial release? That's an answerable question by those who have the data.

It should be remembered that logically this is not a bill designed to reduce firearms offences; it is a bill that deals only with bail hearings for those who have already been charged, according to the police, with committing an offence involving a firearm. The firearms offence would have already taken place.

As best we can tell, offenders who are apprehended for serious violent offences, particularly those charged with offences with firearms, are increasingly held for bail and detained. Some lawyers, the one who appeared before you immediately before me, as an example, have publicly expressed the view that in many parts of Canada—Toronto would be a good example of this—release on bail has effectively already become a reverse onus for almost all cases. In reality, the accused must present an argument as to why he or she should be released and must also develop a plan to demonstrate that he or she will appear in court and commit no further offences.

So my concern is not that you are going to fill provincial prisons with additional remand prisoners. My concern, as I've already said, is that you're giving two incorrect messages about the criminal law and the criminal justice system. The first incorrect message is that Parliament, by adding another reverse onus provision to our bail laws, will protect us from crime. The second related concern is that you're giving a message that our bail courts are generally prone to release people who are likely to commit serious offences and that we need to restrict our bail laws in order to make ourselves safe.

Let me give you a picture of what our bail decisions really look like.

In this slide, I've plotted the overall rate of provincial imprisonment for Canada and its two largest components: those sentenced and the pretrial remand population. This slide and the next three give a picture of the people who are in provincial institutions on an average night in each of the years that is pictured. The number of people in custody is provided as a rate in order to take into account the population increase that has occurred in Canada.

The picture that you see from this graph is easy to describe. First, you see that the overall imprisonment in provincial institutions is fairly stable over this period, starting from the late 1970s and going up to about 2003. Second, you see an increase in imprisonment rates for those on pretrial remand—more than doubling—such that in the latter part of this graph there are just about as many in prison serving their sentences as being punished before being found guilty.

That's the picture for Canada as a whole. When we look at Ontario, we see the same pattern, except it's more extreme.

In Ontario, you see the natural consequences of tough decisions on bail. On an average night, Ontario has twice as many people being punished before being found guilty as being punished as a result of a sentence handed down by a judge. You may be thinking that this is the result of guns, gangs, drugs, domestic violence cases, and other violent things that males do. And certainly you would get support from looking at this slide, which shows the same information, but only for the male offenders.

But when we look at the pattern for women, we see something that might be surprising. We see more or less the same pattern. So if you were thinking about drugs, gangs, guns, and so on in the previous slide, it seems unlikely that the increased tough decisions made about bail would have created the effect for women that we have now, which is that twice as many women are serving their sentences before being found guilty as are serving their sentences after being found guilty, in Ontario's prisons.

Unfortunately, I was not able to find national data that broke down the imprisonment rates for men and women separately. I cannot comment, therefore, on whether the national rate for women looks the same as the rate for Ontario does.

Few of us really believe that the increase in pretrial detention for women is due to these serious crimes. What we're seeing is what's happening to a group of accused people who are not likely to be firearms-wielding offenders.

The picture tells you about the operation of our bail courts more generally. If women are being locked up at higher and higher rates, do we really believe that people who commit serious offences with firearms are being dealt with leniently? What relevance does this have for your consideration of Bill C-35?

I would suggest that one of the messages you are giving when you support Bill C-35 is that the criminal justice system is lenient in the manner in which it treats those who are arrested and brought by the police to court. We know that in Ontario, in recent years, more and more people are being brought before a court for a bail hearing. The police are reluctant to release people on the street who are at the police station. Not only are more people being brought to court, justices of the peace in Ontario are reluctant to release those accused of crimes. It's no wonder, then, that our pretrial remand population is increasing.

● (1015)

I know there has been a fair amount of concern expressed on other parts of these graphs, in particular the reduction in the size of the sentenced population. The most likely reason for this is obvious, as you heard from the previous witnesses. Judges are required to take into account the amount of time people have served when they hand down their sentences.

Taking into account the amount of time served in pretrial detention is an inexact science, as you already heard. When we hear stories about people preferring to serve “dead time” rather than sentence time so that they can be released on time served, it assumes that sentences are almost perfectly predictable. They are not, although they obviously become more predictable when there's a joint submission from the Crown and defence.

