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Chair

Mr. Art Hanger

Standing Committee on Justice and Human Rights

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● (1540)

[*English*]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I call to order the Standing Committee on Justice and Human Rights.

We continue our debate on Bill C-10, an act to amend the Criminal Code, on minimum penalties for offences involving firearms.

Before I call upon the witnesses to present, I'm going to deal with two matters of business that are before the committee, two motions.

Committee members, I apologize. The two motions that are before you are actually notices of motion. They will be brought forward on Monday of next week.

We will go on to the business at hand. We have four presenters here today, as you will note on your agenda. They are Anthony Doob, who is a professor at the Centre for Criminology at the University of Toronto; from the African Canadian Legal Clinic, Royland Moriah and Charlene Theodore; from the Canadian Criminal Justice Association, Irving Kulik; and from The Sentencing Project, Ryan King, who is a policy analyst.

Are you from the U.S.?

Mr. Ryan King (Policy Analyst, The Sentencing Project): Yes, from Washington, D.C.

The Chair: Welcome to Canada and Parliament Hill.

Mr. Ryan King: Thank you. I appreciate the invitation.

The Chair: Great, and we're interested in hearing what you have to say.

I will go according to our agenda and begin with Professor Anthony Doob.

Mr. Doob, the floor is yours.

Dr. Anthony Doob (Professor, Centre for Criminology, University of Toronto, As an Individual): Thank you very much.

I'm a professor at the Centre for Criminology at the University of Toronto. My research on various topics in criminology has been published in a number of peer review journals during the last 35 years. Recently, a colleague at the University of Ottawa, Professor Cheryl Webster, and I wrote a detailed review of the research literature on deterrent impact of sentencing for *Crime and Justice: A Review of the Research*, which is one of the major publication series in this field. A summary of my CV has been given to the clerk.

I'd like to make three rather straightforward points. First, contrary to what various people have said in the House of Commons and elsewhere, the research evidence does not support the conclusion that sentencing enhancements such as those contained in Bill C-10 will reduce crime. The best research on this is quite consistent. Mandatory minimum sentences will not reduce crime.

Second, you should be very cautious about accepting some of the evidence that is sometimes cited as demonstrating that mandatory minimum sentences can reduce crime. Much of the evidence contains obvious artifacts that can be easily demonstrated.

Third, you do the Canadian people a serious disservice when you imply or state that serious crime can be controlled, even in part, by imposing increasingly harsh mandatory minimum sentences. This disservice is easy to describe by focusing on approaches we know are not going to work; you fail to consider approaches to crime that would make our community safer.

At least one previous witness urged you to consider comparisons with the United States. He concluded these comparisons demonstrated harsh sentences would reduce crime in Canada. Simply put, I found his analysis to be astonishingly inadequate. Though I don't think these are the best data available for either side of this debate, I would like to spend a couple of minutes giving you a more adequate description of some of the differences across these two countries.

This is a graph of total crime and violent crime, as recorded by the Canadian police over the last forty years. I've multiplied the violent rate by ten to be able to see the shape of the curve. It is the shape rather than the absolute value that's important. Reported crime obviously went up rather steadily until the early to mid-1990s, and then it started to drift slowly downwards.

Crime is reported differently in the United States, hence you cannot legitimately compare the absolute values from these two graphs. This is the United States. What you see is a remarkably similar trend to what you saw in Canada; increases up to the early 1990s and then decreases since then.

Turning to homicide, because homicide figures can be made comparable, I've plotted the actual homicide rates of the two countries on this slide. American homicide rates are typically about three times those of Canada, but if you look carefully, you can see the overall trends in Canada and the United States are similar. Homicide rates peaked in the mid-1970s and then drifted downwards, heading up a little bit in the late 1980s and then downwards in the 1990s.

To be able to compare these trends visually, I've put the two countries' homicide rates on the same scale by setting the 1961 rate for each country to one and then plotting the change from that rate. What you see, again, is similarity. Increases from the 1960s to the mid-1970s, then a gradual and uneven decline, most notably in the 1990s.

What does this have to do with punishment?

This is the picture of Canadian imprisonment levels for the past 45 years. For various reasons, largely because we found ways of punishing those offenders who committed less serious offences in the community rather than by sending them to prison, we have had a rather steady level of imprisonment over the last 45 years.

In contrast, this is what the American imprisonment rates look like. U.S. imprisonment rates were rather constant for 50 years, ending in the mid 1970s, and then increased dramatically. U.S. imprisonment rates went from being slightly higher than ours in the early 1970s to about seven times that of Canada now. In the last few years we have jail data, which for various reasons weren't available until then, but what you see is an imprisonment rate that is about seven times Canada's rate.

● (1545)

Most criminologists would agree that the levels of imprisonment do not predict the crime rate. In this case, we have two countries, the United States and Canada, with patterns of crime that are fairly similar. Yet the two countries have dramatically different patterns of imprisonment. Therefore, when you're told that high levels of imprisonment will make Canadians safe, you should ask yourself why the shape of our trends are so similar to those of a country that has had very different levels of imprisonment.

I do not consider these to be the best evidence on the subject. I raise it only because apparently you've been urged to follow the American model of attempting to deal with crime by increasing imprisonment levels.

The conclusion from the actual data, if you want to think this way, would be that we have accomplished similar crime trends without having to spend billions of dollars imprisoning people.

To understand whether increased penalties affect crime, I would suggest that you look at the overall weight of the evidence. The conclusion that Professor Webster and I came to—

The Chair: We have a point of order here.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): I have a point of order.

I am hearing the interpretation in French of what he is reading, but the documents I have in front of me are not in French. I'm surprised that none of the Bloc members has raised this. As members of Parliament, we have a right to receive the French translation of any documents that are presented. He is not even allowed to talk about his brief unless I have the French translation of it.

I'm sorry, but this is a privilege granted me as a member of Parliament. So, I would like to be given the French version of this brief. If that is not possible, he should stop giving his testimony. I absolutely want to understand everything that is being said. There are two official languages in Canada: French and English. We are not in a minority here. I am surprised that the Bloc Québécois has not raised this.

[*English*]

The Chair: Yes, point taken, Mr. Petit. That was my error.

Mr. Lemay.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): There is a very simple reason why I didn't raise it. I like looking at the figures and I can follow what the witness is saying by referring to the figures. I didn't really pay attention to what is written above. I'm taking notes based on the figures given by the witness, which I find extremely interesting. When Ms. Diotte spoke to me, I said I had no objection to the brief being only in English. It's all numbers, and the interpretation has been very complete thus far.

I don't want to prevent this gentleman from testifying today, given that the document he sent us is in French. He is complementing that with statistics I feel able to read. I'm looking at the figures and making little annotations. I see no problem with this, although my colleague may be right. At the same time, I would not like to prevent this gentleman from testifying today. What he has to say is important.

[*English*]

The Chair: Excuse me, Mr. Petit, I don't want to belabour this point here. We're going to get to the end of it very quickly.

Mr. Lee.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): I'm assuming that Mr. Petit wasn't urging you to take any steps to impede furthering the presentation. If he did, I would address it.

He made a point, perhaps a good point, and I don't want to get too technical. I don't want to impair the evidence.

So if it's the intention of the chair to proceed with the presentations of witnesses, that's fine. If not, then I would speak to it further.

The Chair: Thank you, Mr. Lee.

Mr. Petit, your point is very well taken. I do apologize for letting this go without consulting the whole committee.

I would ask one question of Mr. Doob.

Can you present some of your arguments in French?

Dr. Anthony Doob: No. But the reality is that the document you have is simply the slides that you have before you.

The Chair: Yes, I understand; I realize that much of this speaks for itself.

Mr. Petit, what is your further comment?

[*Translation*]

Mr. Daniel Petit: Yes, I do have a comment to make and I want it to be on the record.

Mr. Lee, I'm sorry, this is not a procedural matter. My language is French and, as a member of Parliament, I have a right to receive the document in French. I am a member of the Standing Committee on Official Languages, and I have to fight for this on a daily basis. I am entitled to this. It simply isn't true to say this is a procedural matter.

● (1550)

[*English*]

The Chair: Yes.

Mr. Doob.

Dr. Anthony Doob: The reality is that from this point onwards, all of the figures are in my formal brief, which was given to you and I believe has been translated. So if anyone would like to look at these figures, the only difference of any substance is that I will be talking about figures 1 and 2 afterwards. I will be talking about figure 3 onwards first.

Understanding the problem that I've created, I suggest that you follow the translated one from figure 3, and then we will go back to figures 1 and 2, which are in the document that was given to you a couple of weeks ago.

The Chair: Do you have the translated document before you, Mr. Petit?

[*Translation*]

Mr. Daniel Petit: I have the document that the gentleman is in the process of reading.

We are currently studying Bill C-10, which is an extremely important bill. I represent people who speak French and I am from a province where people speak French; I would like that to be noted. It's absolutely ridiculous that I even have to make this comment to you today. It's not right, because I am entitled to the same work tools as members of Parliament from other parties. I am very unhappy about this. It is not a procedural matter, it's a matter of respecting my right to use my language. I absolutely do not accept this situation.

[*English*]

The Chair: Yes, I understand. I will agree with you, Mr. Petit.

Mr. Laframboise.

[*Translation*]

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): : Thank you, Mr. Chairman.

I would suggest that the witness continue to read his brief, for which we have a French translation, and simply ignore the tables, which are in English. What is important for us is that he continue his testimony and read the brief, of which there is a French version.

[*English*]

The Chair: Thank you, sir.

Mr. Petit, would that be acceptable to you? Making note that you're protesting what was done here, and I certainly don't disagree with you, may the witness continue his presentation?

[*Translation*]

Mr. Daniel Petit: Fine.

[*English*]

The Chair: Thank you very much, Mr. Petit. I appreciate it.

Mr. Doob, continue, please.

Dr. Anthony Doob: Thank you very much.

To understand whether increased penalties affect crime, I would suggest that you have to look at the overall weight of evidence. The conclusion that Professor Webster and I came to, based on a thorough survey of the evidence, especially that which was carried out in the last fifteen years, was that variation in the severity of sentences does not affect crime rates.

The reviews that come to different conclusions have generally looked selectively only at the occasional paper that finds some evidence that harsh sentences deter. In other words, for more than 25 years, the overwhelming weight of evidence has been consistent with the conclusions that harsh sentences, in legislation or in practice, will not have any consistent or appreciable impact on levels of crime in the community.

I would now like to turn to two sets of data that have received a lot of prominence here in Ottawa. Each of these has been used to demonstrate that harsh sentences deter. The first example comes from an analysis of a paper that has been referred to in the context of the current bill. It seems that when the deterrent impact of harsh sentences is raised, the name Steven Levitt, one of the authors of the best-selling book, *Freakonomics*, is mentioned, and his paper with Daniel Kessler, published in 1999, is cited.

On the basis of their evidence of the effects of the June 1982 California initiative, Proposition 8, these two economists concluded that the increase in sentence severity that came into effect in June 1982 was responsible for the reduction in crime in California. As a result of this 1982 change in sentencing laws in California, sentences for certain crimes committed by repeat offenders were made considerably longer. From a deterrence perspective, the change in sentencing laws was seen as a good opportunity to test the deterrence theory, since the change in the sentencing was dramatic, sudden, and well publicized. The typical finding is what's shown here, and it is also shown in the translated document.

These are data from Kessler and Levitt's original paper, and what you see is the timing of the law changes marked by the vertical line. From this graph one could easily conclude that crime was going up until the time the sentencing law in California became dramatically harsher. Crime then dropped dramatically, immediately after the law, one could conclude, and these would obviously be quite impressive results.

The findings are similar for four other crimes that were covered by the change in law. Crime went up before the change in the law, Kessler and Levitt's data would show, and then dropped dramatically afterwards. It's no wonder that the supporters of the current bill have repeatedly cited this single study by a quite famous economist, but I'd like you to look again at these data.

Look at this curve carefully and what you'll see is something that's quite peculiar. Levitt, in the published paper, presented data only for the odd-numbered years. That's what's in the figure; that's what was in his paper.

Let's look at the full set of data that were never publicized and never presented in this very highly cited paper on deterrence. This slide simply adds the even-numbered years. The data for the odd-numbered years is identical to what you saw before. Again, the vertical line is when the law change occurred. Unlike the partial set of data, which Kessler and Levitt relied on, what you see is that crime was going down, and started going down before the law changed. The other offences examined by Kessler and Levitt, which were subject to these especially new harsh sentences, show the same kind of pattern.