It is said that many accused prefer to serve their sentences before trial because they get a two-for-one credit for time served in pretrial detention. But I think the two-for-one credit for time served is often misunderstood. We have to remember what a sentence of imprisonment means. An offender in a provincial institution will almost certainly not serve more than two-thirds of his or her sentence. If the sentence is a reasonably long one, the offender will likely be eligible for parole or for temporary absence passes. The result is that they're likely to serve between one-third and two-thirds of their sentences.

Let's imagine that the proper sentence for an inmate is 100 days. The inmate might be expected to serve anywhere from 33 to 67 days. Let's assume they'd get the midway between these extremes of 50 days. If the inmate instead served 50 days in pretrial remand and got a two-for-one credit, it works out to be exactly the 100-day sentence he or she would be expected to get. In other words, two days of credit toward the sentence for each day served is a fair trade-off in the way our system works. Nevertheless, it's typically talked about as if it were a deep discount, but it isn't.

I'm not a big fan of our parole or discretionary release system as it currently exists. Twenty years ago I was part of a commission that recommended discretionary parole, as we know it, should be abolished. But two-for-one credit, as it currently operates, does not seem wildly out of line for an individual prisoner.

But if you think it doesn't matter whether or not people serve their sentences before or after they're found guilty, I disagree with you for two reasons.

First, such approaches distort the meaning of sentences. When ordinary people hear that an offender was sentenced to time served or got a short-sounding sentence because of a two-for-one discount on the sentence, they understandably have no way of evaluating what this means. It would appear that the offender got a light sentence, when he or she may have in fact served exactly the same time as if there had been no time in pretrial detention.

Second, as most correction authorities will tell you, the term “dead time” for those in pretrial detention describes quite well the usefulness of this time in terms of rehabilitation programs. Pretrial detention prisoners, at least in Ontario, are not normally eligible for correctional programming for a very simple reason. No one knows how long these prisoners will actually be in custody. Therefore, no one knows whether or not they will have an opportunity to finish any programming they start.

Bill C-35, then, contributes to many of the problems perceived and otherwise that we have in the justice system generally, particularly with bail. As I've said, I don't think it will result in appreciably more pretrial detention prisoners of the type covered by this bill. They already seem very likely to be detained. But the bill contributes to the perception that bail needs fixing and that in detaining more people before they're found guilty, we will contribute to public safety. I would suggest this bill reinforces a false perception of the justice system.

Finally, I'd like to remind you of the times that we live in with respect to crime. In the past 10 years or so, we've seen an overall decrease in crime. I've given you the figures for both Canada and Ontario. Although crime has apparently decreased, the operation of our bail courts has become tougher. We see the same pattern when we look at violent crime.

Of course, I am aware of the fact that the Prime Minister noted there were increases in 2005 in four categories of violent crime: homicides, attempted murder, robbery, and serious assaults. He failed to note, of course, that there were year-over-year decreases in robberies with firearms, the most serious sexual assaults, and various other categories of crime. But whether or not you're talking about robbery rates or robbery with firearms rates, year-over-year changes tell us little about crime trends.

I would suggest this is a time when we need to seriously think about how to reduce our levels of crime. If crime rates were increasing, it would be harder to have a reasonable discussion about how to invest to reduce crime. But with crime rates essentially stable or perhaps decreasing, we should be able to take advantage of the situation to carefully consider how best to make Canadians safer.

● (1020)

Unfortunately, I see no evidence of thoughtful discussion on this issue. Thus, given that the causes of crime are largely outside the criminal justice system, I would like to end by returning to the point I made earlier.

Changes in the criminal justice system of the kind you're considering will not affect crime. If we were interested in doing something about crime, we would investigate seriously where we might best invest our resources. We might ask, for example, whether resources would be best invested in public health, the police, schools, or our communities. These are not easy choices, but we have to make these choices. This bill does not encourage us to think about the choices that you and other levels of government need to make. Saying that we're going to do both, toughening the justice system and investing in communities, is inadequate if the focus is almost exclusively on the first.

Again, I realize that most of you favour this bill. In that context, therefore, my wish is only that you would cease making false promises to Canadians about its impact on safety. Crime is a serious problem that needs serious attention.

Thank you very much.

The Chair: Thank you very much, Mr. Doob.

Mr. Muise.

Mr. John Muise (Director, Public Safety, Canadian Centre for Abuse Awareness): Thank you, Mr. Patry.

Good morning, and thank you for the opportunity to appear before you as you deliberate on BillC-35. Looking around the room, I know that I've appeared before some of you, but for those I haven't, my background informs what I say, and I'll tell you a tiny bit about it.

I just wrapped up a 30-year career in law enforcement last year at the Toronto Police Service. My last posting was as a detective sergeant in the homicide squad, where I managed the retroactive DNA team in the major case management section. During my career I worked in both plain clothes and uniform, including stints in the drug squad in the early 1980s, and at the first-of-its-kind street crime unit in the early 1990s. It was a community-based education enforcement hybrid that partnered with local high schools for the purpose of tackling youth violence and gang crime in schools and communities. The original model that I participated in the development of has been copied in whole or in part in many communities across the country.

The last six out of seven of my years at the police service I spent on secondment to the Ontario Office for Victims of Crime, an advisory agency to the provincial government. We provided advice on public safety, support for crime victims, and criminal justice reform to several attorneys general and other justice sector ministries in two governments.

I'm going to touch on some of the points that the Canadian Centre for Abuse Awareness believes are pertinent in relation to Bill C-35.

Are the proposed amendments appropriate? The Criminal Code currently provides for reverse onus to switch the onus or burden of proof from the Crown to the accused when bail is being considered. It includes a variety of offences, and I think you know all of them, including certain offences perpetrated against the state as set out in section 469, an indictable offence committed while the accused was already on bail, certain organized crime and terrorism offences, offences committed by an accused who lives outside of the country, murder, and certain drug trafficking offences. It should be noted that this onus with respect to both the Crown and the defence is decided based on a balance of probabilities.

Despite the pronouncements in sections 7 and 11 of the charter, the Supreme Court has supported these provisions, as set out in two cases, one called Morales, and one called Pearson. Morales in particular determined a number of points, including that the right to be presumed innocent, as set out in section 11 of the charter, was not a relevant factor at bail hearings. In other words, guilt or innocence was not being considered, and punishment or sentence was not being imposed. Rather, the hearing was about granting preventive detention or not. The court ruled that public safety was an appropriate ground for denying bail. The court also ruled that the reverse onus provisions continued to be valid.

The court determined that the so-called public interest portion of the section was too vague and, as a result, unconstitutional. After that ruling, Parliament amended that section and it stated the following—and I think it's important:

> on any other just cause being shown and, without limiting the generality of the foregoing, where the detention is necessary in order to maintain confidence in the administration of justice, having regard to all the circumstances, including the apparent strength of the prosecution's case, the gravity of the nature of the offence, the circumstances surrounding its commission and the potential for a lengthy term of imprisonment.

This was added to the original clauses. Pearson made some of the same kinds of decisions.

As you know, in the sections currently contemplated in this bill are offences that involve carrying and using guns in the commission of serious firearm offences and that carry a minimum sentence of three years and up, some more than three years. As a result, they should fit in section 515 in relation to reverse onus.

Is violent crime on the rise in Canada? When it comes to statistics about crime rates, a whole lot of cherry-picking goes on. Criminologists, lawyers, law professors, and other academics are quick to remind you about sticking to the facts and getting it right. I certainly agree with them, but sometimes they're guilty of relying on short-term or year-to-year increases or decreases to make their cases. This can be misleading and inappropriate.

● (1025)

A check of the violent crime rate, calculated on the basis of 100,000 population and dating back to 1962, shows the rate for violent crime of 221 per 100,000 in 1962 increasing to 1,084 in 1992, and levelling off since then to slightly under 1,000 for the past nine years. This is an extraordinary increase by any measure, and the levelling off that has taken place over the last dozen years still has us light years away from the good old days. When one considers the new vocabulary of crime that exists today—and more on that in a moment—this extraordinary rise since 1962 is significant, and I don't think we can go to sleep.

Although the CCAA does not have access to corresponding long-term tables for firearms offences, we are confident that, if available, they would mirror or exceed the general violent crime rate, where similar offences are tracked. The CCAA strongly encourages the committee to obtain from department officials the same long-term tables in relation to firearm-related offences.