On the left of these panels, I've presented the data as published by Kessler and Levitt. On the right panel, all I've done—all, in fact, Cheryl Webster, from the University of Ottawa, and Frank Zimring, from California, and I did—was to add the data for the even-numbered years. By choosing, as Kessler and Levitt did, to present the data only for the odd-numbered years, they gave you a picture of the trends that is completely different from the picture you see when all of the crime rates for all of the years are included.

If you wish, you can look at the monthly data to get a more exact estimate of when the crime drop occurred. We did this as well. Here's one example of it. Again, we marked the time when the law changed by the vertical line, and what you see is that the crime drop started before the law changed, not after, as you would expect if it were the law that was responsible for the change in crime rates.

● (1555)

These graphs are part of a paper that I co-authored with Professor Webster, and Professor Franklin Zimring, from the law school at the University of California, Berkeley. Professor Zimring is one of the world's experts on deterrence, having written extensively on deterrence, beginning with his classic book on the topic in 1972.

As you can imagine, Professor Levitt is not very pleased with our analysis. The best one can conclude I think from Levitt's very interesting, very selective use of data is that it would be risky to base any policy on a study such as this.

About a year ago, in the last session of Parliament, when you were examining Bill C-215, you had a witness before you who indicated that sentence enhancements had helped to drive down the rate of violent crime in Florida. His evidence, like that of your local witness last week, concluded that Florida's 10-20-life law may have sounded convincing. The implication of their statements is clear: tough sentencing regimes drive down crime.

I'm old-fashioned. I think you should look carefully at the data. From the data I presented to you at the outset, you should already be skeptical about such assertions. Crime was already on the downward trend in the United States. Violent crime peaked in the United States and Canada in the early 1990s and then drifted downward.

So let's look at this trend in California. The next two figures show total index crime, which is a measure of the total more serious kinds of crime, and index violent crime for Florida in the 1990s. The timing of the implementation of the so-called 10-20-life law in Florida is marked again by the vertical line.

If you look at this figure, or the next one, which deals with violent crime, the problem with the inference that the law created a change is immediately evident. Crime was going down anyway. If these two figures didn't have a vertical line in them showing where the law change took place, you wouldn't have any idea that anything special was happening. Crime was going down in Florida, just the way it was going down in other parts of the United States and in Canada. There is no evidence that the change in law changed anything.

There are obviously many more studies on this topic. The best research examines more than one jurisdiction and attempts to control for other factors known to correlate with crime rates. Considerably more sophisticated studies have been carried out.

In the United States in the 1990s, largely as a result of the popularity of the so-called three strikes laws, many U.S. jurisdictions brought in very harsh sentencing regimes for at least some offences. Some studies have looked, overall, at the impact of these sentencing changes. One set of investigators, for example, examined the impact of the sentencing changes on seven different crimes in 21 states, using the data from states where no changes were made as a form of a control.

This slide shows you a summary of their findings. The authors report that there were as many increases in crime as there were decreases that followed the imposition of three-strikes sentencing laws. Clearly, it is just as inappropriate to focus on only those changes in the law where crime decreased as it would be to focus on those instances where crime increased after sentencing got tougher. But these findings do show you the dangers of taking isolated findings out of context.

There are two other sets of problems with mandatory minimum sentences that I would like to mention. It is almost inevitable that mandatory minimum sentences will result in disproportionate sentences for at least some offenders. We already have a requirement in the Criminal Code that sentences must be proportionate to the severity of the offence and the offender's responsibility for that offence. It is my impression that most Canadians endorse proportionality in sentencing.

Clearly, Parliament, in attempting to constrain judges with mandatory minimum sentences, is purposefully sending the message that it does not trust judges to judge the severity of offences. But in addition, mandatory minimum sentences almost certainly force judges to hand down sentences that violate section 718.1, the proportionality principle in sentencing.

If the proportionality principle needs strengthening in the Criminal Code—and I, for one, believe it does—then there are ways in which this can be done. But mandatory minimum sentences have been shown repeatedly not to be an appropriate tool to accomplish this goal. There are other harms that can come from proposals such as this one. If the Parliament of Canada were to approve Bill C-10, it would be telling Canadians that Parliament can make our communities safer by increasing mandatory minimum sentences. This is, quite simply, a false promise. If you were to vote in favour of this bill, therefore, you would be, in my opinion, making a promise to Canadians that is known to be false. But it is worse than that. Focusing on such matters as mandatory minimum sentences also distracts you, the Parliament of Canada, from considering approaches to crime prevention that might actually make our communities safer. In other words, by convincing yourselves and others that the proposals such as this one will improve our communities, you necessarily do not adequately consider approaches to crime prevention that would improve our communities.

● (1600)

Thank you very much.

The Chair: Thank you, Professor Doob.

We will now have the African Canadian Legal Clinic. Who will be presenting?

Mr. Moriah, please go ahead.

Mr. Royland Moriah (Policy Research Lawyer, African Canadian Legal Clinic): Thank you, Mr. Chair.

Thank you very much for the opportunity to appear before the committee today. My name is Royland Moriah. I'm the policy research lawyer at the African Canadian Legal Clinic. With me today is Charlene Theodore.

I'd like to apologize at the outset for not having our written submissions. I know there obviously was an issue with Mr. Doob's submission, at least with respect to his slide not being available or translated. Unfortunately, ours isn't translated yet, but I have spoken to the clerk and she has assured me that it will be done and will be available to the members of the committee as soon as possible. I would urge you to contact me if you do have any specific questions with respect to those submissions after you have received them.

I'll give you a little bit of information about the African Canadian Legal Clinic, which I'll refer to as the ACLC throughout the course of my submission. We're a specialty legal clinic funded by the Ontario legal aid system. We conduct legal work aimed at addressing systemic racism and racial discrimination in the province of Ontario. We engage in our work using a test case litigation strategy. To that end, we've represented litigants at tribunals and all levels of courts, up to and including the Supreme Court of Canada. We also monitor legislation—that is why I'm here today—and engage in advocacy and legal education in eliminating racism, and anti-black racism in particular.

Criminal law issues and issues of racism and discrimination in the justice system, of course, are central to our mandate. As noted in our brief, which you will hopefully have an opportunity to read, we've been involved in a number of interventions at all levels of court. For example, we were involved at the Supreme Court of Canada, in Regina v. Spence and Regina v. Williams, which dealt with addressing issues of race in jury challenges for cause; and Regina v. Golden, wherein the Supreme Court outlined strip search procedures for police. At the Court of Appeal, we were involved in some of the seminal racial profiling cases, including Regina v. Brown and Regina v. Richards. More recently, we've been involved in a lot of policy work, particularly with respect to Justice Patrick Lesage's review of the Ontario police complaints system. And this past summer we had part II standing in the Ipperwash inquiry, wherein we provided the inquiry with a report on police use of force.

We're very pleased to have an opportunity to present submissions on Bill C-10, as criminal justice issues are obviously very important to the community we serve. As already noted, numerous reports from jurisdictions across Canada and from all levels of court have raised concerns about the impact of race on the Canadian criminal justice system.

It probably comes as no surprise to many of the people on the committee, because the information is out there, that African Canadians are particularly overrepresented in the criminal justice system. For example, in the recent 2001 census, African Canadians represented approximately 4.5% of the population. However, the federal offender management system, as of this past April, indicated that African Canadians right now comprise 16.1% of federally incarcerated individuals.

Many reports have noted that the overrepresentation of the African Canadian community is due to systematic over-policing. Research by criminologists such as Scot Wortley, from the University of Toronto, have confirmed that African Canadians are targeted by police, and African Canadian males, particularly young males, generally are at greater risk of being stopped and harassed, and thus more likely to be charged with an offence.

The issues that are raised by Bill C-10 are of particular importance to our community, especially the community in Toronto. As most of you have probably seen from the media reports that have been out there over the past year and a half, there has been a rash of gun violence in Toronto over the past year and a half, and it has particularly impacted our community. Given this reality, we submit that there's a clear need to develop effective strategies for addressing this problem.

As noted in our brief, since the outbreak of gun violence, our community has in fact called for strategies that address the root causes of gun crime, with a focus on preventing gun crime from happening rather than punishing its effects. I would submit that most Canadians would agree with us that it's not good enough for us to react to the issue of gun crime and put people in jail after people are maimed and killed, but to prevent it where possible, to prevent the loss of life.

● (1605)

Part of the approach that we had recommended, recognizing that this is a complex issue that will require a multi-faceted approach, was the need to increase funding for services in at-risk communities. It was the need to re-establish many of the social programs that had been cut by the successive governments over the past decade or so. These are governments at all levels, too—both the provincial level and the federal level through transfer payments.

However, our concern with respect to Bill C-10's approach to dealing with gun violence is that at best it is simplistic and at worst it is a reckless response to gun violence. Instead of considering the causes of gun crime and implementing effective strategies, we are essentially relying on rhetoric and ideology, giving the appearance of action while doing little to truly address the problem. It is the ACLC's submission that the proposed Criminal Code amendments won't be effective because they fail to address the complexity of the problem of illegal guns. Unless we commit to recognizing and addressing these underlying causes, we cannot have effective strategies for addressing the problem.

While there are numerous problems that arise out of the proposed mandatory minimums—Professor Doob has raised some of them, and I'm sure you've heard quite a few over the course of the hearings into Bill C-10—my submissions for the ACLC will focus on three main issues: the impact of mandatory minima on the fundamental principle of proportionality—to which Professor Doob has alluded somewhat; the recognized ineffectiveness of mandatory minima—as Professor Doob and I'm sure many others have raised again and again before this committee; and particularly important to the people we serve, the impact of mandatory minima on African Canadians and African Canadian communities, and I would also say communities at large across Canada.

With respect to the principle of proportionality, as Professor Doob noted, sentences under section 718.1 of the Criminal Code should be proportionate to the gravity of the offence and the degree of responsibility of the offender. Mandatory minima distort this principle by removing judges' ability to consider other relevant factors, including aggravating and mitigating circumstances. As noted in an article by Julian Roberts:

> A mandatory sentence prevents judges from modulating the severity of the sentence to reflect the seriousness of the offence and the degree of blameworthiness of the offender.

An example given by Ms. Sue Barnes in her speech to the House, which is actually referenced in our written submissions—and again, I'm sorry that you don't have those available to you—highlights the importance of judicial discretion in the sentencing process. What she talked about was a situation where somebody without a criminal record who's carrying an unloaded gun would actually, under the proposed amendments, get a higher sentence than somebody with a criminal record with a loaded long gun. I think right there that raises some issues with respect to the issue of proportionality.

This is only a very limited example; there are many examples. This is something we really have to consider, how this will impact the criminal justice system and the way our sentencing procedures work under the system.

That's why it's important to consider the role that judges do have. They are uniquely situated to assess all the circumstances of an offence to fashion a suitable sentence that takes into account all the relevant factors, including the need for deterrence, rehabilitation, and protection of society where it's demonstrably necessary. Mandatory minimum sentences usurp this critical role of judges, and they will result in disproportionate sentences. The evidence is clear. They will not adequately consider all the circumstances that are necessary for the proper functioning of proportionate sentencing under the criminal justice system.

In terms of effectiveness, I know I'm probably beating a dead horse, because this is something that has been talked about again and again by probably many of the people who have appeared before this committee and the many people who have a lot of expertise, more expertise than I do in this area. There's just no doubt that mandatory minima do not work. This debate isn't new in Canada. It has been going on for quite some time. The last sentencing commission looked at sentencing commissions and law commissions over the course, I believe, of 40 or 50 years and noted that none of them endorsed mandatory minimum sentences as an appropriate response in the criminal justice system. They were quite clear that they simply do not serve their stated purpose of deterrence or incapacitation.

Recent research done by academics or even commissioned by government departments also concludes that mandatory minimums are not effective. Reports from other jurisdictions—primarily a lot of research in the States and also research in Australia, because they followed some of the mandatory minimum sentences provisions in their country—also confirmed that mandatory minimum provisions do not lower crime rates, do not serve as a deterrent, do not have an incapacitation effect, do not work. In fact, jurisdictions in the States are now moving away from mandatory minimums as lawmakers are starting to understand that they have gone down the wrong path, that these are not effective, and they have a very detrimental impact on the functioning of their criminal justice system.