Law enforcement officers and other professionals working on the front lines of the criminal justice system know intuitively that there are a small number of offenders who commit a disproportionately large number of serious and violent crimes. They also know that a large number of serious violent crimes are committed by offenders out on bail or other forms of conditional or judicial release.

The LEGISinfo discussion paper prepared for this bill commented as follows:

> According to statistics cited by the Government of Canada, of almost 1,000 crimes involving firearms or restricted weapons committed in Toronto in 2006, "nearly 40 per cent ... were committed by someone who was on bail, parole, temporary absence or probation." According to the Toronto Police, 70% of people charged in a homicide in 2006 were under a court order at the time of the slaying.

The CCAA is confident that if these numbers were parsed, many offenders responsible for the commission of serious violent crimes would be found to have been out on bail or another form of conditional release at the time of the offence, including out on bail where firearms were used in the predicate offence. Again, the CCAA recommends that this committee obtain from department officials any information available in relation to these issues.

What about gun play in Toronto in the past 30 years? We want to provide an anecdotal sense of the history of firearm crime in Toronto. We suspect that the same things were occurring in other urban jurisdictions across the country.

I had a unique perspective as a law enforcement officer in the Toronto Police Service from 1976 until 2006. In those early years it was exceedingly rare, even in the busiest downtown divisions, that offenders were arrested in possession of illegal handguns or semi-automatic weapons. Even the most organized narcotics and drug traffickers did not carry or possess these kinds of firearms. I know; I worked in the drug squad. Uniformed, plainclothes, and undercover officers rarely confronted these kinds of weapons.

That changed in the late 1980s and coincided with the crack—that is, freebase cocaine—trade. It continued in the early 1990s and onward with the proliferation of American-style street gangs, usually arranged along ethnic lines, which now commit crime in support of territory and profit.

The results are in full view, often in areas where socially assisted housing predominates and from time to time on our crowded downtown streets: drive-by shootings, shots fired because of a perceived disrespect, brutal and often random home invasions, no self-respecting crack dealer who will leave home without his trusty Glock pistol or 9mm handgun, and whole communities marginalized and living in fear. We have a new vocabulary of violent and brutal crime, and the violent crime statistics I gave you earlier reflect that reality.

Most Canadian citizens neither witness nor experience the gun and gang play that exists in certain urban settings. They often see it only when they tune in to the nightly news. But for a large minority struggling in the lower social strata, the gun and gang play is all too real, wreaking havoc on communities and those who reside in them. It is not hyperbole to suggest that for some, guns and gangs have reduced their communities to virtual urban warfare danger zones, where if you don't join the bad guys, you keep your head down, hope for the best, and pray that you or one of your family members doesn't get shot.

What about stitches for snitches? Against the backdrop described above is the tremendously powerful credo that you don't rat or snitch to the police, ever. This notion has been alive and well for a long time. Started by prison inmates and organized crime groups, it is a particularly powerful social dynamic that has enveloped the communities described above. Urban law enforcement agencies have tremendous difficulty getting witness support where guns and gangs are involved. It is likely the single greatest reason why these offenders are not being brought to justice in the most serious of cases, particularly for homicide.

Allowing offenders who use firearms to get out on bail when they shouldn't contributes to further undermining the administration of justice. And it drives witnesses and victims, if they're still alive, further underground. This problem is not going away anytime soon.

● (1030)

In conclusion, this proposed amendment has received a significant degree of support from a wide variety of stakeholders. Those who possess and use firearms, as set out in this bill, have made very specific choices about how they choose to lead their lives, more so, at least from a public safety perspective, than any nickel-and-dime pot dealer. When you decide to pick up a firearm to use in a crime or as a tool that forms part of your criminal arsenal, you may not know how long you're going to jail for, but you certainly know the consequences if you fire that weapon, and you have made a clear choice. You have to know that serious violence and catastrophic victimization might occur.

The CCAA hasn't and wouldn't support any recommendation that attacks one of the fundamental principles of our justice system: the presumption of innocence. It is a cornerstore of the Canadian criminal justice system. The question we pose is, where do you draw the line? We would suggest that reversing the onus for a small number of similar offences involving firearms that all carry a significant minimum mandatory sentence is an appropriate place.

We would suggest that this is a legislative tweak rather than a dramatic shift in how the law is applied when it comes to bail. At the end of the day, it will still fall to our courts to decide on a balance of probabilities whether the accused should be held pending trial or not. Let us provide those same courts with this small tool to help in making decisions in support of enhanced public safety.

We encourage all members of this committee and all parliamentarians to work together to pass the legislation.

I've left copies of my brief with the clerk, and also a copy of the table with respect to the rise in violent crime.

Thank you.

● (1035)

The Chair: Thank you very much, Mr. Muise.

Now we'll go to questions and answers. There will be a six-minute maximum for every party for questions and answers.

Mr. Bagnell, please.

Hon. Larry Bagnell (Yukon, Lib.): For the first round, you mean?

The Chair: There's no second round. It's six minutes altogether, for questions and answers, for every party. You're number one. You've lost 10 seconds.

Hon. Larry Bagnell: Thank you both for coming. It's great to have you back. Those were very thoughtful presentations.

Mr. Doob, for this and other bills, I just want to get the general environment straight. Is crime going down in Canada? As Mr. Muise said, you don't want to do it year by year, so go back 10 years or something, to 1992 or whenever.

Dr. Anthony Doob: The figure that you have is there. In a sense, both John Muise and I would agree that the number of crimes reported to the police certainly went up dramatically for the 20-year period. The drop from the early to mid-1990s is also something that I think we shouldn't deny. I would agree with him completely that one doesn't want, with crime, to cherry-pick comparisons of years and comparisons of particular crimes over years.

I think my answer to it is that this isn't a time where we have to panic and look for quick, ineffectual solutions to crime. What we should be doing is looking for something serious. I think the problem is that what we would do about crime, whether crime is increasing or decreasing, seems to be much the same.

The issue of gangs with guns, which John Muise has mentioned, is a serious problem. I actually really don't care, in the context of what we're going to be doing about it, whether there is less of it this year than there was last year or the year before. It seems to me that if there's a problem with guns and gangs, we should address that problem.

So I'd see the issue of crime going up or down as not being the central issue. The central issue is that we should be doing something serious about crimes, and obviously we should be doing something serious about crimes with firearms.

Hon. Larry Bagnell: Could you give me a short answer for background? Is the crime rate in the United States higher or lower than in Canada?

Dr. Anthony Doob: The simple answer is that it's not answerable. The reason for that is that the way in which crime is recorded in the United States is very different. In particular, there is a category of crimes called “index crimes”, which are the only ones that the FBI collates across large numbers of police departments. We, on the other hand, collect every crime that's reported to the police on a population basis, all police departments contributing.

The decision to go to index crimes in the United States meant that, necessarily, there were fewer being recorded, because it's a subset of offences.

The answer on the one crime where there's easy comparability is on homicides. The United States has typically had about three and a half times as high a homicide rate as we have. It did in the mid-1970s, when in both countries it peaked, and it does now.

Hon. Larry Bagnell: I have one more question and then I'll let my colleagues ask.

We were very frustrated that there are no statistics on bail. If those people are out committing crimes, that's very frustrating for the committee. Obviously there are a number of innocent people kept in jail on remand, waiting for trial. Do you have any evidence that this is a negative and this is hurting people, having native people in jail? On the other hand, does it outweigh the fact that you may be keeping people in jail when some might commit serious crimes?

● (1040)

Dr. Anthony Doob: I think there are two problems. One is that the idea of punishing people before they're found guilty is something we should be a little concerned about, it seems to me. The second one, from a correctional perspective, is that remand populations are very difficult populations, because the correctional people indicate that they really can't provide appropriate programming for them, for the reasons I've mentioned during my comments. I think the general argument is that people should be sentenced and serve their time after they're found guilty.

The increased remand population, particularly in the last ten years, it seems to me, reflects the fact that we have toughened that aspect of the criminal justice system in a period when crime itself wouldn't justify that. I would be concerned, as I said, with respect to this bill that what we're doing is feeding into that.

The Chair: Madam Jennings, you have a minute and a half.

[*Translation*]

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Mr. Murphy can have my time.