● (1610)

Even the legislative summary for Bill C-10 noted the questionable effectiveness of such provisions. Yet, under the guise of being tough on crime, the government has introduced amendments that, given the available research, you should be well aware, will do little to address the problem of gun violence.

● (1615)

The Chair: Mr. Moriah, would you conclude as quickly as possible?

Mr. Royland Moriah: I certainly will.

I'm just going to raise a couple of issues with respect, obviously, to the impact on the African Canadian community. It's going to take a couple of minutes, and then I'll conclude.

It's our submission that given the widespread acknowledgement of the ineffectiveness of mandatory minimums, the government should not move forward with these amendments. As rightly noted by Thomas Gabor and Nicole Crutcher in their research for the Department of Justice:

> The severity and inflexibility of some mandatory sentencing policies is such as to place a special onus on proponents to demonstrate that their economic and human costs, as well as their incursion upon the judicial role in sentencing, is warranted by their preventative and other benefits.

We're particularly concerned about the human costs to the African Canadian community as well. As I have already stated, these are costs that are going to impact not only our community but communities across the country. There is ample research that highlights a disproportionate impact of mandatory minimum sentences on African Canadians and on aboriginal accused.

There is no doubt that racism affects our criminal justice system. We have numerous reports from jurisdictions across Canada. I won't mention them. They are mentioned in our report, and you can certainly take a look at them yourselves. A major factor in the overrepresentation of groups in the criminal justice system is the reliance on discriminatory stereotypes. Often these stereotypes come into play in discretionary decision-making. This is particularly important in a situation that involves mandatory minimums, because mandatory minimums remove the discretion from an accountable process before an impartial judge and place it with police and prosecutors who have no accountability, whose decisions cannot be reviewed, and who, because of that, have even greater leverage over accused persons.

This occurs because accused, in certain situations in which they are faced with mandatory minimums, are willing, whether or not they are culpable of a crime, to take a lesser sentence to avoid the possibility of a longer mandatory minimum term. For African Canadians and for all Canadians, it is vitally important that critically important criminal justice concerns such as sentencing occur in an open and transparent process that's open to challenge where necessary.

Mandatory minimums are also problematic because people have the idea that they will increase safety within the community. Our concern is that mandatory minimums do not have a long-term impact on safety in communities. While they certainly will help in having people incarcerated, there is a concern, particularly for marginalized communities into which many of these people will return, that they are invoked without other available options being considered, which might be more useful.

We know that in terms of some of the gun violence that's happened in Toronto over the past year and a half, a lot of the people involved in these issues were young males. Our concern is that there are other options available, whether they are community-based or whether they are extra-judicial sanctions, which should be considered to help prevent these people from becoming more involved in the criminal justice system through incarceration among more hardened offenders.

The Chair: Thank you, Mr. Moriah.

Your presentation has been going on for some time now. Generally, we like to keep them down to around ten minutes. Yours is close to fifteen minutes already. If you have other points that you would like to bring forward, you can do so in the question period, if that's all right with you.

Mr. Royland Moriah: It's not a problem.

If any of the committee members have any questions, I would be willing to entertain those.

The Chair: Yes. It will follow all the presentations here.

Thank you.

Mr. Kulik, if you would, please.

Mr. Irving Kulik (Executive Director, Canadian Criminal Justice Association): Thank you, Mr. Chairman.

Thank you for inviting us here to give testimony regarding Bill C-10.

[*Translation*]

I believe you all have received the French and English versions of our presentation.

This afternoon, I would like to give you a brief summary of what has already been presented. I hope you don't mind.

I am the Executive Director of the Canadian Criminal Justice Association. Before assuming this position, I worked for the Correctional Service of Canada for 35 years. For most of those years, I held senior positions.

[*English*]

The Canadian Criminal Justice Association is one of the longest-serving, non-governmental organizations of professionals and individuals interested in criminal justice issues in Canada. The CCJA began its work in 1919, and it has testified before this committee on numerous occasions.

Our association consists of over 700 members. It publishes the *Canadian Journal of Criminology and Criminal Justice*, the *Justice Report*, the *Justice Directory of Services*, and the *Directory of Services for Victims of Crime*. We also organize the Canadian Congress on Criminal Justice every two years.

We are not an advocacy group for offenders. Our mission is to promote a humane, equitable, and effective criminal justice system. We support research-based and reasoned policies that lead to such an effective criminal justice system for Canada.

Mr. Chairman, our association welcomes the initiative of this government in putting forward a proposal designed to deal with the problem of gun crime. Our concern with needless deaths of Canadians as a result of gun crimes goes back decades. Indeed, our organization provided testimony to the subcommittee on firearms control, on then Bill C-17, in August 1991. In that brief, we hoped that our recommendations would lead to a reduction in criminal activity involving firearms, a reduction of unnecessary deaths, and better control of firearms.

In May 1995, we provided evidence to the justice and legal affairs committee concerning Bill C-68, an act respecting firearms and other weapons. We supported the passage of that bill, with the exception of mandatory prison terms. I quote:

> Our association has a long history of opposing mandatory sentences. Of course, the sanctions fail to take into consideration individual characteristics of the offence as well as that of the offender. They tend to shift discretion away from judicial officers toward the police and prosecutors. They increase populations in overcrowded penitentiaries. They are often the subject of plea negotiations. They undermine the totality rule in sentencing and they often increase both the costs and time of litigation in our courts.
>
> Finally, the evidence isn't clear that mandatory prison sentences deter those planning to use a weapon in the commission of a crime.

It would appear that certain problems and deemed solutions are intractable.

Today I'm here to tell you that, with respect, our association has some grave reservations concerning Bill C-10. I will outline them briefly and look forward to your questions and comments.

First we need to ask ourselves what we are trying to accomplish with new legislation. Obviously, the government is attempting to implement new measures in order to ensure greater safety for Canadians. Every Canadian should agree with this intent. As a citizen, as a father, and as a husband, I want to be sure that my family and my neighbours are as safe as can be. How safe? Based upon what we read in the newspapers, probably safer. I want to be sure that they can go about freely wherever they need to be—be it in school, shopping, or at work—without fearing assault or injury.

So how does Bill C-10 intend to do this? By increasing the criminal sanctions for offences involving firearms. We already have mandatory minimum sentences for about 40 criminal offences, including a number for gun crimes, that were instituted in 1995. How well are they working? Are they not harsh enough and thus potentially leading to the commission of more crimes?

I can tell you that in 12 years of direct daily contact with inmates, I never met one who indicated that he would not have committed a crime had the potential sentence been longer. Few ever remarked that they used complex decision-making models, dependent upon the length of sanction, before committing a crime.

Evidence presented here today by us and others, and that we cited in our paper, demonstrates that there is no relationship between the length of a sentence, in particular a mandatory sentence, and deterrence of crime. If anything, it is a certainty of apprehension and rapid sanction that may deter a criminal act.

What then is left but greater harshness of punishment? If that is the case and the intent of the legislation, we need to turn to an enormous meta analysis that reviewed 111 studies, involving 442,000 offenders, which was carried out by Paul Gendreau and his correctional research colleagues in 2002, on behalf of the Solicitor General of Canada. This study seemed to indicate that, if anything, harsher punishment may have led to a 3% increase in recidivism. Again, as has been cited, many of the jurisdictions that evoke the harshest punishment, including the death penalty, have the highest rates of violent crime.

● (1620)

Bill C-10 will further blur the lines between police, prosecutors, and judiciary. By further moving judicial discretion and sentence determination, discretion will be enhanced for police in charging and for crown counsel in prosecuting offences. The impact will be more plea bargains for those who are less guilty but fearful of mandatory minimum sentences—as has been stated a moment ago by my colleague—and as well, curiously, lengthy trials for those who might normally admit their guilt were it not for a lengthier mandatory sentence.

We need to reiterate the impact this will have on the correctional side of criminal justice as well. Obviously, the number of inmates will increase. At the provincial and federal levels, it will lead to even greater burdens on overcrowded facilities, more double-bunking, and increased risk to staff and defenders.

Programs that have a positive impact in safely reintegrating offenders will become even harder to obtain in a timely fashion, because mandatory sentences have a negatively differential impact on the disadvantaged. We can expect a further increase in the number of offenders who would best be served by the mental health system rather than the correctional one. The proportion of aboriginal offenders will grow further, even though they're already over-represented by a factor of six or seven in penitentiaries relative to the Canadian population at large. The number of incarcerated aboriginal women in particular will continue to expand beyond all reason.

Finally, Mr. Chairman, we need to consider the cost of more inmates serving longer sentences. Certainly one could say that no cost to ensure public safety is too great. However, if the measures adopted do not work or, worse, have the opposite effect, then the expenses incurred are wasted money and wasted resources that can better be used for Canadians' health care, educational opportunities, and other social needs, which will also in fact assist those communities that suffer daily from the effects of crime. It's by investing in these causes that we can indeed have a positive impact in reducing crime and assuring public safety.

● (1625)

[*Translation*]

Thank you, Mr. Chairman. Although I made most of my presentation in English, I will be very pleased to answer any questions in French.

[*English*]

The Chair: Thank you, Mr. Kulik.

And finally Mr. King from The Sentencing Project.

I gather that's an initiative that you are reporting on to this committee.

Mr. Ryan King: I'll describe the organization.

The Chair: Please do.

Mr. Ryan King: Thank you, Mr. Chairman.

Good afternoon.

I'm Ryan King, a policy analyst with The Sentencing Project, a criminal justice policy organization located in Washington, D.C.

Our mission is to broaden the discussion regarding criminal and justice policy in the United States by bridging the gap between research and the policy and practitioner community while working toward a humane, fair, and effective criminal justice system. The Sentencing Project has been engaged in research and advocacy regarding the implications of mandatory minimum sentencing policy for two decades. We are a leading independent, non-profit organization that has authored a number of ground-breaking research publications and policy reports on sentencing issues in the United States. We welcome the invitation to address the standing committee about the American experience with this approach.

I would like to draw your attention to two important conclusions about mandatory minimum sentencing garnered from decades of accrued experience in the United States. First, empirical research has demonstrated that mandatory minimum sentencing fails to achieve the intended goal of a reduction in criminal offending, and secondly—

Mr. Marc Lemay: Slowly, because we have the translation, and what you say is important.

Merci.

Mr. Ryan King: First, empirical research has demonstrated that mandatory minimum sentencing fails to achieve the intended goal of a reduction in criminal offending.

Secondly, this twenty-year experiment with mandatory sentencing has had catastrophic consequences for law enforcement in the criminal court system. We strongly recommend that this committee look to the United States as a cautionary example of the perils of resorting to mandatory minimum sentences to address criminal conduct.

In the interest of time, I would like to focus my oral remarks upon the second conclusion. In August 2003, the United States Supreme Court Justice Anthony Kennedy called for wholesale reform in the American system of criminal sentencing. He stated that our "resources are misspent, our punishments too severe, our sentences too long".

Justice Kennedy, referring to the mechanisms of conviction and sentencing as "the hidden world of punishment", was particularly critical of mandatory minimums as a primary catalyst for fundamental inequities and flaws in the American federal court system. He said that he "can accept neither the necessity nor the wisdom of federal mandatory minimum sentences. In too many cases, mandatory minimum sentences are unwise and unjust." Justice Kennedy was referring both to the ineffectiveness of mandatory minimum sentences, as well as to the impact they have had on the criminal justice system and the community.

The consequences of mandatory minimum sentencing on criminal case processing have been significant, often in unintended ways. Legislatively mandated sentences undermine the independence of judiciary and shift the authority of crafting appropriate sentences from judges to legislators.

Judges are trained to consider the accumulated facts and circumstances of a criminal event, the characteristics of the defendant, and to use their institutional wisdom to develop a suitable sentence. The independence of the judiciary is a hallmark of the American system of checks and balances among the three branches of government. The discretion reserved to judges permits the consideration of such relevant factors as a defendant's personal and criminal history and his or her role in the offence, which can help an independent arbitrator determine just culpability.

However, mandatory minimums, in which legislators take on the role of judges and determine culpability largely by single factors, such as the weight of a drug or the presence of a handgun, usurp this independence and threaten the carefully orchestrated balance between the governing branches. Moreover, mandatory sentences frequently expose defendants to punishments substantially disproportionate to the charged conduct.