[*English*]

The Chair: Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Professor Doob, you leave us hanging, saying that if we're really interested in preventing crime we would invest in a number of priorities. I realize your task here today was to talk about this bill, but for instance, the promise by the Prime Minister and his team to fund 2,500 police officers, if that actually were done, which to date it hasn't been, would you see that as one of the important aspects, or would you go further and say we should embrace the crime prevention program of other parties in whole or in part?

Dr. Anthony Doob: My answer to that is that what we really want to do is this. If we have a certain amount of money that we're willing to spend on crime prevention, what I would like to do is have a serious debate about how to use that.

The evidence that I am aware of is that the police are capable of at least suppressing certain kinds of crime by their mere presence on the street. According to the studies that have targeted police officers in particular locations where there are particular problems, there seems to be a reduction during the time the police are there. The idea that massive crackdowns, as has occurred in some cities, are going to do that is another thing. But it seems to me that the simple issue of what we know, for example, from the deterrence research is that apprehension is important. Things that would lead to apprehension, targeted programs that would lead to the apprehension of people who are committing serious crimes with firearms—it's hard to argue against that.

At the same time, I think that if we have a certain number of millions of dollars, we have to sit down and ask how we are going to allocate that. Are we going to allocate it to prisons, which is punishment after the fact; or can we allocate it to the police to do the kinds of things I've just mentioned; or can we allocate it to primary prevention, where we try to reduce the motivation of people to join gangs and acquire guns?

I would like that to be the debate.

[*Translation*]

The Chair: Mr. Ménard.

Mr. Réal Ménard (Hochelaga, BQ): I have three short questions, two for Dr. Doob and one for Mr. Muise. I agree that every person must do his or her fair share.

As you may know, Dr. Doob, a National Crime Prevention Strategy was adopted in Canada about ten years ago. In the opinion of the Bloc Québécois, this strategy should receive a funding boost of 25%. In actual fact, the strategy is comprised of three programs, two of which target community groups, while the third provides tools to prevent crime, particularly on a national scale.

Have you examined the impact of this strategy? You don't need to convince us that the figures are what they are, since you're the one who tabled them.

You also told us that practically speaking, a person charged with a firearms-related offence has little chance of being released on bail. Whether the outcome is positive or negative, we need to look elsewhere for solutions to the scourge of firearms-related offences.

In your opinion, has the National Crime Prevention Strategy—I suppose we should be talking in terms of a Canadian strategy, because we're dealing with "nations" in the plural sense, although that's a whole other discussion—produced some positive results?

Then, I'd like to ask Mr. Muise why he questions the statistics on the effective crime rate in Canada.

● (1045)

[*English*]

Dr. Anthony Doob: Responding to the issue about the effectiveness of the overall strategy is very difficult, because the overall strategy of the national crime prevention program, it seems to me, has both the strength and weakness of being diffuse, which is that large numbers of programs are being given relatively small amounts of money to do various kinds of community programming. That wouldn't have been my choice. My choice would have been to focus crime prevention dollars on known effective programs and to evaluate them while they're going, so that we would actually know.

There was one European program I'm aware of that was quite similar, where money was given to relatively small communities, and communities did various things. The overall impact of that seemed to be relatively small. My concern is that where you give $50,000 here and $20,000 here and $100,000 here, you have so many programs, most of which aren't being properly evaluated, that in the end you're not going to know what's effective.

If I were to allocate crime prevention dollars, what I would say is let's look at four or five different kinds of things that we might be able to do. Let's put those in place in a number of different locations, and let's seriously evaluate and modify what we're doing. So when we find out something is working in one place, we modify the other programs, and when we find out other things are not working, we stop them.

I don't think we have that, because as I've said, what we've done is to say, let everybody in Canada have a go at this, and we have all these bits and pieces around.

The Chair: Mr. Muise.

Mr. John Muise: Mr. Ménard, I think your question was why I'm challenging the crime rate. I'm not. What I'm using is slightly different; that's non-traffic, overall Criminal Code. But in 1962—and I know Mr. Doob has the chart for this one—the violent crime rate was 221 per 100,000 population. It peaked in 1992 at 1,084, and it has now levelled off to 943.

What I take from that is that we had an extraordinary increase from 1962 to 1992, and we've had a levelling off and a slight decrease of probably 12% to 15% over the last 13 years. That's the little bit of good news from this.