Mandatory minimum sentences also threaten the independence of the United States Sentencing Commission, an agency in the executive branch. In the Sentencing Reform Act of 1984, the legislature created and charged the commission with developing a comprehensive set of federal sentencing guidelines, using evidence-based analysis to calibrate a punishment adequately reflecting the seriousness of the criminal event.

However, the passage of numerous mandatory minimum sentencing laws has created a situation in which the more punitive statutory punishment trumps the suggested guideline range. Thus, defendants of lesser culpability, who might have faced a shorter guideline sentence, are subjected to the statutory minimum.

By exposing less serious offenders to punishments equal to more serious offenders, mandatory sentencing creates disproportionality that subverts the commission's underlying goal to craft just and fair sentences that accurately reflect the seriousness of the offence. Moreover, the commission has been compelled to adjust the guideline ranges upward to link the lower bound of the guideline range to any applicable mandatory minimum sentences. In doing so, the commission is adjusting sentence length, not according to evidence-based research but to the political will of the legislative branch.

The quintessential example of mandatory sentences resulting in disproportionate punishment is the recent case of Weldon Angelos. Mr. Angelos was arrested in 2002 after undercover agents made two controlled purchases of one-half pound of marijuana. An informant reported that during each of these purchases, Angelos had a firearm present. Although he never brandished the weapon, it was reported to be present in the automobile during the first purchase and in an ankle holster during the second purchase. When agents searched Angelos' home, a handgun was found in a bag containing cash.

The presence of the handgun at the two controlled buys and at the house exposed Angelos to federal mandatory minimum sentence enhancements that are triggered when guns are present during a drug transaction, whether or not they're used. Each instance in which a firearm is present is counted separately. Consequently, Angelos faced a five-year mandatory sentence for the first controlled purchase and then two consecutive 25-year mandatory minimum sentences as a result of the second purchase and the firearm found during the search of the house. Bound by law to apply the 55-year sentence, the judge called the punishment "unjust, cruel, and even irrational".

The Angelos case highlights fundamental flaws in mandatory sentencing, as defendants frequently are exposed to severe sentences out of proportion to the conduct with which they have been charged, while judges sit powerless to consider the circumstances of the offence and amend the punishment accordingly.

● (1630)

Mandatory minimum sentences are generally triggered automatically by a single element of a criminal act. For example, drug mandatory sentences are triggered solely by the weight of the substance. Potentially mitigating evidence addressing the sophistication of the role the defendant plays in the drug enterprise cannot be considered in determining whether a mandatory minimum sentence applies. In the case of a handgun enhancement, the mere presence of a weapon is sufficient to warrant a mandatory sentence. In cases such as these, the prosecutor's determination of what conduct to charge and how to charge that conduct is the single most important element in a criminal proceeding. Prosecutors, in making a charging decision, have the discretion to alter the outcome before the proceedings begin. This is an unconscionable tilting of power in an adversarial system that functions on the premise that equally situated parties are necessary to adjudicate a case fairly.

An additional problem raised by mandatory minimum sentencing is evidenced by prosecutors' arguments that these sentences are an important tool in pretrial negotiations with a defendant's counsel. A prosecutor has significant leverage in conducting negotiations and eliciting a plea bargain if the defendant is facing a statutorily mandated five-year sentence. This permits a prosecutor to use the proverbial carrot-and-stick approach: offering a plea deal to a lesser charge associated with less serious conduct, or threatening a mandatory minimum sentence should the defendant choose to exercise his or her right to trial.

This inequity in negotiating posture, exacerbated by the potential exposure to a mandatory sentence, perverts criminal case processing in two ways. First, defendants frequently do not face sentences that are reflective of their actual conduct. This is tragic in a criminal court system that is supposed to be premised on rationality and predictability. Instead, mandatory sentences create uncertainty and disparity in outcomes. A governing principle behind the Sentencing Reform Act of 1984 was to institute fairness in sentencing and equality between two similarly situated defendants. This goal is undermined by mandatory sentences.

Secondly, approximately 95% of the 70,000 annual federal cases are handled via plea bargain. However, the likelihood of being offered a plea is dependent on where a case is adjudicated and the type of offence with which a defendant has been charged. Moreover, the race of the defendant has been demonstrated as a significant factor in determining whether an individual receives a mandatory minimum or is offered a plea bargain. African American defendants are more likely to receive a mandatory minimum sentence and less likely to benefit from a substantial assistance or safety valve departure. The unchallenged discretion of the prosecutor makes it increasingly difficult to combat these inequities in sentencing, and mandatory minimums have only complicated matters.

Plea bargaining also reduces the likelihood that issues of innocence or misconduct by law enforcement during arrest will receive an airing before the court. Tactics of investigation and apprehension by law enforcement officers raise critical issues of constitutional protections regarding arrest, interrogation, and the procurement of evidence. Determining the legality of one’s arrest requires skilled representation of counsel and can often result in prolonged pretrial proceedings. Moreover, it is at this point where a defendant’s innocence may face its test before a judge. However, in order to litigate any of the aforementioned issues, a defendant frequently must decide to forgo an offer of a plea bargain and face a potentially more severe mandatory sentence in order to pursue his or her constitutional right to trial. A defendant seeking to pursue a court decision as to the validity of an arrest faces a trial penalty, in which the spectre of a longer mandatory minimum sentence will be the result of exercising this right. This fact often leads defence counsel to advise clients to accept the plea deal rather than challenge their arrest—yet another situation in which mandatory sentences thwart the guiding principles of fairness and equity in the criminal court system.

Mandatory minimum sentences have been shown to have a disproportionate impact on African American defendants. A study by the United States Sentencing Commission found that African Americans were 21% more likely to receive a mandatory minimum sentence than white defendants facing an eligible charge. The most egregious example of the racially disparate impact of mandatory sentences is federal cocaine sentencing, in which the possession of five grams of crack cocaine, about the weight of two sugar packets, can result in a five-year mandatory sentence, while possession of the same quantity of powder cocaine, a pharmacological equivalent, amounts to misdemeanour possession and no sentence to incarceration. Despite the fact that approximately two-thirds of regular crack cocaine users are white or Latino, 81% of persons sentenced in the federal system for a crack cocaine offence were African American.

These disturbing trends reflect differential patterns of law enforcement in which the war on drugs has been pursued disproportionately in communities of colour. As if this fact was not pernicious enough, the imposition of mandatory minimum sentencing exacerbates the impact of these practices by codifying racially disparate arrest patterns in federal statutory law.

● (1635)

I'd like to conclude by saying mandatory minimum sentences are a counter-productive approach to combatting criminal offending. They have been demonstrated to have little impact on rates of crime while having detrimental consequences to the operation and fairness of the American criminal justice system.

Moreover, with stiff penalties already residing within statute as well as within the federal—and state, where appropriate—guidelines, there is little need for the additional enhancement of a mandatory sentence.

Regarding firearm offences, the United States Sentencing Commission reports that the average time served for firearm trafficking and possession has doubled since the implementation of the sentencing guidelines in the mid-1980s. This increase in punitiveness has resulted independently of mandatory minimums. Thus, it is clear that a legislature can respond firmly to criminal offending and levy stiff sentences via sentencing guidelines while also preserving the independence of the judiciary and the integrity of the criminal court process.

On a personal note, I have lived and worked in the United States all my life, and I have worked on this issue. I do find it very disturbing to see a lot of the criminal justice practices that we have adopted over the last thirty years, despite the really extensive documentation of the failures and the costs...to see other countries picking up this language and picking up these practices. As if it's not tragic enough, the consequence to the American public, being responsible for exporting these practices internationally would add an additional burden, and it would be something that I really hope you take into very strong consideration.

Thank you.

● (1640)

The Chair: Thank you, Mr. King.

And now to questions.

Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): Thank you to all the witnesses.

Mr. Moriah, I agree with everything you say, especially the root causes and the multi-faceted solutions, and the Toronto police chief said exactly that on the front page of *The Toronto Star*.

I have one question for you. Has the work of the court challenges program or of the Law Commission of Canada helped your organization at all?

Mr. Royland Moriah: It's actually interesting that you should bring that up. Certainly the court challenges program is something we did apply to for funding, up until this year, actually, for doing research and also for doing test case litigation.

Why it's important that you bring that up is because if we're looking at a multi-faceted approach that's actually going to deal effectively with gun violence and increases in crime, and is going to look at how we can appropriately address any issues we have with our sentencing practices here in Canada, I think we need to ask ourselves, first, why the Law Commission would be dismantled, and secondly, why we don't have a sentencing commission in Canada that could actually take a look at these things on a more holistic basis to come up with more effective strategies for figuring out sentencing in Canada.

Hon. Larry Bagnell: Thank you.

Mr. Kulik, I appreciate what you said on aboriginal people. I'm not going to ask about it, though, because we've heard it before and we all agree, at least on this side.

The Liberals' basic goal in all this is to make Canada safer for the victims, so they're not reoffended against, or for other citizens. And we're making our decisions based on facts, not on people's misconceptions or rumours or emotion.

We've had a great deal of evidence. It's been wonderful.

And it's great, Mr. Doob, to have you here because I know you're one of the acknowledged experts. And you're not just talking about one paper because you have done a review of all the recent literature, so it's much more broad. There were only two pieces of fact-based evidence that we had that suggested this law might be helpful and you have debunked them both.

I just want to put on the record that this committee now has no scientific, fact-based evidence suggesting that any MP should vote for this bill.

I have a question on something you didn't address at all. Mr. Kulik, Mr. Doob, and maybe even Mr. King could answer this.

A lot of witnesses have suggested, including the police, that when you put a person in prison, the longer they're in prison, the more criminal tricks they learn, the more they get socialized to criminal life, the less hope there is for a normal lifestyle, the less socialization they get with their family, and indeed, generally, they become more dangerous as opposed to less dangerous. But I don't know, once again, if we're going on fact-based evidence. No one has mentioned that topic at all. I wonder if there have been any studies done on that.

Mr. Irving Kulik: Do you want me to start?

I don't think anybody would suggest that going to prison is recommended for an individual in Canada. That's quite clear. It's not a prescription for success in the future. Certainly, individuals pick up a lot of traits or tricks in bad company, and that's not going to be good for them.

On the other hand, I think to be fair, certainly at the federal level over the course of the last ten to twelve years, a lot of creative programs have been developed that actually have an impact on some of these individuals. We're dealing with cognitive behavioural approaches to assist offenders in learning how to cope with various problems. It's problem solving, essentially.

Individuals frequently come from a background where they've learned over time to react to situations in a particular, violent fashion. You have to unlearn some of those traits, and some of the programs that have been developed have been very successful.

The research that Correctional Service Canada has done, and others as well, demonstrates a very significant impact when these programs are delivered to the end. What they've also discovered, interestingly, is that those individuals, those inmates, who don't continue the programs to the end tend to become the highest risks.

● (1645)

Dr. Anthony Doob: In addition, I think there are two separate issues. One is programming and one is being in prison. There certainly are some studies that would suggest the programming outside of prison is likely to be more effective, part of it being that what we're talking about in Canada is we have relatively few.... At the moment we have about 32,000 people in prison. Most of those are going to get out; a very small number will not.

So what we have to think about is not just the fact that we put them in prison, but rather that we have to reintegrate. The longer you put people in prison, or rather put them in prison as opposed to looking for something else in particular, you make it more difficult for them to come back and live a peaceful life.

I have no problem in suggesting we have to send some people to prison, and there are some people, in a simple proportionality model of sentencing, for whom we're not going to be able to figure out anything other than prison. I have no difficulty with that. I think the argument is that we're not really making ourselves safe by doing that. What we may be doing, by having a certain number of people in prison, is accomplishing a proportionality model of sentencing.

Without calling it what it is, what we've really got in the sentencing system is a punishment system, and what we're looking for is a fair punishment system. If we're looking to reduce crime, we should look elsewhere.

Hon. Larry Bagnell: Mr. King.

Mr. Ryan King: Just briefly, approximately 650,000 Americans come out of prison every year, to give you a sense of the scale in our country. One of the buzzwords in Washington in the last five to six years has been this notion of re-entry.