The bad news, I think, is that we live in an entirely different place from where we did in 1962. So there's a little bit of positive, but overall, significantly negative in terms of violent crime. When it gets back to the 1962 levels and the *Leave it to Beaver* days, which will be well over the time that I pass from this earth, if indeed it ever happens, then I won't be coming here anymore.

I don't quarrel or argue with the violent crime rate at all. It's horrendous.

The Chair: *Merci beaucoup.*

Mr. Comartin, please.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): I can't let that sit on the record. I mean, the reality is that the figures in the early 1960s right through until—Professor Doob would know this better—well into the mid-1970s were grossly under-reported, because our system of statistics gathering for crime rates was just getting going by the 1970-to-1975 timeframe.

Mr. Muise, you may want to go back and study the gathering of statistics from that perspective.

Professor Doob, the—

Mr. John Muise: Did you want me to answer that, Mr. Comartin?

Mr. Joe Comartin: No, I didn't. That was my comment. I get to make comments. If you're going to tell us to do things in terms of understanding statistics—and I do—I suggest you should probably understand them better than you do at this point.

Professor Doob, regarding the 40% figure for people being out and then committing a subsequent crime—and Mr. Muise used the figure, not surprisingly—you're playing that down, at least both in your text and your verbal presentation today, and I'm not sure why. Why should we not be concerned? Is that figure just not accurate?

You used the words “it wasn't relevant”, but I didn't understand that, so could you explain your position on that?

Dr. Anthony Doob: My position is very simple, which is that the category of 40% of people who commit offences with firearms is a large one. Those are people on probation, people on parole, people on some form of release, people on some form of warrant. What we're talking about today is bail, and the question is what proportion of those are on bail.

The second issue is—

● (1050)

Mr. Joe Comartin: We don't know that?

Dr. Anthony Doob: Well, it's not my study. I've only seen the citations of it, and I don't believe it's a published study, so I don't have access to it.

The second problem we're talking about is how many of those people were not just on bail, but also on bail for firearms offences. So I think we have to be careful about who is the target of this, in terms of public safety. It's people who are charged with a firearms offence, who are going to go to a bail court, who are going to be detained, and who would have been released were it not for this bill —that is, who would be detained because of Bill C-35—but then commit another offence. So you're talking about a minuscule potential impact, because you're talking about this group.

My starting point from the Ontario data I'm aware of is that these folks are going to get detained. So when you change it by reversing the onus.... In reality, the onus is already reversed, as the previous witness has already told you. So you're talking about a minuscule number of people who might now be detained, but otherwise would have been released. Now you're saying, what proportion of that tiny number would commit another offence? This isn't public safety.

Mr. Joe Comartin: I accept that.

Are there any other similar results from this practice by courts, shown in your graph on the increased rate of women being incarcerated pending trial or disposition of the charges, for visible minorities, first nations, aboriginals or Métis? Have you seen anything in that regard?

Dr. Anthony Doob: I think I used the word “impoverished” when talking about statistics in this country in many ways. This is another area. I'm only able to get these data for Ontario. We don't even have these data for women. You would think it would be relatively easy.

I have been looking at this issue in another context recently, and the difficulty is that there are shifting definitions. We don't have clear definitions of what other groups are. I don't really want to defend the statistical agency in this case, but the circumstances are such that measuring who is an aboriginal person, for example, is not easy over time. In its population data, Statistics Canada reported that the number of aboriginal people increased by 106% between 1981 and 1991. That's largely because people were willing to identify themselves as aboriginal in 1991, and weren't willing to do so in 1981. We have no information about how aboriginal status is collected in prisons.

So the simple answer is that this is an area where I have sympathy for the statistical agency not having data, though there are other areas where I think they should have data, but don't.

Mr. Joe Comartin: Have you had any contact with the agency? They are undertaking to gather more statistics—whether meaningful or not, I'm not sure—over the next year or year and a half. Have you had any contact with them as to how they design that statistical gathering?

Dr. Anthony Doob: I looked quickly at the evidence from when they were here a few days ago. I believe they were talking in terms of court statistics. The difficulty with court statistics at the moment is that we're already two years behind. They promised to release the 2004-05 court statistics in the third quarter of this fiscal year. They've never released the 2003-04 statistics. This is true for youth and adults. So in terms of our ability to get detailed information, we're way behind.

In addition, the level of detail they typically release—at least to people like me—is such that it's very difficult to use it to inform policy such as this.

The Chair: Thank you.

Mr. Moore, please.

Mr. Rob Moore (Fundy Royal, CPC): Thank you to both of you.

One of the things we heard overwhelmingly from witnesses before —and I heard it from you today, Mr. Muise—including the chiefs of police.... And I think we did hear, Professor Doob, that this could be affecting a relatively small number of people.

What we've heard overwhelmingly as a committee is that a relatively small number of people are the problem, when they're out on the street. We heard testimony that when you take this small number of serious repeat offenders off the street—the people who are committing offences with a firearm, such as the serious ones Bill C-35 addresses—in some communities crime rates can dramatically fall from very high rates.

So I'm wondering, Mr. Muise, if you can comment on that, in your experience, because it's certainly something we've heard time and time again. Also, I think you wanted to make some comment on a question from Mr. Comartin, so I'll allow you time for that.

Could both of you keep your remarks brief, as I do have a couple of other questions.

● (1055)

The Chair: Be very brief, because we have three minutes left.

Mr. John Muise: Yes. Thank you, Mr. Moore.

On the first count, yes, incapacitation.... Ultimately, the reason for withholding somebody's bail is about ensuring an appearance in court and making sure that if they're a threat, they're not going to engage in further crimes when they're out on bail. But there is no question that overall, if you incapacitate the worst offenders who commit a disproportionately large number of serious violent crimes, at the end of the day, if it's firing on all cylinders, it's going to work. Crime will go down.

As for the statistics, we're not in a position to get into a debate here. I am aware of the difference in collecting over the years. Subject to some more robust information coming forward from experts in the field, I think that particular graph of the violent crime is reasonably reflective of the course of the violent crime rate in this country between 1962 and the present.

I'll leave it at that for now, and thank you for allowing me—

Mr. Rob Moore: We've heard also time and time again that it's difficult to get the statistics. Likewise, we've heard just as often that it is always a relatively very small percentage of our entire population in Canada that is actually the problem, and if you focus on those very few, you can make a real difference in communities.

Professor Doob, I agree with one of the things you said. We should be doing something whether crime is up or crime is down. If we have a crime problem, we should be acting. I agree with that 100%.

You mentioned the higher remand rates versus sentence. Do you see that as somewhat due to delays in getting to trial? Have you examined and compared these rates with various jurisdictions, where someone is able to get to trial sooner or later, depending on the jurisdiction?

Dr. Anthony Doob: Yes, your point is a good one, which is that part of this does have to do with delay.

What we seem to see in more detailed things in Ontario is that there are two problems. One is that the bail hearings themselves are taking longer, and instead of people taking a day or two for the bail hearing, they are actually taking a substantial amount longer. In addition, they're being held for long periods of time. But it also appears that there are more people being held for longer periods of time. So it's all three possibilities.

Mr. Rob Moore: Okay.

And Mr. Muise, you've seen what this bill focuses on. We've seen where reverse onus has been used in the past. It's used currently. It's been upheld on a couple of occasions, even by our highest court, as being constitutional, particularly when it's in such a focused manner as in this legislation. Some of the eight serious offences—dealing with a firearm, attempted murder, robbery, kidnapping....

Can you comment a bit on how you feel a focused bill such as this one will have an impact on some of these cases?

Mr. John Muise: Well, I think some thought went into it. Obviously when they wrote this, people looked at the case law of Morales and Pearson, and they looked at the charter, because it would be hard to imagine a more targeted set of offences that lay waste to a community than firearm crimes in urban areas in the hands of people who shouldn't possess those firearms.

I'm with the previous speaker on this—and I don't want to diminish it—but more so than the local pot dealer. It intuitively makes sense that we want to target people who possess firearms and use firearms in the commission of serious crimes.

● (1100)

The Chair: Thank you very much to both witnesses, Mr. Muise and Professor Doob.

I want to remind our colleagues that we have an appointment this afternoon at three-thirty, in room 308, West Block. Thank you.

The meeting is adjourned.

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