These numbers have become so significant that we have been forced to reckon with the fact that almost everybody who goes into prison does come out. So we've had a lot of research around the re-entry process over the last five to six years, and I think it will inform your question to some degree.

The two most important factors to a successful transition out of prison—for the one-third of people who are not re-arrested and go back within three years of release—is being able to find housing and employment upon release. The longer people are incarcerated, the more difficult that is. The successful keys are often individuals being able to keep connections to their family networks. That's often their only support system. The only person who's likely to hire them may have been the person for whom they had worked in the past who's willing to give them another chance.

As sentences increase, we definitely have seen those networks erode, thus recidivism is a much bigger concern as a result of these connections eroding. So that I think informs that question to some degree.

The Chair: Thank you, Mr. Bagnell and Mr. King.

Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: Good afternoon.

My first comments are for Mr. King.

Thank you for being here today. I carefully read your briefs. Mr. King, I was a defence lawyer for 25 years, practising criminal law, and I completely agree with you.

I am tempted to ask you a question. How do you go about reintegrating into society an individual sentenced to 55 years in prison? If he is 25 years old when he enters prison, he will leave prison at the age of 80. When I think of that happening in Canada, my reaction is that this is completely irrational and unreal.

I read your brief carefully, and I paid particular attention to comments about sentencing made by Justice Anthony M. Kennedy at a meeting of the American Bar Association, which you quote. This is an issue of great concern to us in Canada.

Our colleagues opposite tabled this bill, and you will hear them talk about street gangs and repeat offenders who get out of prison. People in the party which is currently in office claim that nobody here ever talks about the victims. I have read all of your briefs and I have just one question for you. If each of you could quickly answer my question, that would most appreciated.

We have evidence beyond a reasonable doubt that long prison terms just don't work. I don't see how we could have more evidence of that.

What can we do or recommend as legislators? How do we go about reducing the crime rate? I have read and reread Mr. Doob's statistics, and I read the brief: there is a drop in the crime rate. There seem to be peaks: the rate goes up, and then suddenly, it goes down again. We know that there will always be crime in society. That has been a reality since the beginning of time. But how can we prevent sharp rises in crime?

The example of street gangs is the most obvious, because that sort of thing is in fashion now. In Quebec, we have criminal biker gangs, and we still have them.

Do you have any idea what we should be doing to try and bring down the crime rate?

I realize I took a lot of time, but I tried to leave you one minute each to answer the question.

● (1650)

[*English*]

Mr. Ryan King: In about a minute. From the American perspective, our crime rates are shaped by a number of complex issues, and they are historically linked to post-war development and evaporation of economic opportunity in urban cities. Frequently what has been left in a lot of urban areas is essentially vast wasteland, where the only two institutions that remain are churches and liquor stores. These are predominately populated by low-income communities of colour.

The short, one-minute answer is that the problems in the criminal justice system, the problems with crime, result from failure—in the American case, and I believe it's portable elsewhere—to provide adequate social services. In the case of the United States, we have documented failures in addressing poverty, education, health care, child development, and drug abuse. In every one of these factors we have documented ways in which we can address them. We know drug treatment works. We know early headstart and childhood programs work. We have ways to bring about economic revitalization in communities, and we've done it. We do have ways.

I think we need to address a lot of the problems in the other social spheres, because the criminal justice system, the correctional system, serves largely as a catch basin where individuals who have fallen through the gaps are eventually gathered and left to spend large portions of their adult life.

Mr. Royland Moriah: I would agree with Mr. King. In looking at the issue of how we address crime in Canada and anywhere else, it must come from a realization that the criminal justice system isn't necessarily the system that's going to be appropriate for dealing with the situation we're facing right now. As Mr. King said, it is a catchment for people who fall through the cracks. From the perspective of our community, and certainly from what leaders in our community have said, it does start from making sure there are appropriate programs in place; making sure there are programs for at-risk youth; making sure there are social services available; making sure that education, health care, and all of these other issues are dealt with. By doing that, you increase people's opportunities to live successfully within society. That certainly makes a big difference in whether or not they find themselves enmeshed in the criminal justice system.

It's not something that can be dealt with necessarily in one minute, and it certainly can't be addressed in the sound bite of mandatory minimums. But we do have to look behind some of those things, look to other areas that the government does have control over, and put the resources where they need to be so that we can address them more effectively.

The Chair: Mr. Doob.

Dr. Anthony Doob: My starting point would be to say that if we're willing to do mandatory minimums, that means we have money on the table to deal with crime. Let's talk about that money.

It seems to me that if we're talking about an extra 1,000 prisoners in this country, we're talking about $80 million. Where are we going to put $80 million? That's the question that I think you should be asking yourselves. My answer to that would be that there are lots of places, and previous speakers have mentioned these. One of them would be schools. A school is not something just in terms of learning. The school is an institution in which people can thrive and can move on to other things. I'd look at it in terms of housing. One of the things that we know is that instability of housing in young kids and in adolescent kids is likely to lead to increased offending. And I would look at it in terms of various kinds of very fundamental public health issues that would deal with this.

The problem is that we tend to look for quick fixes, something that's going to fix the problem by tomorrow. I was recently reading an overview of the American experience in gangs, because a lot of what's driving the discussion at this table today is gangs. What this pair of authors, who are really experts in this area, were saying is that the United States, with all of the problems of gangs historically, has squandered the opportunity, because both the programs and the evaluations have focused on quick-fix kinds of things, where essentially the model is to suppress rather than to deal with the problems.

There are some areas that are very difficult. I don't have the answers on what to do, for example, in the area of gangs. But things like housing, like the communities, like schools, like public health, like opportunities and real jobs are the kinds of things that have benefits in addition to the crime prevention benefits.

So my answer on the $80 million is that I would want to have those folks sitting at the table, perhaps including the police, for example, because there are things they can do. I would ask them where we are going to get the most effect. One of the things that we know from the research is that we would almost certainly get the least effect from programs such as mandatory minimum sentences.

● (1655)

The Chair: Thank you, Mr. Doob.

Mr. Kulik.

[*Translation*]

Mr. Irving Kulik: You are right to say that there will always be crime. Of course, there are things we can do, and I believe my colleagues addressed most of the critical points in terms of crime prevention.

But there is another point that needs to be made, and it relates to mental health. We know that 10 per cent of federal inmates are considered to be suffering from mental health problems. That is not something we established yesterday; we have come to that conclusion over a certain period of time. I believe that we have to do what is necessary at the federal and provincial levels — and, of course, health care is primarily a provincial responsibility in Canada — to ensure that there are increased investments in mental health in the communities. If we do not do that, people with mental health problems will continue to end up in police cells, and then in provincial and federal penitentiaries.

I can tell you that at the federal level, in the institutions where people are serving minimum mandatory sentences of two, three, or five years, and so on, 90 per cent of the inmates already had a criminal record at the provincial level, or as juveniles, before entering the federal system.

So, it is the community that is critical. We need to invest in the measures that have been mentioned by my colleagues, as well as in mental health.

[*English*]

The Chair: Thank you.

Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thank you, Mr. Chair, and thank you to all the witnesses for appearing. I've listened with interest to all of your testimony.

I want to read something from Statistics Canada this past year that says that the national homicide rate rose for the second straight year in 2005, reaching its highest point in nearly a decade. Firearms-related killings increased for the third year in a row. There were 658 homicides last year, 34 more than in 2004. Of these, 222 were committed with a firearm, up from 173. They report that 107 homicides were believed to be gang-related in 2005, 35 more than in 2004. Two-thirds of gang-related homicides involved a firearm, most often a handgun.

What all that tells me is that it's beyond dispute, in my opinion, that what we're doing currently is working. That's what it tells me. I'm not satisfied with those statistics, and I think we can do a lot better.

Mr. Moriah, I listened with interest to what you had to say, and some other witnesses have made the same point. A piece of legislation can't be the be-all and end-all. We have to work from all angles to tackle the problem. I agree with you.

I think Mr. Doob or someone mentioned jobs, opportunities. No one is against those things. We're all in favour of jobs, opportunities, and resources. Some of the things we've done have been to put more law enforcement officers on the streets and at the border, dedicate resources to help prevent crime, and focus specifically on preventing at-risk youth from getting involved in street gangs and drugs.

We can do all those things, but I haven't heard from any of the witnesses that there's any place at all for the Criminal Code. I didn't hear any suggestions of how we can make this bill better. You say you're against the bill, but we do in fact have a Criminal Code that deals with a situation when, despite all our best efforts, someone has taken a gun and shot someone.

We can talk about root causes all we like and we can go back as far as we like, but at that moment that someone has taken a gun and shot someone, I don't think we should make excuses for that person. At that point, there's a role for the criminal justice system, I believe. Some of you may disagree, but I'd like to hear what you propose. What role do you see for criminal justice?

I'll give you all an opportunity to speak to that.

I do have to mention something. Concerning Dr. Levitt, we've heard testimony that mandatory minimums do deter, and we've heard testimony that they don't. Dr. Levitt, of course, is not here to defend himself. He was one of *Time Magazine*'s 100 people who shape our world, for 2006. He is a senior fellow for the American Bar Foundation. Without him here to defend his own work, I don't quite take what my colleague Mr. Bagnell said, that all evidence that this would work has been debunked. I think you've made arguments on one side. There's other work on the other side. I would like some comment on that.

Mr. Kulik, you said your organization supported Bill C-68, and you oppose this Bill C-10. Bill C-68 was, overall, misguided. I think history now, after ten years, has looked at it as a total failure. The problem with Bill C-68 is that it went after law-abiding citizens and said you have to line up and register your duck gun, and it ignored gangs that use handguns on the streets. Those people did not register their gun. The evidence that I just cited from Statistics Canada says people continue to get handguns.

We talk about resources and what this bill will cost. Bill C-68 has cost over $1 billion. Imagine what we could have done with $1 billion wasted registering people's legal firearms. I have to say, on the cost associated with Bill C-10, firearm cases are, I think we'd all agree, very serious incidents, but they represent less than 1% of the national caseload. So what we're talking about overall, globally, in cost, we have to put in perspective.

I've touched on a number of bits of your testimony, I think all of you, except Mr. King.

I do want to mention one thing. This is not an American three-strikes rule. I appreciate hearing the American perspective, but this bill is focused on specific crimes. Gangs committing crimes with handguns—that's where the problem is. It's not a broad three-strikes rule. We don't have broad application of mandatory minimum sentences. It's very focused. And we've seen evidence that says when you have very focused use of mandatory minimums, it works, because it takes those who continue to commit crimes off the street.

● (1700)

So I'd appreciate all your comments on your testimony.

Dr. Anthony Doob: If I could start, I'd like to respond to each of those.

Obviously, I see a role for the criminal justice system when somebody has done a serious crime. I have no difficulty. It seems to me that we have to realize that the overall criminal justice system is a very important institution. It seems to me that what we are doing with the criminal justice system, when somebody has committed a crime, is we are looking for a fair way of apprehending and punishing that person. I have no problems whatsoever in doing that, and I believe very strongly that the sentences handed down should be proportionate to the harm that's done.

What I think we should realize, though, is that having the criminal justice system and criminalizing certain behaviours is important. The possibility that somebody is apprehended is important. The size of the sentence that's handed down appears from an enormous amount of research not to affect the levels of crime. So what we're talking about is not in any sense to say that the criminal justice system shouldn't exist, or that we shouldn't punish people, or that when they do serious things, we shouldn't punish them severely. What we're saying is don't look to changing the sentencing structure in the Criminal Code as a good way of solving the problem of crime.

The second thing I would like to do is talk about Steven Levitt. In the formal brief that's before you and that has been translated, I quote the responses Steven Levitt gave to the fact that he suppressed data. I quote it in its complete form. It's there available to you. So is his complete article. I'd invite you to read that as well as the other responses to it.

The difficulty, in any case, is that my argument is that if everything hinges on a favourable assessment of Steven Levitt's article, we're barking up the wrong tree. What we should be looking at is the overall impact of this kind of sentencing regime, and that impact has been studied in a number of places.

The final point I want to make is that everything has costs. I agree that there are other ways, and that this could be seen as part of the mix. But what we have to say is whether this is a good investment and the best investment in terms of the impact it's going to have on public safety. I think the evidence is in that it will not be.

● (1705)

The Chair: Mr. Kulik.

Mr. Irving Kulik: I don't want it to be inferred for a moment that we would just neglect the impact from having individuals using guns in the most heinous, the most dangerous ways, and so on. There are a lot of dangerous people in this country who are in prison. I've had, I guess you can call it, the opportunity to work with many of them for many years. Yes, they're very dangerous, and the right place for them is in penitentiary for the period of time required, until they can be safely reintegrated into society. And that decision is made in an objective fashion.

That said, where we differ perhaps is that we believe judges should be allowed to judge. They have all the facts in front of them. The defence made their presentation, the prosecutor theirs. The sentence, if a finding of guilt, comes about, and then the judge should determine, based on all the factors that are brought to bear, what the appropriate sentence should be for that individual.

The Chair: Thank you.

Mr. Moriah.

Mr. Royland Moriah: I'll focus perhaps a little bit on the issue of the different strategies we can use. I'd like to make it clear right away that given the impact that gun and gang violence has had on the African Canadian community, we certainly are in favour of strong laws that do protect us from people who are using guns. We are a community that has been primarily impacted by gun violence, and I think I would do a disservice to my community if I said to you that it's not important to us. However, I think what we need to do is think critically about what we're trying to accomplish here. What we are trying to accomplish is safety for communities.

You did mention the importance of safety for victims as well. What we're trying to do is accomplish that through mandatory minimums, which is a system that we know does not work. So it's very hard for us to give suggestions on something that we know doesn't work. I think that's fundamentally the problem right now. You're asking us to give you some sort of idea of how we can improve a piece of legislation that fundamentally is flawed. As I said, we need to step back from that, and we need to look at the criminal justice system as a whole, as an important part of this process, because it is important, and recognize that we also have systems in place within the criminal justice system that are working. Part of that, as Mr. Kulik said, is the idea that judges are there to judge and can make decisions, in particularly heinous crimes, that somebody needs to be locked up.

It's not that I'm against that; it's just that we have to look at the processes we're using to make sure they are going to be effective, to make sure that our communities are safe. And we believe that Bill C-10 doesn't do that.

● (1710)

The Chair: Mr. Moore, did you want to check something out with him?

Mr. Rob Moore: You've stated that it does not work. We've heard compelling testimony, from Toronto and elsewhere, that when you take individuals who continually victimize others with guns out of the community, when they are not in the community and they're detained, the violent crime goes down. I haven't heard anyone persuade me that when someone is in jail, whether they're being rehabilitated or not, whether they were deterred by the sentence they got or not, when they're in jail for that period they are not out on the street committing crimes. I think that's evident.

The Chair: Thank you, Mr. Moore.

Mr. King, you wanted to....

Mr. Ryan King: I want to echo my colleague's remarks.

Nobody's suggesting that for handgun crimes, when there's violence involved, that these people are not going to prison. I think the distinction is the role that mandatory minimums play and their tendency to overreach. From our experience, the fact of the matter is that if you have tough sentencing, but you retain judicial discretion, you will have the punishment.

Nobody's saying that these people shouldn't be incarcerated, but it's when mandatory minimums come in and they have this overreach and a lot of other individuals who don't belong there get pulled in that it becomes dangerous.

I have just a quick clarification on your point about the three strikes issue. I completely agree with you there, but the mandatory minimums I was describing in the paper are equally as focused as the ones you're talking about here. We have a wide range of mandatory minimums, but each individual one, such as the one I mentioned concerning Mr. Weldon Angelos, which was about the presence of firearms during a drug trafficking crime, is often tailored to be for a very specific situation. So I wasn't referring to sort of a broad mandatory minimum. But they are focused pieces of legislation.

The Chair: Thank you, Mr. King.

We'll go to Mr. McKay.

Hon. John McKay (Scarborough—Guildwood, Lib.): Thank you, Chair.

Normally I sit on the finance committee, Chair, and I don't think I've ever had a panel that was so of one mind in seeing this bill as irredeemably flawed, so this is a bit of an education.

I want to address my first question to Professor Doob with respect to the data and your very helpful analysis. When you look at the full amount of data on rape, robbery, burglary, and firearms, the trend lines seem to operate independently of the minimum mandatory laws. In other words, aggravated assault is actually, at this point, in 1989—I can't quite read that, maybe it's 1999—higher than it was before, whereas burglary is down, robbery rates in a number of the years are actually higher than they were before the law, and there doesn't seem to be any kind of clear trend with respect to rape, other than that it seems to be going down.

Is there any particular reason for that? Am I right in my assumption that it just simply seems to operate independently of minimum mandatories?

Dr. Anthony Doob: I think what's clear is that it's independent of the change in the law that occurred in June of 1982. What we see toward the end of the 1980s in California is actually what you see across the United States during that period of time, which was that from the mid to late 1980s up until the early 1990s, there was an increase, and you're seeing that in California.

In this particular context, obviously the focus is largely on what was happening around the time of 1982, because Levitt's main argument is that there's a drop from 1981 to 1983 as a result of the change in law and what you see is a pre-existing trend.

Hon. John McKay: Thank you.

Apparently a Professor Lee was here and supported the issue of minimum mandatories.

Dr. Anthony Doob: I did receive a copy of a PowerPoint presentation. I don't know whether it was presented to the committee or not.

● (1715)

Hon. John McKay: Do you have comments on that?

Dr. Anthony Doob: In terms of the deterrent issue, he focused largely on Steven Levitt's work. Steven Levitt is, as I said, in large part because of the book *Freakonomics*, a very well-known person. There are very serious concerns above and beyond this particular study that Professors Webster and Zimring and I did. There are very serious problems that have been raised about a number of different things that Steven Levitt has done, including things like simply not presenting the results of analyses, which are in fact the ones that he describes. Conveniently, certain variables are left out of the equation, which changes dramatically what his findings are.

Mr. Lee, in terms of deterrence, depended largely on two things. One was Steven Levitt's assessment, which I'm saying is fundamentally flawed in large part because of the rather cavalier fashion in which he deals with data, and the second one is the issue of Florida. I couldn't tell from the PowerPoint when it was, and I wasn't able to find on the web the transcription of this committee, so I wasn't able to see when it was Mr. Lee indicated that the change in the law in Florida happened.

The two figures I have here are from a much more detailed study than Mr. Lee's study, because what it did is not only just plot the crime during the 1990s, but it also did quite a sophisticated statistical analysis on overall crime, on violent crime, on homicides, on homicides with firearms, and, again, found no evidence whatsoever.

To answer your question, I go back to Mr. Lee's testimony before you, and I wonder what it was he was saying. These are all public domain articles in refereed journals that are available on the web. These are not in obscure places; they are in the major journals in criminology. He presented information to you that was accurate in the sense that he and I are talking about the same overall trend in Florida crime. The figure I presented from a research piece happened to have in it when the law changed, and it also went back further. My feeling is that what you have to do is look at the overall figure. I think when you do that you see very different things.

Similarly, for example, saying crime is higher than it was in 1962, we do know that. There is no question of that. The question is, what's the relevance of that to Bill C-10? It seems to me that one has to say not whether crime is going up or crime is going down. I would be making exactly the same arguments to you about mandatory minimums whether crime was going up or down. That's not relevant. They either work or they don't. It doesn't matter whether crime is going up. If it's going up or down, we should be doing something.

To go back to the earlier question that was put to me, it does seem to me that when we have 600-and-something murders a year in Canada, that's too many. I don't care if it's already going down; I'd argue it's too many. So we can have fewer maybe in 2006 than we did in 2005, but that doesn't make me feel any better. We should be looking for effective ways of dealing with crime whichever direction it's going.

Mr. Lee was dependent on, in a sense, saying crime is out of control and we've got to do something. We've got to do something, but let's do it effectively.

The Chair: Thank you, Mr. Doob.

Mr. Ménard.

[*Translation*]

Mr. Réal Ménard (Hochelaga, BQ): I'm sorry to have missed your presentations. But, today in the House of Commons, there was a debate on re-opening the same sex marriage issue, and I had to make a speech.

I am very pleased to meet Mr. Doob. I have been hearing about you for years now, and I am a strong admirer of what you have produced. I read the study that the Clerk forwarded to us, in which you identify everything that has been written about the deterrence factor associated with minimum mandatory sentences, and you suggest that in that respect, there is absolutely no evidence that they do. But that is not exactly what I would like to discuss with you today.

I believe it has been proven that minimum mandatory sentences do not serve the objectives for which people claim that they are needed and that there is no connection between minimum mandatory sentences and deterrence. I also believe that the government is motivated by ideology alone and that there is no scientific rigour in Bill C-10. Finally, the best thing that could happen would be for Bill C-10 to be defeated by the Committee, right here.

In addition, I would like to know how we can tackle the problem of violence perpetrated by certain street gangs and to what extent we know what the effect of legislation passed to tackle gangsterism has been effective. As you may recall, we passed sections 466, 467 and 468 of the Criminal Code, which now refers to gangsterism.

Does any one of you have suggestions to make with respect to the whole question of guns and gangsterism, smuggling and street gangs? Are you able to share any information with us that could help us refocus the debate on more effective, more inspired actions?

● (1720)

[*English*]

Dr. Anthony Doob: What I would like to see is a debate about how we should use limited resources to deal with crime. The problem with firearms is not a problem we're having only in Canada. It's a problem that's occurring in other places. What we really need to do about firearms—and obviously I'm not saying anything very important—is to stop people from having them and stop people from carrying them.

What we're really talking about, even if we move to a deterrence model, is looking for ways to apprehend people who have them or keep people from having them. That has to do with catching people, and catching people is unfortunately a lot harder than simply changing laws and fiddling with penalties.

I would say to move away from the penalty structure, because we have plenty of harsh laws that deal with serious crimes having to do with firearms. After all, if it's a prohibited or restricted weapon, what we're talking about at most on a first offence is moving it from four years to five years. I don't think we know many people who would commit an offence for four years but not for five years. It's a silly argument.

What we have to do is think of it in terms of the suppression of firearms, but let's also look at what it is that makes people carry firearms. One of the difficulties—and there is certainly some evidence of this—is that people carry weapons in part because they are frightened of other people carrying weapons. What we have to do is address our communities and address these things. These are much harder. It is a much harder task to do. It's not an area that I would consider to be part of my expertise, but in reading the gang literature from places like Los Angeles, which has very serious gang problems, when the experts there are worried about the narrow approaches we use, all I can say is that their narrow approaches look very much like the narrow approaches we're using.

We have to approach these in a broader fashion. We're not going to solve the problem of gun crime by passing a simple law like Bill C-10. I would say that if this committee wanted to look into this issue about how best to use resources, that would be a very good program for the committee to take on.

The Chair: Thank you, Mr. Ménard.

Before you begin, Mr. Comartin, we usually conclude at the half-hour. We're five minutes from there now. Is it the wish of the committee to extend it a few minutes, say, fifteen or maybe twenty minutes?

Secondly, I would ask if the witnesses would be willing to stay for a few extra minutes.

Voices: Agreed.

The Chair: Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: We are debating Senator Lapointe's bill on video lottery terminals, and we have to go and make a speech. We would agree to the Committee extending the meeting if a promise is made that there will be no motions dealt with. We cannot stay, but we have no objection to extending the meeting if the idea is simply to allow colleagues to ask questions. But we want to be given assurances that there will be no motions, because we will not be here to vote. If it's just to allow colleagues to ask questions, we can agree to that.

[*English*]

The Chair: No, Mr. Ménard. Yours is the only motion, and we've already addressed it without your presence here. Thank you.

Mr. Comartin.

An hon. member: [*Inaudible—Editor*]

● (1725)

Mr. Réal Ménard: You're supposed to be happy with my motion. It's a Christmas gift.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Is it my turn now, Mr. Chair?

The Chair: Order, please.

Mr. Comartin, please.

Mr. Joe Comartin: Thank you, Mr. Chair.

My thanks to all the witnesses for being here. It has been very informative.

Mr. Doob and Mr. Moriah, you may want to comment about this as well. Both in your paper and your verbal comments today you indicated that you had some thoughts on how the principle of proportionality could be strengthened. I wonder if you would just share those thoughts with us.

I have a second one for anyone, perhaps particularly for you, Mr. King.

I haven't seen any specific studies on this, but I understand that with regard to taking away the discretion from the judiciary, some of the states in the United States have taken the discretion away from the prosecutors by forbidding plea bargaining in certain cases. Other techniques have just mandated that the mandatory minimums cannot be avoided by some of the points you have made. I wonder if you could comment on that issue, and whether anybody else from the Canadian side has seen any signs of that. We've had it to some degree in zero tolerance in domestic violence cases and the way we treat some of the impaired driving charges. We've had some of that just on the surface of prosecutorial discretion. But specifically on mandatory minimums, could you comment?

Dr. Doob, would you start?

Dr. Anthony Doob: On the issue of proportionality, the difficulty that was written into the Criminal Code in 1996 is the statement about proportionality, which I am obviously completely comfortable with. There is also a statement about the goals of sentencing that goes immediately before it. The difficulty is that accomplishing the various goals of sentencing may well conflict with proportionality. The concern I have is that if we do want proportionality to be the dominant determinant of the severity of the sentence, then we should say that. What we should say perhaps is that those various purposes that are listed there—some of which I don't think can be accomplished at sentencing—should be held within, in a sense, the range that is set by proportionality.

Just as an example—and I'll use this as an example while knowing some of my colleagues sitting as witnesses may disagree with it—we say that one of the goals the judge may choose in determining the sentence should be the rehabilitation of the offender. There's a problem with that. What of the rehabilitation of the offender if the most appropriate rehabilitative sentence is not proportionate to the harm done? The question, then, is how those things become resolved with one another. The Criminal Code of Canada is silent on that issue. It seems to me that the Criminal Code should not be silent on that issue.

I don't want necessarily to go back twenty years to the Canadian Sentencing Commission. What the Canadian Sentencing Commission said was that the dominant principle should be proportionality and that in choosing the actual sanctions, for example, one might choose them to accomplish other kinds of goals. In the end, though, we would look at the sentence and say it's proportionate.

Most of the problem the public has with sentencing, rightly or wrongly—and in many cases wrongly—is that the sentence doesn't look proportionate. That's a completely separate issue from stopping crime through general deterrence. So I would say we should look at ways in which we can ensure that sentences are proportionate to the harm done, so that when a sentence deviates from that, we can easily say it is an inappropriate sentence.

The Chair: We'll take one more response, quickly.

Mr. King.

Mr. Ryan King: Very quickly, in August 2003, then Attorney General John Ashcroft issued a memorandum to federal prosecutors, essentially instructing them not to plead cases down. The official position at the federal level of the Department of Justice is that there is not supposed to be any of this kind of bargaining down—charge bargaining, basically—for the purposes of getting a plea. In reality, in actual operation, that oversight is very difficult to maintain, but it shows a disconnect and it shows how it becomes a kind of high-stakes poker game in terms of what somebody is going to get. It's particularly disturbing in light of the fact that, in the last twenty years, developments in court sentencing in the United States were supposed to have been following a rational approach, with predictability being built in as much as possible. That's what sentencing guidelines and mandatory minimums were supposed to be bringing about. In reality, though, we see that this is how it functions.

● (1730)

The Chair: Thank you, Mr. Comartin.

Mr. Thompson.

Mr. Myron Thompson (Wild Rose, CPC): Thank you all for being here.

Welcome, Mr. King, from my home country before I emigrated to Canada in the 1960s. Of course, by looking at you I can see I probably spent my 32 years down there when you were but a twinkle in your mom and pop's eyes. But I'd like to welcome you.

I was kind of pleased to see Mr. Doob with his charts. I think it's always interesting to go back to the 1960s. I think it's also good to go back to the 1920s, you know, this steady incline and then sort of leveling and peaking and all that sort of stuff. I find it really interesting.

Most of the witnesses that we have here I think and what we as politicians are trying to do is answer the pleas of the public. Too many people are dying because of guns and gangs. What are you guys going to do about it? We want these people off the street.

If you ask the public what we should do with these people who are shooting people in Toronto, probably almost 100% will say "Put them in jail." "Are you willing to pay for more jails? Are you willing to pay the extra costs? Absolutely. I want my kids safe."

Now, we're talking about a very focused thing in this Bill C-10. We're not talking about a broad range of how we should deal with this. The police like what we're doing. The victims are supporting what Bill C-10 is doing. And I think the public at large is appreciating what we are doing.

People like yourselves come in, and I understand you want to get to the root cause as well. I've talked about the root causes a hundred times. You don't really want to get to the root causes with these issues, but if you did, then you would do something about alcohol. It's a major cause. They tell me that 80% of the people wouldn't be in prison today if it weren't for booze and drugs. I don't know if any of you can, but I can't think of one root cause that justifies anybody picking up a gun and shooting somebody. I cannot think of a root cause that would justify that.

Through that chart, Mr. Doob, that you've shown, we've already made a lot of decisions that help make that climb. I'm talking about the days in the States when they had 21 years for drinking. It went down to 18 for awhile; all hell broke loose in the schools, and now I think they're back to 21 all across the States. They're trying to do something about root causes. I appreciate that.

I'm trying to point out.... In Warkworth Penitentiary out here, it's full of sexual offenders. The last time I was there—I believe you were here that time with me, Mr. Chairman—there were 745 sexual offenders in this place. I visited with lots of the inmates. Of those who sexually attacked the children, almost to a man, they wouldn't be there had they not got hooked on child pornography. They started overusing it, and they got to the point where they had to act out their fantasies, driven by child pornography.

So you come here and you try to fight child pornography, but the government for the last thirteen years has brought things forward and the courts have decided, "Well, that's not quite good because it might infringe on our freedom of expression. Well, you can't do it that way because there might be some artistic merit. Well, there might be some public good. Well, it might serve a useful purpose."

I think going to the root causes is a futile exercise in this country because we're forever worried about somebody's rights being infringed on, so we never get the job done. For thirteen years now I've asked the government of the past, and I'm asking this government today, to come up with something and get to the root cause of those kinds of offences. Stamp out child pornography. It's not getting anywhere because somewhere some court will decide, "Wait a minute, that doesn't meet the charter test, or that isn't exactly the right thing to do because you'll infringe on...."

My whole message to you folks is that I appreciate you being here, but I don't think you're really focusing enough on the issue of Bill C-10. The public outcry is, "Do something about gangs and guns", and it's very focused. I think it certainly is not the answer to all the crime that is happening. It's maybe not going to reduce crime, but those who are in jail are not going to do it again.

● (1735)

It's an effort by the politicians to try to accomplish something that (a) the public wants, because we're the servants of the public, and (b) the victims want, because I happen to have a lot more concern about victims than I do about criminals, and (c) is the right thing to do.

If it can be done better, we've got to work at that as time progresses, but we need an immediate answer to guns and gangs and crime, and I think it has to be found through Bill C-10. We can talk about all the issues that we've talked about, but they will not stop if we don't take some serious, concrete action.

The Chair: Do you have a question, Mr. Thompson?

Mr. Myron Thompson: What is your suggestion? Am I out of line by suggesting to you folks that you're not addressing Bill C-10 and that you're addressing the bigger picture? That's fine. I think there's a time to do that, but specifically, the public wants something done in Toronto, Montreal, and other cities. Get the gangs and guns off the streets and help protect our society.

The Chair: Thank you, Mr. Thompson. I'll cut you off here.

I'm going to allow the witnesses to make some statements. I'm going to ask each witness to respond, but could you make your answers short? I do have a couple more people who want to put questions here.

Would you mind starting, Mr. Kulik?

Mr. Irving Kulik: Okay. I'll keep it very brief, Mr. Chairman.

I sense the member's frustration. I think we can identify with that frustration. We can certainly understand it.

I don't believe that I certainly or any of our colleagues here were trying to justify anybody's criminality based on root causes.

There are two points to be made. Looking at root causes is important to ensure that there is not continued growth in criminality and there aren't new witnesses tomorrow. That's what that is about. As for those who are in penitentiary or in prison today, hopefully they'll do something or something will be done for them to improve their lives and to make it safer for them to one day return to a community.

The other aspect is understanding the situation in Toronto or any other major community in Canada. The laws exist today to put into prison for life somebody who shoots somebody else. That exists. So because you make a particular offence mandatory at a point in time, that by itself—although it sounds like an easy solution—is not going to be the solution to all the problems we have.

The Chair: Mr. Doob.

Dr. Anthony Doob: Well, I think the issue is whether you want to do something that's effective or whether you want to do something that might, for a moment, look good. It seems to me that the evidence is overwhelming that what you're going to be doing if you pass this bill is telling the public that something effective is being done when the evidence is clear that we're working in the other direction.

Why does the public want mandatory minimums or tougher laws and so on? They want them because they've been told repeatedly by this Parliament and others that mandatory minimums are the way to solve the problem of crime. This is not a party issue. All three national parties have endorsed mandatory minimums at one point or another. I'm against all three of those parties for that.

I think what one has to do is to ask what it is we can do that will actually do something. So again, to repeat what was just said, getting the gangs and the guns off the street has nothing to do with sentencing. We all agree that's good. We all agree that the sentences that are available in the Criminal Code allow people to be put away for serious crimes for a long period of time.

What you're asking is whether the promise that is explicit in Bill C-10 is a legitimate promise. I am telling you it is not.

The Chair: Thank you.

Mr. Moriah.

Mr. Royland Moriah: I don't know that I'll dwell on it anymore, but I think I'm going to reiterate what my colleagues have said.

Certainly, and especially in the African Canadian community, we want people who are using guns to be off the street. I will make that very clear to you. We share in our community the same frustration, because it is mostly members of our community who are being killed.

However, in addressing how we're going to do that, we think it's important to look at what effective strategies we have and whether the strategy we've chosen is going to work. And in terms of what the public has asked for, it is not necessarily Bill C-10. What they have asked for is safety from guns and gangs and violence. That's why we're here today to tell you that mandatory minimums are not an adequate response to guns and gangs and violence.

● (1740)

The Chair: Mr. King.

Mr. Ryan King: You make the distinction that there is a time to talk about the big issues but this is a specific problem we need to address. With all due respect, that's the thinking that has governed the United States policy for the past thirty years and that has gotten us into problems.

If we're not going to address these bigger issues now, then when are we going to? We know for a fact that these little efforts to address things here and there simply don't work, and have substantially detrimental consequences.

So if you concede that there are larger root causes that lead to gun violence, drug transactions, sexual offending, etc., then when is the right time to address those? That's the question I would put to you.

Mr. Myron Thompson: I've tried to illustrate how over thirteen years nothing happened, even when we tried to address things like child pornography. And I told you why nothing happens. It's frustrating.

The Chair: I've sat back and listened to the arguments today, and perhaps I can make a point here.

There's always the defence of more or less the status quo, but there is a problem in that offenders really aren't necessarily held accountable for all they do. One thing that has come up repeatedly is that prisons are not doing the job they're supposed to be doing. If prisons are not doing the job they're supposed to be doing, then maybe we have a prison problem and we should be doing something differently in the prisons.

Secondly, this country does not have any kind of drug strategy to deal with the drug problems that are ever before us, and that, as Mr. Thompson mentioned, certainly play a big part in the crimes committed. The drug issues are destroying so many lives now, not only of the people involved in committing these crimes but also of the individuals who have crimes committed against them. This is a growing problem, and ultimately we're not fully addressing that problem either.

So what do we do? Nobody talks about.... Well, they do talk about prison; many witnesses have told us not to send anybody to prison because it's a school for learning more crime. Okay, then, maybe we should be concentrating in those areas.

That's just another point.

Mr. Lee, the floor is yours.

Mr. Derek Lee: Thank you, Mr. Chairman.

By the way, I'm not the Mr. Lee referred to earlier in the testimony.

Mr. Moore referred to the recent spike in firearm homicides across the country. Those are accurate statistics for 2004 and 2005. We've been through this little exercise before. I do want to let the record show that in Toronto, at least, the firearm homicides for 2006, up to the month of November, had dropped about 44%—a huge drop. Hopefully that shows the previous two years to be a spike, but time will tell.

I want to induce a response, if it were there, perhaps from Mr. King. With regard to the reference to the Kessler-Levitt study, just because this guy Levitt was on the front of some magazine and wrote a book called *Freakonomics* and was recognized as a very valuable contributor doesn't mean we have additional evidence on the issue of mandatory minimums in sentencing. I was just going to ask...and you may during your answers want to say yes, there is more evidence from Professor Levitt or Kessler or whatever. If there isn't any other evidence that's relevant, that's okay; if there is, we should try to take a look at it.

I have two questions, one to Professor Doob and one to Mr. King. With regard to sentencing rates, we've seen the crime increase from 1960 to 1992, and then it starts going down. Is there any evidence that fluctuations in sentencing rates were a factor in the increasing crime rate? We've heard about a lot of other factors of crime, but were sentencing rates ever seen or studied to be a factor in the increasing crime rates for 1960 to 1992?

Secondly, in your work in sentencing, are there any real benefits seen in legislation like this? Does increased incarceration, in a targeted way, as Mr. Moore refers to it, provide any benefits at all? For example, will it enhance appropriate incapacitation for the really bad guys? Will an extended intervention in an offender's life better assure access to programming that would allow the offender to get things turned around—go straight, as they sometimes say?

Thirdly, would increased incapacitation allow for the extraction of an individual from a crime context? Again, that's a neighbourhood where that's the way you get things done. You extract the individual, you get him convicted, and you put him away for extra time in the hope that programming might be the intervention needed to break the cycle.

I don't believe those things do happen, but if there's any evidence that you've come across in your studies and your extensive work, I would like you to please help us out.

● (1745)

The Chair: I'm going to ask the panel if they would respond as quickly as possible to each of Mr. Lee's points.

Mr. King, would you like to start?

Mr. Ryan King: I will take a couple of them. The ones that I think are more appropriate to Professor Doob, I might pass on.

On the Levitt question, I'm actually equally as staunch a critic of Steven Levitt as is Professor Doob. And no, I don't believe any other work exists. In fact, I believe there's really a common thread of disingenuousness through his work, and it's been exposed frequently, by Mr. Doob today, as well as by some others.

On the incapacitation issue—and Professor Doob will probably expand on this—incapacitation has an impact if you take somebody out, but we're talking about already having stiff sentences that exist. That person is already being incapacitated. So the question is, is this a mandatory minimum in some sort of way? Is this going to result in somebody being incapacitated for a longer period of time? In most cases, if you have stiff sentences that exist, that's not going to be the case. In particular, as far as drug crimes are concerned, we've seen that incapacitation really has no effect whatsoever, whether it's for a short period of time or not.

The sentencing issue leading to an increase in crime from 1960 to 1992.... I haven't seen any research leading to that, but I have seen a new strain of research that's emerged since 2000, that's looking at the formation of social control, at informal means of control in social capital within low-income communities where there's high-density incarceration. It has actually been demonstrated in a number of American cities, in a number of different contexts, that there's a tipping point. When incarceration rates reach a certain point within some of these communities—and there are neighbourhoods in American cities where up to one-fifth of the young males in that neighbourhood are incarcerated or in the criminal justice system on any given day—there's a tipping point, and we actually begin to see crime rates increase. It's speculation, and that is as a result of an erosion, really. In any sort of neighbourhood, the constant disruption of people moving in and out of the criminal justice system actually has what would be called statistically a positive effect leading to an increase, which is actually a negative effect.

The Chair: Mr. Doob.

Dr. Anthony Doob: First of all, on the issue of the Toronto gun crime, for example, which seemed to have galvanized everybody a year ago, again, I don't want to feel like anybody should relax about the seriousness of crime because gun crime might have gone down. My point is that we're not going to fix that. Whether it fixes itself or it is fixed because of some other reason, we're not going to fix it with sentencing. So if Toronto gun crime goes down, we still have a problem with guns and we still have people being killed. We should take that seriously. Again, whether crime is going up or down, we do all hope it obviously is decreasing.

I'll talk very briefly about the issue of incapacitation. The difficulty is, when you're talking about an incapacitation strategy, what you're really saying is something in addition to what is deserved by the crime. These are all serious crimes. These are all going to get very heavy sentences. None of us sitting here is suggesting, ever, that what we're talking about is taking these very serious crimes...and suggesting that they shouldn't lead to imprisonment. Obviously, what we're talking about is that the penalty should fit the crime, and I think there's a general consensus of this.

The final point I want to make is that the criminal justice system is not good at treating people. What we may be able to do with a sensible correctional system is to do the best we possibly can. If we're serious, this is a very expensive, individualistic endeavour of taking somebody who is committing serious kinds of crimes, putting them in prison, and providing them with programs. Again, if you look at it, if we're really interested in providing programs to people, this is probably not the way to do it. As I've said, we have to remember the ones we're talking about are going to be in prison anyway.

The problem that Mr. King has already mentioned is with drugs. The simple imprisonment policy, for example.... What you simply get in these circumstances, particularly with street-level trading of drugs, it seems, is simple replacement. Somebody else comes in and sells the drugs, so we haven't really accomplished anything; at worst, what we may have done is recruit another person into the business. So I think the feeling around all of us is that we're looking for a good solution with our limited resources. Certainly there are some studies published, in addition to Levitt's, that would suggest that harsher sentences will deter, but those are the exceptions. The exceptions tend to be, in effect, ones that are cherry-picked from studies, or cherry-picked examples that would be part of that last study I talked about in my oral remarks today.

So I think we have to understand that the evidence is fairly clear in one direction.

● (1750)

The Chair: Mr. Kulik.

Mr. Irving Kulik: I would certainly support what Professor Doob just said. I have a couple of additional comments.

I don't think Mr. King referred to it, but in American prisons there are major issues with gang membership. In a number of institutions, many institutions, the gangs are running the institution, particularly in the west in the States, in the midwest. We've started seeing in the last number of years in Canada the same kinds of issues starting to grow, though not at the same level.

I'm not suggesting they shouldn't be in prison, but simply imprisoning them, removing them from the community, doesn't solve the gang issue. In fact, I think there is some evidence that would show that some of the gangs are actually born and go back into the community after. I don't know if we're going to solve it in a simple fashion. I don't think one particular mandatory sentence is going to change anything.

The reality, for me, at least, is that being a gang member, the individual, who may not have any other reason...it gives them stature, and it gives them stature in that particular group, which is basically and usually a violent group. We need to somehow focus on replacing that kind of reward situation with a more lawful one, and that is not easy. It's very difficult. Obviously, our friends in the States have been working on this, and Canada has been working on this. It's related to root causes and all kinds of factors. We don't have a silver bullet, to use the old expression, on how to solve these kinds of problems. We have to keep working on it.

The Chair: Thank you, Mr. Kulik.

Mr. Petit.

[*Translation*]

Mr. Daniel Petit: I want to thank you for staying so long. We were supposed to conclude the meeting at 5:30 p.m. I have a question for you with respect to judicial discretion — in other words, judicial power. A great many witnesses have come before the Committee to say that we are attacking the power or discretion of judges.

But I would just like to make a few comments by way of introduction. Under the American system, judges are elected, with the exception of federal judges. If I had the power to elect judges, perhaps we would not be here trying to resolve this problem. In Canada, all our municipal, provincial and federal judges are appointed by politicians. When they are appointed, they are given the right to take action under the Criminal Code. If a judge is given the right to take action under the Criminal Code, it is Parliament setting the parameters within which he has to work. For example, we require this or that type of evidence. The principle of evidence being proven beyond a reasonable doubt is a parameter. We tell the Crown prosecutor that he wants to convict someone, he will have to prove beyond a reasonable doubt that the individual in question committed the crime of which he or she is accused. So, we set parameters.

We also give judges certain parameters. We tell them that if they believe, beyond a reasonable doubt, that the accused is guilty, they will have to do certain things. But because judges are appointed for life, they can do whatever they like. The only avenue of appeal is the Appeal Court. I can assure you that in the United States, a judge who decided to do whatever he liked would be removed from his position within two years. I'm not talking about federal judges. There is a big difference between the two systems. That changes the dynamic. In Canada, we are different.

And there is a second point I want to raise with respect to judicial discretion. Mr. Moriah, I related somewhat to your comments. We live in Canada, with a population of 32 million. I am from the province of Quebec. I sometimes feel as though I am a victim of discrimination because there are proportionally more Francophones in prison in Quebec. I see that as a problem. So, in that regard, I am on the same wavelength with you. The fact is that there are more Francophones in prison in Quebec.

People often talk about the different groups there are here in Canada. Mr. Bagnell often talks about the Aboriginal peoples. There are Aboriginal groups in Northern Quebec; there are 200 of them. And when someone commits a crime, we have to get that person out of there. These groups are overrepresented in places where we send people who commit crimes. Because there is no road, we have to go and get that person in an airplane, in order to bring him back to Montreal to put him in prison. It's a bit of a problem. We live in a rather strange country.

I would be interested in hearing your comments, because you are a lawyer. Do you disagree with the idea of limiting the discretionary power of judges? That is our role. In reality, it all comes down to that. Bill C-10 applies to extremely serious crimes committed in serious circumstances. As Mr. Kulik was saying earlier, most of the people these legislative provisions will apply to were initially convicted in youth court, or at the provincial level, and then entered the federal system.

You are a lawyer practising in Toronto, Ontario, and I would like you to tell me whether you disagree with the idea that we can limit judges' discretionary power. That is an extensive power. It may be the most significant power a judge has when handing down a sentence.

● (1755)

[*English*]

The Chair: Mr. Moriah.

Mr. Royland Moriah: It's a broad question in some senses, because when you're talking about discretion under Bill C-10, there are a couple of things. First is the general issue of whether or not people believe judges are using appropriate discretion in dealing with sentencing issues. That's one of the things underlying some of the discussion we're having here about Bill C-10, and certainly about the push to implement mandatory minimums.

What we have to think about first when we're talking about judges' discretion is that they are experts to some extent in the field they're working in. They were appointed through a very good process in Canada in terms of the way we decide who our judges are going to be. So even though they are appointed, it's a very open and transparent process that is not as political as a politician choosing a particular person.

In terms of the actual use of that discretion, we have to realize judges' discretion covers a number of areas, as you've said, and particularly in sentencing you have to realize we're talking about mandatory minimums. But as some of my colleagues have said several times today, judges can always implement a range of sentences. The issue is whether or not we believe they're doing so appropriately and whether mandatory minimums will be the panacea to make sure they do so. From the information we have available, that doesn't happen, because what happens is the discretion judges have in terms of charging and determining sentences merely gets transferred to another player within the judicial system, whether it be the police or the prosecutors. What we have to think about first is that judges have the ability to give at least that mandatory minimum sentence, but they also have the ability to give a larger sentence.

What we have to be concerned about particularly for the African Canadian community, recognizing we have racism within our criminal justice system, is that any exercise of discretion should be done in an open and transparent manner. That's particularly important in sentencing because you have the ability to review sentences, to appeal them, to determine whether or not they are appropriate in any given circumstance. Unfortunately, when you have mandatory minimums that shift the judicial discretion to police and prosecutors, that process is no longer available, and that's particularly problematic for communities such as African Canadians, such as aboriginal communities that have disproportionately borne the brunt of a discriminatory use of discretion within the criminal justice system.

So, yes, we want to make sure judges use their discretion appropriately, but we have to realize they have processes available to do that. They have minimum and maximum sentences they can impose. More importantly, it's important that whoever is exercising that discretion is doing so in an open and transparent way that can reviewed.

● (1800)

The Chair: Thank you, Mr. Moriah.

Don't politicians choose our judges here in Canada?

Mr. Derek Lee: The appointment is made by the Governor in Council, which is essentially the Prime Minister and the politicians—

The Chair: Through a selection process.

Mr. Derek Lee: —but the process is more multi-faceted. There's a consultative process in each province.

The Chair: Okay. So can a judge possibly have a philosophical point of view? I don't know if Mr. Moriah can answer this question.

Mr. Royland Moriah: It comes back to the issue of the difference between impartiality and neutrality. It's not saying judges are going to be neutral, but judges have to be impartial. I'm sure judges, just like all of us, come to their job with a particular point of view.

Judges are supposed to be appointed, and I know judges take their job very seriously in terms of making sure they are impartial in making their decisions, and that's what's important.

The Chair: Thank you, Mr. Moriah.

Thank you, witnesses. I really appreciate your extending your time here with the committee. This has been a very good discussion. It's certainly invoked a lot of response from the witnesses and it has given us some things to think about.

Mr. King, thank you for coming from the U.S. Your testimony was interesting. I can't say I necessarily agree with it, but I don't think anybody here agrees with everything that's been said.

It's much appreciated, gentlemen, madam. Thank you.

The meeting is adjourned.

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